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IN THE SUPREME COURT OF THE STATE OF NEVADA

HIGH NOON AT ARLINGTON RANCH  
HOMEOWNERS ASSOCIATION, A  
NEVADA NON-PROFIT  
CORPORATION, FOR ITSELF AND  
ALL OTHERS SIMILARLY SITUATED,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
SUSAN JOHNSON, DISTRICT JUDGE,  
Respondents,

D.R. HORTON, INC.,

Real Party in Interest

Case No. ~~A~~52798

2009 MAY 22 PM 4:39

Clark County District  
Court No. A542616

FILED

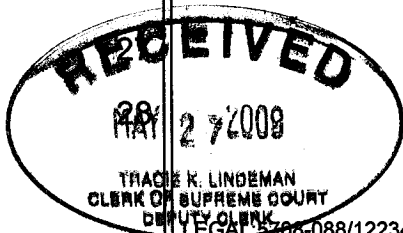
MAY 27 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *R. Malone*  
DEPUTY CLERK

REAL PARTY IN INTEREST D.R. HORTON'S SUPPLEMENT TO ITS ANSWER  
OPPOSING THE ISSUANCE OF WRITS OF MANDAMUS OR PROHIBITION

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09-12078

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IN THE SUPREME COURT OF THE STATE OF NEVADA

HIGH NOON AT ARLINGTON RANCH  
HOMEOWNERS ASSOCIATION, A  
NEVADA NON-PROFIT  
CORPORATION, FOR ITSELF AND  
ALL OTHERS SIMILARLY SITUATED,  
Petitioner,

Case No. A52798

Clark County District  
Court No. A542616

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
SUSAN JOHNSON, DISTRICT JUDGE,  
Respondents,

D.R. HORTON, INC.,

Real Party in Interest

**REAL PARTY IN INTEREST D.R. HORTON'S SUPPLEMENT TO ITS ANSWER  
OPPOSING THE ISSUANCE OF WRITS OF MANDAMUS OR PROHIBITION**

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Attorneys for Real Party in Interest,

D.R. Horton, Inc.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Real Party in Interest D.R. Horton set forth in its Answer Opposing the Issuance of Writs of Mandamus or Prohibition (the "Opposition") that permitting homeowners associations to bring construction defect claims in place of the individual homeowners regarding issues that affect solely their individual property is improper at law and contrary to the public policy of this State. A primary concern of Real Party in Interest as noted in its Opposition was the potential of greed and corruption that can occur when the claims of the actual homeowners are usurped for the profit of others. Recent reports of improprieties with regard to construction defect lawsuits brought by homeowners associations in Nevada confirm that this is not mere rhetoric. In light of these developments, Real Party in Interest's concern that greed and corruption are at play in the instant matter are now substantiated.

Here, Petitioner seeks the issuance of a Writ of Mandamus, or in the alternative, a Writ of Prohibition, providing that the Petitioner does have standing to sue on behalf of homeowners for alleged defects existing on their individually-owned property. In addition to the reasons set forth in its Opposition, the new information presented herein confirms that Petitioner is not entitled to the relief sought. Real Party in Interest respectfully requests that this honorable Court deny Petitioner's Petition as the District Court did not err in its judgment.

**II. STANDARD OF REVIEW**

Nevada Rules of Appellate Procedure Rule 31(d) provides, in pertinent part:

Any party may supplement the party's brief or briefs with supplemental authorities... by filing and serving a supplemental memorandum not later than fifteen (15) days before the day set for oral argument... All matters presented in supplemental memorandum shall be clearly referenced to the parts of the party's briefs on file which are supplemented by memorandum.

Under Rule 31(d), this honorable Court may consider supplemental authority as long as it supplements and references arguments from the party brief being supplemented. The additional points and authorities which are the subject of this brief

1 directly supplement and reference the arguments from Section "D" of Real Party in  
2 Interest's Opposition. As such, this timely supplementation may be considered by this  
3 honorable Court under *NRAP* 31(d).

4 **III. ARGUMENT**

5 **A. ALLOWING STANDING IN THIS CASE IS CONTRARY TO THE**  
6 **ASSERTED PUBLIC POLICY OF THIS STATE.**

7 **1. Recently Discovered Evidence of Improprieties in Construction Defect**  
8 **Lawsuits on Behalf of Homeowners Associations in Nevada Further**  
9 **Demonstrates that Petitioner Is Without Standing to Assert Claims for**  
10 **Defects that Only Affect Individually-Owned Property.**

11 Real Party in Interest's Opposition explained that "giving a homeowners association power  
12 over construction defect lawsuits and taking claims away from the homeowners can lead to  
13 corruption, greed and abuse of authority."<sup>1</sup> New information has come to light subsequent to  
14 submitting its Opposition which confirms that corruption, greed, and abuse of authority are  
15 evident in the instant matter. Because recent news reports establish that Petitioner's counsel's  
16 actions in the underlying matter are motivated by greed, corruption, and abuse of authority,  
17 Petitioner is not entitled to the relief it seeks.

18 On February 2, 2009, John J. Nicholas, Petitioner's electrical expert, and Liberty Site  
19 Control, Petitioner's site inspection coordinator, filed an Amended Complaint detailing the illicit  
20 litigation practices of Petitioner's counsel, Nancy Quon ("Quon") of the Quon Bruce Christensen  
21 Law Firm ("QBC").<sup>2</sup> Plaintiffs in *Nicholas v. Quon* allege that Petitioner's counsel hired them to  
22 work on a number of constructional defect matters, including the matter at issue here. However,  
23 as outlined in their Amended Complaint, "since Quon discovered that she was under investigation  
24 by federal authorities, Quon and the Quon (Bruce Christensen) Law Firm have not met their due  
25 obligations to Nicholas, Liberty and third parties similarly situated, and there is evidence of

26 <sup>1</sup> Please see Real Party in Interest's Opposition at P. 20, ll. 20-22.

27 <sup>2</sup> Please see the Amended Complaint filed in *John J. Nicholas, et al. v. Nancy Quon, et al.*

1 significant monies being paid or scheduled to be paid to the Quon (Bruce Christensen) Law Firm,  
2 and at the same time, entities being created for the purpose of transferring and protecting assets for  
3 the ultimate benefit of Quon and/or her affiliates or relatives."<sup>3</sup>

4 In a separate lawsuit against Petitioner's counsel, counsel is alleged to have entered into a  
5 loan agreements collateralized by proceeds from this litigation. Ignoring for the moment the  
6 myriad ethical and legal problems with such financial transactions, it remains that counsel took a  
7 pecuniary interest in this litigation which the actual homeowners do not share. There is no dispute  
8 that Petitioner's counsel's interests in and to this litigation are directly in contrast with those of the  
9 actual homeowners the result of counsel's nefarious financial transactions.

10 On April 16, 2009, SMS Financial, LLC filed a verified complaint against Petitioner's  
11 Counsel, Quon, and QBC, outlining QBC's borrowing of over \$740,000.00 against a potential  
12 recovery in the underlying High Noon Arlington Ranch matter.<sup>4</sup> This transaction occurred on  
13 August 27, 2007, two (2) months after Petitioner filed its Complaint, and four (4) months before  
14 Petitioner served its Notice, in the underlying matter. As noted in Real Party in Interest's  
15 Opposition, Petitioner filed a Complaint against Real Party in Interest on June 7, 2007.<sup>5</sup> Petitioner  
16 then filed an ex parte motion to stay service of the Complaint, stating that it would "immediately  
17 serve Defendants with Notice of Construction Defects pursuant to *NRS* 40.645." However,  
18 Petitioner did not serve the Notice until January 21, 2008, six months after the ex parte motion.

19 The foregoing establishes that the concerns of Real Party in Interest are now realized. Real  
20 Party in Interest asserts in its Opposition that this "construction defect lawsuit (was) being planned  
21 and orchestrated in order for certain individuals to profit, none of which include the actual  
22  
23

24 (District Court Case No. A580453) attached hereto as Exhibit "AA".

25 <sup>3</sup> Please see Exhibit "AA" at P.4, ¶.5.

26 <sup>4</sup> Please see the Verified Complaint filed in *SMS Financial, LLC v. Nancy Quon, et al.*  
(District Court Case No. A587918), attached hereto as Exhibit "BB", at PP. 13-14, ¶¶. 70-74

27 <sup>5</sup> Please see the underlying Complaint excluding exhibits, attached to Real Party in  
28 Interest's Opposition as Exhibit "A"

1 homeowners in the development."<sup>6</sup> There is no doubt that Petitioner's counsel abused her  
2 authority as counsel for Petitioner by entering into a secret loan agreement, receiving over  
3 \$740,000.00 in loan proceeds, without advising Petitioner. The greed and corruption evidenced by  
4 this transaction, in and of itself, is sufficient proof of what happens when homeowners are allowed  
5 to have their claims appropriated. When coupled with actions described by Petitioner's counsel's  
6 own consultants, a pattern of corruption by Petitioner's counsel is wholly apparent now.

7 SMS Financial has also taken a security interest in the underlying matter.<sup>7</sup> As a result of  
8 the greed of Petitioner's counsel in obtaining personal loans against litigation proceeds which  
9 properly belong to Petitioner, if any are to be had, Real Party in Interest now faces additional  
10 hurdles in trying to resolve the underlying matter. All of this is easily avoided if Nevada law is  
11 properly enforced to prevent the abuse of individual homeowners' rights.

12 This supplemental evidence further supports Real Party in Interest's assertions that "the  
13 broadening of the powers of the association provided within *NRS* 116.3102 and the declaration  
14 that govern the association can lead to the ills presented in these recent allegations."<sup>8</sup> Petitioner's  
15 counsel had Petitioner incur significant costs and expenses in making defect allegations that it  
16 lacks standing to assert. Given the number of lawsuits filed against Petitioner's counsel, Petitioner  
17 now finds itself one of potentially hundreds of creditors of Petitioner's counsel, hoping to be  
18 reimbursed for counsel's outrageous conduct.

19 Because recent events have shown the greed and corruption that results when homeowners'  
20 rights are infringed upon, permitting standing to Petitioner is contrary to the public policy of this  
21 State, in addition to well-established canons of statutory construction. As such, Petitioner's  
22 Petition for a Writ to overturn Respondent Court's May 27, 2008 ruling, should be denied.

23  
24  
25 <sup>6</sup> Please see Real Party in Interest's Opposition at P. 22, ll. 8-12.

26 <sup>7</sup> Please see the "Notice of Security Interest and request for Special Notice", attached  
27 hereto as Exhibit "CC", filed by SMS Financial, LLC in the underlying matter.

28 <sup>8</sup> Please see Real Party in Interest's Opposition at P. 22, ll. 14-17.



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1 IV. CONCLUSION

2 For all of the foregoing reasons, Real Party in Interest respectfully submits that  
3 Respondent Court did not abuse its discretion, given that *NRS* 116.3102 does not confer standing  
4 on a homeowners association for individual homeowner defects and that  
5 *NRS* 116.3102 expressly provides that the homeowners association's statutory powers are limited  
6 by the declaration applicable to the association. As such, Real Party in Interest respectfully  
7 requests that Petitioner's Petition for a Writ of Mandamus or, in the alternative, Writ of  
8 Prohibition, to overturn Respondent Court's May 27, 2008 ruling, be denied.

9 DATED: May 22, 2009

WOOD, SMITH, HENNING & BERMAN LLP

10  
11 By:



12 JOEL D. ODOU, ESQ.

13 Nevada Bar No. 7468

14 THOMAS E. TROJAN, ESQ.

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1 **PROOF OF SERVICE**

2 **STATE OF NEVADA, COUNTY OF CLARK**

3 I am employed in the County of Clark, State of Nevada. I am over the age of eighteen  
4 years and not a party to the within action; my business address is 7670 West Lake Mead  
Boulevard, Suite 250, Las Vegas, Nevada 89128-6652.

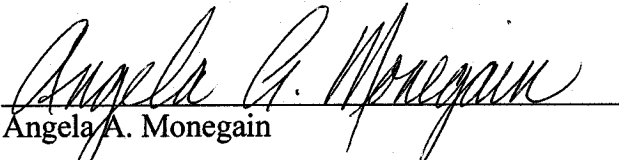
5 On May 22, 2009, I served the following document(s) described as **REAL PARTY IN**  
6 **INTEREST D.R. HORTON'S SUPPLEMENT TO ANSWER OPPOSING TO THE**  
7 **ISSUANCE OF WRITS OF MANDAMUS OR PROHIBITION** on the interested parties in  
this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

8 **SEE ATTACHED LIST**

9 **BY MAIL:** I am "readily familiar" with Wood, Smith, Henning & Berman's practice for  
collecting and processing correspondence for mailing with the United States Postal Service.  
10 Under that practice, it would be deposited with the United States Postal Service that same day in  
the ordinary course of business. Such envelope(s) were placed for collection and mailing with  
11 postage thereon fully prepaid at Las Vegas, Nevada, on that same day following ordinary business  
practices.

12 I declare under penalty of perjury under the laws of the United States of America that the  
13 foregoing is true and correct and that I am employed in the office of a member of the bar of this  
Court at whose direction the service was made.

14 Executed on May 22, 2009, at Las Vegas, Nevada.

15   
16 \_\_\_\_\_  
17 Angela A. Monegain

**SERVICE LIST**  
**Case No. 52798**

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Honorable Judge Susan H. Williams  
Regional Justice Center  
District Court, Dept. 22  
200 Lewis Avenue  
Las Vegas, NV 89101

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CLERK OF THE COURT

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9 (702) 796-5555  
10 *Attorneys for Plaintiffs,*  
11 *John J. Nicholas d/b/a JN Consulting Company*  
12 *and Liberty Site Control, Inc.*

DISTRICT COURT

CLARK COUNTY, NEVADA

10 JOHN J. NICHOLAS, a Nevada resident, doing  
11 business as JN2 CONSULTING COMPANY;  
12 LIBERTY SITE CONTROL, INC., a Nevada  
13 corporation,

Plaintiffs,

vs.

14 NANCY QUON, a Nevada resident, individually  
15 and doing business as QUON BRUCE  
16 CHRISTENSEN LAW FIRM; NANCY QUON,  
17 a Nevada Professional Corporation doing  
18 business as QUON BRUCE CHRISTENSEN  
19 LAW FIRM; ROBERT GUNDERSON, a  
20 Nevada resident; LYNNE GALLAGHER, a  
21 Nevada resident; AMBER RIDGE  
22 CONDOMINIUM ASSOCIATION, a Nevada  
23 non-profit corporation; CHATEAU NOUVEAU  
24 CONDOMINIUM UNIT-OWNERS'  
25 ASSOCIATION, INC., a Nevada non-profit  
26 corporation; CHATEAU VERSAILLES  
27 CONDOMINIUM UNITOWNERS  
28 ASSOCIATION, INC., a Nevada non-profit  
corporation; DORRELL SQUARE  
HOMEOWNERS ASSOCIATION, a Nevada  
non-profit corporation; FIRST LIGHT  
HOMEOWNERS ASSOCIATION, a defaulted  
Nevada non-profit corporation; HORIZON  
HILLS HOMEOWNERS ASSOCIATION, a  
Nevada non-profit corporation; MARAVILLA  
HOMEOWNERS ASSOCIATION, a defaulted  
Nevada non-profit corporation; PARK AVENUE  
HOMEOWNERS' ASSOCIATION, a Nevada  
non-profit corporation; SEDONA  
HOMEOWNERS CONDOMINIUM  
ASSOCIATION, INC., a Nevada non-profit

CASE NO. A580453  
DEPT. VII

**AMENDED COMPLAINT**

corporation; COURT AT ALIANTE HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation; TRIANA SOUTH HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation; FOUR TURNBERRY PLACE CONDOMINIUM ASSOCIATION, A Nevada non-profit corporation; FLEUR DE LIS CONDOMINIUM ASSOCIATION, INC., a Florida corporation; THE HAMPTONS AT METROWEST CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation; VUE CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation; WATERSTREET AT CELEBRATION CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation; VENTNOR "B" CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation; PROMENADE CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation; EL-AD ENCLAVE AT MIRAMAR CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation; MERRICK PRESERVE CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation; RIVERWALK TOWER UNIT-OWNERS' ASSOCIATION, a Nevada non-profit corporation; HIGH NOON AT BOULDER RANCH HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation; FIRST LIGHT AT BOULDER RANCH HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation; DOES I through X and ROE ENTITIES I through XX, inclusive,

Defendants.

COMES NOW Plaintiff, John J. Nicholas, a Nevada resident, d/b/a JN2 Consulting Company ("Nicholas"), and Plaintiff, Liberty Site Control, Inc., a Nevada corporation ("Liberty"), by and through counsel, the law firm of Gordon Silver, and hereby complain and allege against Defendants, Nancy Quon, a Nevada resident, individually and d/b/a Quon Bruce Christensen Law Firm ("Quon"); Nancy Quon, a Nevada Professional Corporation d/b/a Quon Bruce Christensen Law Firm (the "Quon Firm"); Robert Gunderson, ("Gunderson"), Lynne Gallagher, ("Gallagher"); Amber Ridge Condominium Association, a Nevada non-profit corporation ("Amber Ridge"); Chateau Nouveau Condominium Unit-Owners' Association, Inc., a Nevada non-profit corporation ("Chateau Nouveau"), Chateau Versailles Unit-Owners'

1 Association, Inc., a Nevada non-profit corporation ("Chateau Versailles"); Dorrell Square  
2 Homeowners Association, a Nevada non-profit corporation ("Dorrell"); First Light Homeowners  
3 Association, a defaulted Nevada non-profit corporation ("First Light"); Horizon Hills  
4 Homeowners Association, a Nevada non-profit corporation ("Horizon Hills"); Maravilla  
5 Homeowners Association, a defaulted Nevada non-profit corporation ("Maravilla"); Park  
6 Avenue Homeowners; Association, a Nevada non-profit corporation ("Park Avenue"); Sedona  
7 Condominium Homeowners Association, Inc., a Nevada non-profit corporation ("Sedona");  
8 Court at Aliante Homeowners Association, a Nevada non-profit corporation ("Aliante"); Triana  
9 South Homeowners Association, a Nevada non-profit corporation ("Triana"); Four Turnberry  
10 Place Association, a Nevada non-profit corporation ("Turnberry"); Fleur de Lis Condominium  
11 Association, Inc. a Florida corporation ("Fleur de Lis"); The Hamptons at Metrowest  
12 Condominium Association, Inc., a Florida non-profit corporation ("Hamptons"); Merrick  
13 Preserve Condominium Association, Inc. a Florida non-profit corporation ("Merrick"); El-Ad  
14 Enclave at Miramar Condominium Association, Inc. a Florida non-profit corporation  
15 ("Miramar"); Promenade Condominium Association, Inc. a Florida non-profit corporation  
16 ("Promenade"); Vue Condominium Association, Inc. a Florida non-profit corporation ("Vue");  
17 Ventnor "B" Condominium Association, Inc. a Florida non-profit corporation; Waterstreet at  
18 Celebration Condominium Association, Inc. a Florida non-profit corporation ("Waterstreet");  
19 Riverwalk Tower Unit-Owners' Association, a Nevada non-profit corporation ("Riverwalk");  
20 High Noon at Boulder Ranch Homeowners Association ("High Noon"); First Light at Boulder  
21 Ranch Homeowners Association, a Nevada non-profit corporation ("Boulder Ranch"); Does I  
22 through X and Roe Entities I through XX, inclusive (collectively referred to herein as  
23 "Defendants"), as follows:

24 I.

25 **GENERAL ALLEGATIONS**

26 **A. The Parties:**

27 1. Plaintiff Nicholas is, and has been at all times relevant hereto, a Nevada resident,  
28 and since June 11, 2007, has been doing business as JN2 Consulting Company.

2. Plaintiff Liberty is, and was at all times relevant hereto, incorporated in the State of Nevada and doing business in Clark County, Nevada.

3. Upon information and belief, Defendant Quon is, and was at all times relevant hereto, a Nevada resident and incorporated as a professional corporation in the State of Nevada doing business as the Quon Firm.

4. Upon information and belief, the Quon Firm represents Defendants Gunderson, Gallagher, Amber Ridge, Chateau Nouveau, Chateau Versailles, Dorrell, First Light, Horizon Hills, Park Avenue, Sedona, Aliante, Turnberry, Triana, Fleur de Lis, Merrick, Miramar, Maravilla, Promenade, Vue, Ventnor "B," Waterstreet, Riverwalk, High Noon and Boulder Ranch. Upon information and belief, the Quon Firm represents these clients on a contingency basis in the prosecution of claims against third parties for alleged construction defects of homes or condominiums.

5. Defendants designated herein as Does and Roe Entities are individuals and legal entities that are liable to Plaintiffs for the claims set forth herein. In addition to possible alter egos of the above-named defendants and additional possible liable parties that may be discovered for the alleged obligations, if discovery should reveal Quon and/or the Quon Firm or any of its members are participating in fraudulent transfers for the purpose of avoiding creditors such as Plaintiffs, then members of the Quon Firm and/or third-party transferees, including but not limited to new Quon entities formed for holding property and assets shall be added as defendants herein. Upon information and belief, since Quon discovered she was under investigation by federal authorities, Quon and the Quon Firm have not met their due obligations to Nicholas, Liberty and third parties similarly situated, and there is evidence of significant monies being paid or scheduled to be paid to the Quon Firm, and at the same time, entities being created for the purpose of transferring and protecting assets for the ultimate benefit of Quon and/or her affiliates or relatives. Any transactions and the true capacities of Does and Roe Entities are presently unknown to Plaintiffs and, therefore, Plaintiffs sue said defendants by such fictitious names. Plaintiffs will amend his Complaint to assert the true names and capacities of such Doe and Roe Entities when more information has been ascertained.



1     **B.     The Services Provided By Nicholas:**

2             6.     At all times relevant hereto, Nicholas has been in the business of providing  
3     electrical expert testimony and construction defect litigation support services to homeowners,  
4     homeowner associations and law firms, including but not limited to Defendants.

5             7.     Prior to Nicholas agreeing to provide services for the benefit of the Quon Firm  
6     and its clients, Quon represented to Nicholas that in exchange for his provision of services for  
7     the benefit of the Quon Firm and its clients, that she would pay him for those services. At  
8     various times over the years, Quon and Nicholas have discussed Nicholas' fee arrangement. The  
9     fee arrangement has changed over the years, but only with respect to the percentage of payment  
10    to be paid current.

11            8.     Prior to June 2007, Nicholas was doing business as JN Consulting Co. Nicholas  
12    d/b/a JN Consulting Co. filed a petition for Chapter 7 bankruptcy in April 2007, and during the  
13    pendency of the bankruptcy, Nicholas reached an accord and satisfaction for all outstanding  
14    receivables due and owing to JN Consulting Co. with the Quon Firm.

15            9.     Upon Nicholas commencing work on behalf of Defendants as JN2 Consulting in  
16    June 2007, Nicholas and Quon discussed the fee arrangement that would apply on a going-  
17    forward basis.

18            10.    At all times, Nicholas and Quon have agreed that Nicholas would bill monthly to  
19    the Quon Firm for work performed for the benefit of each Quon Firm client. Following the June  
20    2007 accord, Quon agreed that Nicholas would thereafter receive payment for 65% of the  
21    amount due for his services on a current basis. In other words, Nicholas was to be paid 65% of  
22    all amounts due to him for services rendered until the client's matter was resolved, at which time  
23    Nicholas would be paid the remaining 35% due to him. No payment to Nicholas is contingent.

24            11.    Nicholas' services performed on behalf of and/or for the benefit of Quon, the  
25    Quon Firm, Gunderson, Gallagher, Amber Ridge, Chateau Nouveau, Chateau Versailles, Dorrell,  
26    First Light, Horizon Hills, Maravilla, Park Avenue, Sedona, Aliante, Triana, Turnberry, Fleur de  
27    Lis, Hamptons, Merrick, Miramar, Promenade, Vue, Ventnor "B," and Waterstreet include, but  
28    are not limited to, the following described services:

- 1 a) identify, inspect, investigate, audit, review and analyze the subject housing
- 2 units that form the subject matter of the litigation;
- 3 b) prepare all required reports and analyses and provide all expert testimony
- 4 required by the homeowners association or the Quon Firm;
- 5 c) conduct all support services deemed necessary to accomplish the
- 6 investigations and perform the expert services.

7 12. Nicholas has sent the Quon Firm monthly invoices for services performed on  
8 behalf of each of the Quon Firm clients. The Quon Firm has remitted payment in the past, and  
9 there was no dispute as to invoices remitted for payment.

10 13. The Quon Firm has failed and/or refused to remit payment for the services  
11 performed on behalf of Defendants, despite its obligation to remain 65% current on each matter  
12 and to pay the remainder due when a matter is resolved.

13 14. Upon information and belief, the case filed by the Quon Firm on behalf of Park  
14 Avenue has settled. Upon information and belief, despite certain settlement proceeds being paid  
15 to the Quon Firm and Park Avenue, Nicholas has not been paid for his billed services in that  
16 case. Upon information and belief, the case filed by the Quon Firm on behalf of Gallagher has  
17 also settled; however, Nicholas has not been paid in full for his services in the Gallagher case  
18 either.

19 **C. The Services Provided By Liberty:**

20 15. Since its formation, Liberty has been in the business of providing construction  
21 defect litigation support services to Quon, and since Quon formed the Quon Firm, Liberty has  
22 provided those services to the Quon Firm and for the benefit of their homeowner and  
23 homeowners' association clients.

24 16. Prior to Liberty agreeing to provide services for the benefit of the Quon Firm and  
25 its clients, Quon represented to Liberty that in exchange for its provision of services for the  
26 benefit of the Quon Firm and its clients, that she would pay Liberty for those services.

27 17. Quon agreed that Liberty would receive payment for 50% of the amount due for  
28 services on a current basis. In other words, Liberty was to be paid 50% of all amounts due for

1 services rendered until the client's matter was resolved, at which time Liberty would be paid the  
2 remaining 50% due. No payment to Liberty is contingent.

3 18. Liberty's services performed on behalf of and/or for the benefit of Quon, the  
4 Quon Firm, Amber Ridge, Chateau Nouveau, Chateau Versailles, Aliante, Dorrell, First Light,  
5 High Noon, Horizon Hills, Park Avenue, Riverwalk, Boulder Ranch, Sedona and Turnberry  
6 include, but are not limited to, the following described services:

- 7 a) identify, inspect, investigate, review and analyze the subject housing units  
8 that form the subject matter of the litigation;  
9 b) attend, supervise and control site inspections;  
10 c) obtain and marshal evidence from site;  
11 d) perform other litigation support services deemed necessary by Quon and  
12 the Quon Firm.

13 19. Liberty has sent the Quon Firm monthly invoices for services performed on  
14 behalf of each of the Quon Firm clients. The Quon Firm has remitted payment in the past, and  
15 there was no dispute as to invoices remitted for payment.

16 20. The Quon Firm has failed and/or refused to remit payment for the services  
17 performed on behalf of Defendants, despite their obligation to remain 50% current on each  
18 matter and to pay the remainder due when a matter is resolved.

19 21. Upon information and belief, the case filed by the Quon Firm on behalf of Park  
20 Avenue has settled. Upon information and belief, despite certain settlement proceeds being paid  
21 to the Quon Firm and Park Avenue, Liberty has not been paid for billed services in that case.

22 II.

23 **CLAIMS FOR RELIEF**

24 **FIRST CAUSE OF ACTION**

25 **(Breach of Contract)**

26 25. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1  
27 through 24 of this Complaint as though fully set forth herein.  
28

26. Upon information and belief, Gunderson, Gallagher, Amber Ridge, Chateau Nouveau, Chateau Versailles, Dorrell, First Light, Horizon Hills, Park Avenue, Sedona, Aliante, Turnberry, Triana, Fleur de Lis, Merrick, Miravilla, Miramar, Promenade, Vue, Ventnor "B," Waterstreet, Riverwalk, Boulder Ranch and High Noon authorized their attorneys to act on for their benefit and hire professionals such as Plaintiffs to provide expert and other litigation support services. Quon, acting on behalf of her clients, therefore entered into a contract with Plaintiffs for expert and other litigation support services.

27. Plaintiffs on one hand and Defendants on the other hand are therefore parties to contract, express and implied. Plaintiffs agreed to provide services for the benefit of Defendants in exchange for payment, and without such payment, Plaintiffs would not have performed the services for the benefit of Defendants.

**28. Plaintiffs performed the promised services.**

29. Defendants have accepted the benefits provided by Plaintiffs pursuant to the contracts for services.

30. Despite that Plaintiffs have met their performance obligations, Defendants have failed and/or refused to pay the due amounts to Plaintiffs pursuant to the terms of the contract.

31. The breach of contract has resulted in damages to Plaintiffs in excess of \$10,000.00, specific amounts to be proven at trial.

32. Plaintiffs contract damages include the cost of collection, including attorneys' fees and costs incurred herein.

## SECOND CAUSE OF ACTION

**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

32. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 31 of this Complaint as though fully set forth herein.

33. Each contract has an implied covenant of good faith and fair dealing, including the contracts with Plaintiffs for the provision of expert and other litigation support services for the benefit of Defendants.

34. Defendants have breached the implied covenant of good faith and fair dealing by acting in bad faith, contrary to the justified expectations of Plaintiffs in the performance of the contracts.

35. The breaches of the implied covenant of good faith and fair dealing has resulted in damages to Plaintiffs in excess of \$10,000.00, a specific amount to be proven at trial.

36. The contract damages include the cost of collection, including attorneys' fees and costs incurred herein.

### THIRD CAUSE OF ACTION

**(Quantum Meruit)**

37. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 36 of this Complaint as though fully set forth herein.

38. Defendants received the benefit of Plaintiffs' services and would not have received these services but for their promise to pay Plaintiffs for them.

39. The reasonable value of Plaintiffs' services provided for the benefit of Defendants that remains unpaid is an amount in excess of \$10,000.00, a specific amount to be determined at the time of trial.

40. Plaintiffs are entitled to attorneys' fees and costs incurred in the prosecution of this case.

#### **FOURTH CAUSE OF ACTION**

## Unjust Enrichment

41. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 40 of this Complaint as though fully set forth herein.

42. Defendants are prosecuting their cases with the benefit of Plaintiffs' services having been provided to them, which Defendants accepted Plaintiffs' services and utilized them and did not pay a reasonable value for such use.

43. Defendants will be unjustly enriched if permitted to retain the reasonable value of these services without paying Plaintiffs for the same.

44. The reasonable value of Plaintiffs' services that remains unpaid is an amount in excess of \$10,000.00, a specific amount to be determined at the time of trial.

45. Plaintiffs are also entitled to punitive damages in an amount sufficient to deter Defendants from similar conduct in the future, pursuant to NRS 42.005, *et seq.*

46. Plaintiffs are entitled to attorneys' fees and costs incurred in the prosecution of this case.

**WHEREFORE, Plaintiffs pray for judgment as follows**

1. An award of damages in excess of \$10,000.00, a specific amount to be determined at the time of trial;
2. An award of punitive damages;
3. an award of fees and costs; and
4. such other and further relief as the Court deems just and proper.

Dated this 19 day of January, 2009.

**GORDON SILVER**

Signature

ERIKA PIKE TURNER

**Nevada Bar No. 6454**

KENNETH E. HOGAN

Nevada Bar No. 10083

3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169

(702) 796-5555

*Attorneys for Plaintiffs,*

*John J. Nicholas, d/b/a JN Consulting Company  
and Liberty Site Control, Inc.*



151

1 **COMP**  
2 **GORDON SILVER**  
3 **ERIKA PIKE TURNER**  
4 Nevada Bar No. 6454  
5 **KAREN L. HANKS**  
6 Nevada Bar No. 9578  
7 3960 Howard Hughes Pkwy., 9th Floor  
8 Las Vegas, Nevada 89169  
9 (702) 796-5555  
10 Attorneys for Plaintiff,  
11 SMS Financial, LLC

**ORIGINAL**

**FILED**

APR 16 12 41 PM '09

*E. J. [Signature]*  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

10 SMS FINANCIAL, LLC, an Arizona limited  
liability company,

11 Plaintiff,

12 vs.

13 NANCY QUON, A PROFESSIONAL  
14 CORPORATION, a Nevada corporation d/b/a  
15 QUON BRUCE CHRISTENSEN LAW FIRM;  
16 NANCY QUON, individually and d/b/a QUON  
17 BRUCE CHRISTENSEN LAW FIRM; JQ  
18 PRINTING & GRAPHICS, INC., a Nevada  
19 corporation; SL PUBLIC RELATIONS, INC., a  
20 Nevada corporation; QUON INVESTMENTS,  
21 LLC, a Nevada limited liability company; and  
22 QUONTUM MARKETING SERVICES, INC., a  
23 Nevada corporation; DOES and ROE ENTITIES,  
I - X, inclusive,

Defendants.

CASE NO.  
DEPT. NO.

A 587918  
XIII

**VERIFIED COMPLAINT**

**Exempt from Arbitration: Amount in  
Controversy Exceeds \$50,000.00 and  
Receiver Requested**

21 Plaintiff, SMS FINANCIAL, LLC, by and through its counsel, the law firm of Gordon  
22 Silver, hereby complains and alleges against Defendants, NANCY QUON, A PROFESSIONAL  
23 CORPORATION, a Nevada corporation d/b/a QUON BRUCE CHRISTENSEN LAW FIRM;  
NANCY QUON, individually and d/b/a QUON BRUCE CHRISTENSEN LAW FIRM; JQ  
PRINTING & GRAPHICS, INC.; SL PUBLIC RELATIONS, INC.; QUON INVESTMENTS,  
LLC; and QUONTUM MARKETING SERVICES, INC., DOES and ROE ENTITIES, I - X,  
inclusive, as follows:

...

**RECEIVED**

APR 16 2009

CLERK OF THE COURT

Gordon Silver  
Attorneys At Law  
Ninth Floor  
3960 Howard Hughes Pkwy  
Las Vegas, Nevada 89169  
(702) 796-5555

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1 of 23



I.

**GENERAL ALLEGATIONS**

**A. PARTIES, JURISDICTION AND VENUE:**

1. Plaintiff SMS Financial, LLC ("SMS Financial") is, and was at all times relevant herein, an Arizona limited liability company.

2. Upon information and belief, Defendant Nancy Quon, A Professional Corporation, is, and was at all times relevant herein, doing business in Clark County, Nevada as the Quon Bruce Christensen Law Firm (the "Quon Firm"). Upon information and belief, the Quon Firm is a law firm located in Las Vegas, Nevada that is primarily engaged in the practice of construction defect litigation.

3. Upon information and belief, Defendant Nancy Quon ("Quon") is, and was at all times relevant herein, an individual residing in Clark County. Quon, in her individual capacity, also does business as the Quon Bruce Christensen Law Firm.

4. Upon information and belief, Defendant JQ Printing & Graphics, Inc. ("JQ Printing") is, and was at all times relevant herein, a Nevada corporation conducting business in Clark County, Nevada.

5. Upon information and belief, Defendant SL Public Relations, Inc. ("SL Public") is, and was at all times relevant herein, a Nevada corporation conducting business in Clark County, Nevada.

6. Upon information and belief, Defendant Quon Investments, LLC ("Quon Investments") is, and was at all times relevant herein, a Nevada limited liability company conducting business in Clark County, Nevada.

7. Upon information and belief, Defendant Quantum Marketing Services, Inc. ("Quantum Marketing") is, and was at all times relevant herein, a Nevada corporation doing business in Clark County Nevada.

8. Defendants designated herein as Does and Roe Entities are individuals and legal entities that are also liable to SMS Financial for the claims set forth herein. In addition to possible alter egos of the above-named defendants, if discovery should reveal that the above-

1 named defendants or any of its principals are participating in fraudulent transfers for the purpose  
2 of avoiding creditors such as SMS Financial, then third-party transferees, including but not  
3 limited to new Quon entities formed for holding property and assets shall be added as defendants  
4 herein. Upon information and belief, since Quon discovered she was under investigation by  
5 federal authorities, Quon and the Quon Firm have not met their due obligations to third parties,  
6 and there is evidence of significant monies being paid or scheduled to be paid to the Quon Firm,  
7 and at the same time, entities being created for the purpose of transferring and protecting assets  
8 for the ultimate benefit of Quon and/or her affiliates or relatives. Any transactions and the true  
9 capacities of Does and Roe Entities are presently unknown to SMS Financial and, therefore,  
10 SMS Financial sues said defendants by such fictitious names. SMS Financial will amend this  
11 Complaint to assert the true names and capacities of such Doe and Roe Entities when more  
12 information has been ascertained.

13 9. The Quon Firm, Quon, JQ Printing, SL Public, Quon Investments and Quantum  
14 Marketing (collectively, the "Defendants") are all parties to written contracts subject of this  
15 lawsuit, which provide for the resolution of all disputes in Clark County, Nevada state court.

16 **B. The Subject Loans:**

17 10. On January 12, 2009, SMS Financial acquired from the Federal Deposit Insurance  
18 Corporation ("FDIC") all right, title and interest in the following described loans originally  
19 entered into between the Quon Firm and First National Bank of Nevada ("Bank of Nevada").  
20 SMS Financial is the successor to the FDIC, as receiver for the failed Bank of Nevada.

21 11. As described in the business loan agreements, the purpose of the loans made from  
22 Bank of Nevada to the Quon Firm was to fund the Quon Firm operations (i.e., case litigations).  
23 The detail of the outstanding loans is as follows:

24 12. Upon information and belief, on or about June 5, 2006, the Quon Firm executed a  
25 Business Loan Agreement and Promissory Note, pursuant to which the Quon Firm borrowed the  
26 principal amount of \$2,000,000.00 from Bank of Nevada (hereinafter the "Park Avenue  
27 Promissory Note"). A true and correct copy of the Park Avenue Business Loan Agreement and  
28 Park Avenue Promissory Note are attached hereto as Exhibit "1-A."

1           13.    Upon information and belief, on June 5, 2006, in connection with the Park  
2 Avenue Promissory Note, the Quon Firm executed a Commercial Pledge Agreement pursuant to  
3 which the Quon Firm granted Bank of Nevada a security interest in all income and proceeds  
4 from the outcome of case A521169, filed on May 14, 2006, in the Eighth Judicial District Court,  
5 Clark County, Nevada for Plaintiff Park Avenue Homeowner's Association (the "Park Avenue  
6 Action"). A true and correct copy of the Park Avenue Commercial Pledge Agreement is  
7 attached hereto as Exhibit "1-B."

8           14.    Upon information and belief, on July 23, 2007, the Quon Firm executed a Second  
9 Amendment to Promissory Note wherein the maturity date on the Park Avenue Promissory Note  
10 was extended to July 11, 2008. On January 22, 2008, the Quon Firm executed an Amendment to  
11 Business Loan Agreement, pursuant to which the principal amount of the loan was increased to  
12 \$2,250,000.00. True and correct copies of the Amendments to the Park Avenue Promissory Note  
13 are attached hereto as Exhibit "1-C."

14           15.    On January 28, 2009, SMS Financial recorded a UCC Financing Statement  
15 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
16 proceeds from the outcome of the Park Avenue Action. A true and correct copy of the UCC  
17 Financing Statement Amendment is attached hereto as Exhibit "1-D."

18           16.    Upon information and belief, the Park Avenue Action has settled for \$12.5  
19 million. Upon further information and belief, the Quon Firm was to receive all settlement  
20 proceeds by no later than April 13, 2009.

21           17.    SMS Financial received two payments of \$500,000.00 each, one in January 2009  
22 and one in February 2009. As of March 9, 2009, the outstanding balance due and owing under  
23 the Park Avenue Promissory Note, as amended, is \$1,488,208.77.

24           18.    Upon information and belief, on or about June 6, 2006, the Quon Firm executed a  
25 Promissory Note wherein the Quon Firm borrowed the principal amount of \$300,000.00 from  
26 Bank of Nevada (hereinafter the "Amber Ridge Promissory Note"). A true and correct copy of  
27 the Amber Ridge Promissory Note is attached hereto as Exhibit "1-E."

28

1           19. Upon information and belief, on June 6, 2006, in connection with the Amber  
2 Ridge Promissory Note, the Quon Firm executed a Commercial Pledge Agreement pursuant to  
3 which the Quon Firm granted Bank of Nevada a security interest in all income and proceeds  
4 from the outcome of case A533852, filed on January 4, 2007 in the Eighth Judicial District  
5 Court, Clark County, Nevada for Plaintiff Amber Ridge Condominium Association (the "Amber  
6 Ridge Action"). A true and correct copy of the Amber Ridge Commercial Pledge Agreement is  
7 attached hereto as Exhibit "I-F."

8           20. Upon information and belief, on July 23, 2007, the Quon Firm executed a Fourth  
9 Amendment to Promissory Note wherein the maturity date on the Amber Ridge Promissory Note  
10 was extended to July 11, 2008. On December 19, 2007, the Quon Firm executed a Sixth  
11 Amendment to Promissory Note, pursuant to which the principal amount of the loan was  
12 increased to \$750,000.00. True and correct copies of the Amendments to the Amber Ridge  
13 Promissory Note are attached hereto as Exhibit "I-G."

14           21. On January 28, 2009, SMS Financial recorded a UCC Financing Statement  
15 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
16 proceeds from the outcome of the Amber Ridge Action. A true and correct copy of the Amber  
17 Ridge UCC Financing Statement Amendment is attached hereto as Exhibit "I-H."

18           22. As of March 9, 2009, the outstanding balance due and owing under the Amber  
19 Ridge Promissory Note, as amended, is \$831,435.79.

20           23. Upon information and belief, the Amber Ridge Action has settled for the amount  
21 of \$5.8 million, at least \$1,914,451.85 which has funded. The Quon Firm never notified SMS  
22 Financial that the Amber Ridge action settled and has not paid SMS Financial any portion of the  
23 settlement income.

24           24. Upon information and belief, on or about June 6, 2006, the Quon Firm executed a  
25 Promissory Note wherein the Quon Firm borrowed the principal amount of \$900,000.00 from  
26 Bank of Nevada (hereinafter the "First Light Promissory Note"). The maturity date of the First  
27 Light Promissory Note was May 29, 2007. A true and correct copy of the First Light Promissory  
28 Note is attached hereto as Exhibit "I-I."

1           25.    On January 28, 2009, SMS Financial recorded a UCC Financing Statement  
2 Amendment reflecting its assignment of Bank of Nevada's security interest in the First Light  
3 Action. A true and correct copy of the First Light UCC Financing Statement Amendment is  
4 attached hereto as Exhibit "1-J."

5           26.    As of March 9, 2009, the outstanding balance due and owing under the First Light  
6 Promissory Note, as amended, is \$1,226,929.78.

7           27.    Upon information and belief, on or about June 6, 2006, the Quon Firm executed a  
8 Promissory Note wherein the Quon Firm borrowed the principal amount of \$796,549.24 from  
9 Bank of Nevada (hereinafter the "Gunderson Promissory Note"). The Gunderson Promissory  
10 Note was secured by the proceeds from the outcome of Case No. A495059 filed on November  
11 10, 2004 with the Eighth Judicial District Court of Clark County, Nevada on behalf of Robert  
12 and Phyllis Gunderson and other similarly situated homeowners (the "Gunderson Action"). A  
13 true and correct copy of the Gunderson Promissory Note is attached hereto as Exhibit "1-K."

14           28.    Upon information and belief, on July 23, 2007, the Quon Firm executed a Third  
15 Amendment to Promissory Note, wherein the maturity date on the Gunderson Promissory Note  
16 was extended to July 11, 2008. On April 18, 2008, the Quon Firm executed a further  
17 Amendment to Promissory Note, pursuant to which the principal amount of the loan was  
18 increased to \$1,600,000.00. True and correct copies of the Amendments to the Gunderson  
19 Promissory Note are attached hereto as "Exhibit 1-L."

20           29.    On January 28, 2009, SMS Financial recorded a UCC Financing Statement  
21 Amendment reflecting its assignment of Bank of Nevada's security interest in the proceeds from  
22 the outcome of the Gunderson Action. A true and correct copy of the UCC Financing Statement  
23 Amendment is attached hereto as Exhibit "1-M."

24           30.    According to Court records, the Gunderson Action is closed. As of March 9,  
25 2009, the outstanding balance due and owing under the Gunderson Promissory Note, as  
26 amended, is \$1,659,259.95.

27           31.    Upon information and belief, on or about June 6, 2006, the Quon Firm executed a  
28 Promissory Note wherein the Quon Firm borrowed the principal amount of \$200,000.00 from

1 Bank of Nevada (hereinafter the "Dorrell Square Promissory Note"). A true and correct copy of  
2 the Dorrell Square Promissory Note is attached hereto as Exhibit "1-N."

3 32. Upon information and belief, on June 12, 2007, in connection with the Dorrell  
4 Square Promissory Note, the Quon Firm executed a Commercial Pledge Agreement pursuant to  
5 which the Quon Firm granted Bank of Nevada a security interest in all income and proceeds  
6 from the outcome of case A527688, filed on September 6, 2006 in the Eighth Judicial District  
7 Court, Clark County, Nevada for Plaintiff Dorrell Square Homeowners Association (the "Dorrell  
8 Square Action"). A true and correct copy of the Dorrell Square Commercial Pledge Agreement  
9 is attached hereto as Exhibit "1-O."

10 33. Upon information and belief, on July 23, 2007, the Quon Firm executed a Fourth  
11 Amendment to Promissory Note wherein the maturity date on the Dorrell Square Action was  
12 extended to July 11, 2008. On December 19, 2007, the Quon Firm executed a Sixth Amendment  
13 to Promissory Note, pursuant to which the principal amount of the loan was increased to  
14 \$325,000.00. True and correct copies of the Amendments to the Dorrell Square Promissory Note  
15 are attached hereto as Exhibit "1-P."

16 34. On January 28, 2009, SMS Financial recorded a UCC Financing Statement  
17 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
18 proceeds from the outcome of the Dorrell Square Action. A true and correct copy of the UCC  
19 Financing Statement Amendment is attached hereto as Exhibit "1-Q."

20 35. As of March 9, 2009, the outstanding balance due and owing under the Dorrell  
21 Square Promissory Note, as amended, is \$359,586.63.

22 36. Upon information and belief, on or about August 19, 2003, the Quon Firm  
23 executed a Business Loan Agreement and Promissory Note, pursuant to which the Quon Firm  
24 borrowed the principal amount of \$250,000.00 from Bank of Nevada (hereinafter the "Line of  
25 Credit Promissory Note"). A true and correct copy of the Line of Credit Promissory Note is  
26 attached hereto as Exhibit "1-R."

27 37. Upon information and belief, on August 19, 2003, in connection with the Line of  
28 Credit Promissory Note, the Quon Firm executed a Commercial Security Agreement pursuant to

1 which the Quon Firm granted Bank of Nevada a security interest in all inventory, chattel paper,  
2 accounts, equipment and general intangibles. A true and correct copy of the Line of Credit  
3 Commercial Security Agreement is attached hereto as Exhibit "I-S."

4 38. Upon information and belief, on May 21, 2007, the Quon Firm executed a Fifth  
5 Amendment to Promissory Note, wherein the maturity date on the loan was extended to July 11,  
6 2008. True and correct copies of the Amendments to the Quon Firm Line of Credit Promissory  
7 Note are attached hereto as Exhibit "I-T."

8 39. Upon information and belief, on February 20, 2008 Bank of Nevada recorded a  
9 UCC Financing Statement Amendment reflecting its security interest in all inventory, chattel  
10 paper, accounts, equipment and general intangibles. A true and correct copy of the Line of  
11 Credit UCC Financing Statement Amendment is attached hereto as Exhibit "I-U."

12 40. As of March 9, 2009, the outstanding balance due and owing under the Quon  
13 Firm Line of Credit Promissory Note, as amended, is \$239,033.93.

14 41. Upon information and belief, on or about October 30, 2006, the Quon Firm  
15 executed a Business Loan Agreement, documenting \$7,500,000.00 in principal due to Bank of  
16 Nevada, as well as a new Commercial Pledge Agreement, pursuant to which the Quon Firm  
17 granted Bank of Nevada a further security interest in the chattel, equipment, accounts, records  
18 and general intangibles of the Quon Firm. A true and correct copy of the October 30, 2006  
19 Business Loan Agreement and Commercial Pledge Agreement are attached hereto as Exhibits "I-  
20 V" and "I-W," respectively.

21 42. Upon information and belief, on or about November 2, 2006, the Quon Firm  
22 executed a Business Loan Agreement and Promissory Note wherein the Quon Firm borrowed the  
23 principal amount of \$600,000.00 from Bank of Nevada (hereinafter the "Chateau Nouveau  
24 Promissory Note"). A true and correct copy of the Chateau Nouveau Promissory Note is  
25 attached hereto as Exhibit "I-X."

26 43. Upon information and belief, on November 2, 2006, in connection with the  
27 Chateau Nouveau Promissory Note, the Quon Firm executed a Commercial Pledge Agreement  
28 pursuant to which the Quon Firm granted Bank of Nevada a security interest in all income and

1 proceeds from the outcome of case A532047, filed on November 27, 2006 in the Eighth Judicial  
2 District Court, Clark County, Nevada for Plaintiff Chateau Nouveau Condominium Unit Owners'  
3 Association, Inc. (the "Chateau Nouveau Action"). A true and correct copy of the Chateau  
4 Nouveau Commercial Pledge Agreement is attached hereto as Exhibit "1-Y."

5 44. Upon information and belief, on July 23, 2007, the Quon Firm executed a Fourth  
6 Amendment to Promissory Note, wherein the maturity date on the Chateau Nouveau Action was  
7 extended to July 11, 2008. On December 19, 2007, the Quon Firm executed a Sixth Amendment  
8 to Promissory Note, pursuant to which the principal amount of the loan was increased to  
9 \$1,050,000.00. True and correct copies of the Amendments to the Chateau Nouveau Promissory  
10 Note are attached hereto as Exhibit "1-Z."

11 45. On January 28, 2009, SMS Financial recorded a UCC Financing Statement  
12 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
13 proceeds from the outcome of the Chateau Nouveau Action. A true and correct copy of the UCC  
14 Financing Statement Amendment is attached hereto as Exhibit "1-AA."

15 46. As of March 9, 2009, the outstanding balance due and owing under the Chateau  
16 Nouveau Promissory Note, as amended, is \$1,054,749.24.

17 47. Upon information and belief, on or about November 2, 2006, the Quon Firm  
18 executed a Business Loan Agreement and Promissory Note wherein the Quon Firm borrowed the  
19 principal amount of \$500,000.00 from Bank of Nevada (hereinafter the "Court at Aliante  
20 Promissory Note"). A true and correct copy of the Court at Aliante Promissory Note is attached  
21 hereto as Exhibit "1-BB."

22 48. Upon information and belief, on November 2, 2006, in connection with the Court  
23 at Aliante Promissory Note, the Quon Firm executed a Commercial Pledge Agreement pursuant  
24 to which the Quon Firm granted Bank of Nevada a security interest in all income and proceeds  
25 from the outcome of case A527941, filed on September 5, 2006 in the Eighth Judicial District  
26 Court, Clark County, Nevada for Plaintiff Aliante Homeowners Association (the "Aliante  
27 Action"). A true and correct copy of the Court at Aliante Commercial Pledge Agreement is  
28 attached hereto as Exhibit "1-CC."



1           49.    Upon information and belief, on May 21, 2007, the Quon Firm executed a Second  
2 Amendment to Promissory note, wherein the maturity date of the Court at Aliante Promissory  
3 Note was extended to July 13, 2007. On December 19, 2007, the Quon Firm executed a Fourth  
4 Amendment to Promissory Note, pursuant to which the principal amount of the loan was  
5 increased to \$1,000,000.00. True and correct copies of the Amendments to the Court at Aliante  
6 Promissory Note are attached hereto as Exhibit "1-DD."

7           50.    On January 28, 2009 SMS Financial recorded a UCC Financing Statement  
8 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
9 proceeds from the outcome of the Aliante Action. A true and correct copy of the Court at  
10 Aliante UCC Financing Statement Amendment is attached hereto as Exhibit "1-EE."

11           51.    As of March 9, 2009, the outstanding balance due and owing under the Court at  
12 Aliante Promissory Note, as amended, is \$1,109,923.76.

13           52.    Upon information and belief, on or about November 2, 2006, the Quon Firm  
14 executed a Promissory Note wherein the Quon Firm borrowed the principal amount of  
15 \$300,000.00 from Bank of Nevada (hereinafter the "Sedona Promissory Note"). A true and  
16 correct copy of the Sedona Promissory Note is attached hereto as Exhibit "1-FF."

17           53.    Upon information and belief, on November 2, 2006, in connection with the  
18 Sedona Promissory Note, the Quon Firm executed a Commercial Pledge Agreement pursuant to  
19 which the Quon Firm granted Bank of Nevada a security interest in all income and proceeds  
20 from the outcome of case A523113, filed on June 9, 2006 in the Eighth Judicial District Court,  
21 Clark County, Nevada for Plaintiff Sedona Condominium Homeowners Association, Inc. (the  
22 "Sedona Action"). A true and correct copy of the Sedona Commercial Pledge Agreement is  
23 attached hereto as Exhibit "1-GG."

24           54.    Upon information and belief, on July 23, 2007, the Quon Firm executed a Second  
25 Amendment to Promissory Note, wherein the maturity date on the Sedona Promissory Note was  
26 extended to July 11, 2008. True and correct copies of the Amendments to the Sedona  
27 Promissory Note are attached hereto as Exhibit "1-HH."

28

1           55. On January 28, 2009 SMS Financial recorded a UCC Financing Statement  
2 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
3 proceeds from the Sedona Action. A true and correct copy of the Sedona UCC Financing  
4 Statement is attached hereto as Exhibit "1-II."

5           56. As of March 9, 2009, the outstanding balance due and owing under the Sedona  
6 Promissory Note, as amended, is \$255,173.16.

7           57. Upon information and belief, on or about November 2, 2006, the Quon Firm  
8 executed a Promissory Note wherein the Quon Firm borrowed the principal amount of  
9 \$150,000.00 from Bank of Nevada (hereinafter the "Pebble Beach Promissory Note"). A true  
10 and correct copy of the Pebble Beach Promissory Note is attached hereto as Exhibit "1-JJ."

11           58. Upon information and belief, on February 1, 2007, the Quon Firm executed a First  
12 Amendment to Promissory Note, pursuant to which the principal amount of the loan was  
13 increased to \$305,000.00. On July 23, 2007, the Quon Firm executed a Third Amendment to  
14 Promissory Note, wherein the maturity date on the Pebble Beach Promissory Note was extended  
15 to July 11, 2008. True and correct copies of the Amendments to the Pebble Beach Promissory  
16 Note are attached hereto as Exhibit "1-KK."

17           59. As of March 9, 2009, the outstanding balance due and owing under the Pebble  
18 Beach Promissory Note, as amended, is \$329,853.57.

19           60. Upon information and belief, on or about March 14, 2007, the Quon Firm  
20 executed a Promissory Note wherein the Quon Firm borrowed the principal amount of  
21 \$300,000.00 from Bank of Nevada (hereinafter the "Horizon Hills Promissory Note"). A true  
22 and correct copy of the Horizon Hills Promissory Note is attached hereto as Exhibit "1-LL."

23           61. Upon information and belief, on March 14, 2007, in connection with the Horizon  
24 Hills Promissory Note, the Quon Firm executed a Commercial Pledge Agreement pursuant to  
25 which the Quon Firm granted Bank of Nevada a security interest in all income and proceeds  
26 from the outcome of case A538988, filed on April 6, 2007 in the Eighth Judicial District Court,  
27 Clark County, Nevada for Plaintiff Horizon Hills Homeowners Association (the Horizon Hills  
28

1 Action"). A true and correct copy of the Horizon Hills Commercial Pledge Agreement is  
2 attached hereto as Exhibit "1-MM."

3 62. Upon information and belief, on July 23, 2007, the Quon Firm executed a Third  
4 Amendment to Promissory Note, wherein the maturity date on the Horizon Hills Promissory  
5 Note was extended to July 11, 2008. A true and correct copy of the Third Amendment to the  
6 Horizon Hills Promissory Note is attached hereto as Exhibit "1-NN."

7 63. On January 28, 2009 SMS Financial recorded a UCC Financing Statement  
8 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
9 proceeds from the outcome of the Horizon Hills Action. A true and correct copy of the Horizon  
10 Hills UCC Financing Statement is attached here as Exhibit "1-OO."

11 64. As of March 9, 2009, the outstanding balance due and owing under the Horizon  
12 Hills Promissory Note, as amended, is \$259,187.78.

13 65. Upon information and belief, on or about March 14, 2007, the Quon Firm  
14 executed a Business Loan Agreement and Promissory Note wherein the Quon Firm borrowed the  
15 principal amount of \$600,000.00 from Bank of Nevada (hereinafter the "Chateau Versailles  
16 Promissory Note"). A true and correct copy of the Chateau Versailles Promissory Note is  
17 attached hereto as Exhibit "1-PP."

18 66. Upon information and belief, on March 14, 2007, in connection with the Chateau  
19 Versailles Promissory Note, the Quon Firm executed a Commercial Pledge Agreement pursuant  
20 to which the Quon Firm granted Bank of Nevada a security interest in all income and proceeds  
21 from the outcome of case A536343, filed on February 16, 2007 in the Eighth Judicial District  
22 Court, Clark County, Nevada for Plaintiff Chateau Versailles Condominium Unit Owners'  
23 Association, Inc. (the "Chateau Versailles Action"). A true and correct copy of the Chateau  
24 Versailles Commercial Pledge Agreement is attached hereto as Exhibit "1-QQ."

25 67. Upon information and belief, on July 23, 2007, the Quon Firm executed a Second  
26 Amendment to Promissory Note wherein the maturity date on the Chateau Versailles Promissory  
27 note was extended to July 11, 2008. On December 19, 2007, the Quon Firm executed a Third  
28 Amendment to Promissory Note, pursuant to which the principal amount of the loan was

1 increased to \$800,000.00. True and correct copies of the Amendments to the Chateau Versailles  
2 Promissory Note are attached hereto as Exhibit "1-RR."

3 68. On January 28, 2009 SMS Financial recorded a UCC Financing Statement  
4 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
5 proceeds from the outcome of the Chateau Versailles Action. A true and correct copy of the  
6 Chateau Versailles UCC Financing Statement Amendment is attached hereto as Exhibit "1-SS."

7 69. As of March 9, 2009, the outstanding balance due and owing under the Chateau  
8 Versailles Promissory Note, as amended, is \$781,632.47.

9 70. Upon information and belief, on or about August 27, 2007, the Quon Firm  
10 executed a Promissory Note wherein the Quon Firm borrowed the principal amount of  
11 \$500,000.00 from Bank of Nevada (hereinafter the "High Noon Arlington Promissory Note").  
12 The maturity date of the High Noon Arlington Promissory Note was July 11, 2008. A true and  
13 correct copy of the High Noon Arlington Promissory Note is attached here as Exhibit "1-TT."

14 71. Upon information and belief, on August 27, 2007, in connection with the High  
15 Noon Arlington Promissory Note, the Quon Firm executed a Commercial Pledge Agreement  
16 pursuant to which the Quon Firm granted Bank of Nevada a security interest in all income and  
17 proceeds from the outcome of case A542616, filed on June 7, 2007 in the Eighth Judicial District  
18 Court, Clark County, Nevada for Plaintiff High Noon at Arlington Ranch Homeowners  
19 Association (the "High Noon Arlington Action"). A true and correct copy of the High Noon  
20 Arlington Commercial Pledge Agreement is attached hereto as Exhibit "1-UU."

21 72. Upon information and belief, on December 19, 2007, the Quon Firm executed a  
22 First Amendment to Promissory Note, pursuant to which the principal amount of the loan was  
23 increased to \$700,000.00. A true and correct copy of the First Amendment to the High Noon  
24 Arlington Action is attached hereto as Exhibit "1-VV."

25 73. On January 28, 2009 SMS Financial recorded a UCC Financing Statement  
26 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
27 proceeds from the outcome of the High Noon Arlington Action. A true and correct copy of the  
28

1 High Noon Arlington UCC Financing Statement Amendment is attached hereto as Exhibit "1-  
2 WW."

3 74. As of March 9, 2009, the outstanding balance due and owing under the High  
4 Noon Arlington Promissory Note, as amended, is \$744,734.92.

5 75. Upon information and belief, on or about August 27, 2007, the Quon Firm  
6 executed a Promissory Note wherein the Quon Firm borrowed the principal amount of  
7 \$600,000.00 from Bank of Nevada (hereinafter the "Riverwalk Tower Promissory Note"). The  
8 maturity date of the Riverwalk Tower Promissory Note was July 11, 2008. A true and correct  
9 copy of the Riverwalk Tower Promissory Note is attached hereto as Exhibit "1-XX."

10 76. Upon information and belief, on August 27, 2007, in connection with the  
11 Riverwalk Tower Promissory Note, the Quon Firm executed a Commercial Pledge Agreement  
12 pursuant to which the Quon Firm granted Bank of Nevada a security interest in all income and  
13 proceeds from the outcome of case CV07 01917, filed on August 23, 2007 in the Second Judicial  
14 District Court, Washoe County, Nevada for Plaintiff Riverwalk Tower Unit Owners Association  
15 (the "Riverwalk Tower Action"). A true and correct copy of the Riverwalk Tower Commercial  
16 Pledge Agreement is attached hereto as Exhibit "1-YY."

17 77. On January 28, 2009, SMS Financial recorded a UCC Financing Statement  
18 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
19 proceeds from the outcome of the Riverwalk Tower Action. A true and correct copy of the  
20 Riverwalk Tower UCC Financing Statement Amendment is attached hereto as Exhibit "1-ZZ."

21 78. As of March 9, 2009, the outstanding balance due and owing under the Riverwalk  
22 Tower Promissory Note, as amended, is \$413,697.50.

23 79. Upon information and belief, on or about November 12, 2007, the Quon Firm  
24 executed a Promissory Note wherein the Quon Firm borrowed the principal amount of  
25 \$500,000.00 from Bank of Nevada (hereinafter the "Fleur de Lis Promissory Note"). The  
26 maturity date of the Fleur de Lis Promissory Note was July 11, 2008. A true and correct copy of  
27 the Fleur de Lis Promissory Note is attached hereto as Exhibit "1-AAA."  
28

1           80.    Upon information and belief, on November 12, 2007, in connection with the Fleur  
2 de Lis Promissory Note, the Quon Firm executed a Commercial Pledge Agreement pursuant to  
3 which the Quon Firm granted Bank of Nevada a security interest in all income and proceeds  
4 from the outcome of case CV07 02527, filed on November 5, 2007 in the Second Judicial  
5 District Court, Washoe County, Nevada for Plaintiff Tanamera Resort Condominiums, LLC (the  
6 "Fleur de Lis Action"). A true and correct copy of the Fleur de Lis Commercial Pledge  
7 Agreement is attached hereto as Exhibit "1-BBB."

8           81.    On January 28, 2009 SMS Financial recorded a UCC Financing Statement  
9 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
10 proceeds from the outcome of the Fleur de Lis Action. A true and correct copy of the Fleur de  
11 Lis UCC Financing Statement is attached hereto as Exhibit "1-CCC."

12           82.    As of March 9, 2009, the outstanding balance due and owing under the Fleur de  
13 Lis Promissory Note, as amended, is \$554,290.52.

14           83.    Upon information and belief, on or about March 11, 2008, the Quon Firm  
15 executed a Promissory Note wherein the Quon Firm borrowed the principal amount of  
16 \$400,000.00 from Bank of Nevada (hereinafter the "Waterstreet Promissory Note"). The  
17 maturity date of the Waterstreet Promissory Note was July 11, 2008. A true and correct copy of  
18 the Waterstreet Promissory Note is attached hereto as Exhibit "1-DDD."

19           84.    Upon information and belief, on March 11, 2008, in connection with the  
20 Waterstreet Promissory Note, the Quon Firm executed a Commercial Pledge Agreement  
21 pursuant to which the Quon Firm granted Bank of Nevada a security interest in all income and  
22 proceeds from the outcome of case CI 08 CI1486, filed on February 25, 2008 in the Ninth  
23 Judicial Circuit, Osceola County, Florida for Plaintiff Waterstreet at Celebration Condominium  
24 Association, Inc. (the "Waterstreet Action"). A true and correct copy of the Waterstreet  
25 Commercial Pledge Agreement is attached hereto as Exhibit "1-EEE."

26           85.    On January 28, 2009, SMS Financial recorded a UCC Financing Statement  
27 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
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1 proceeds from the outcome the Waterstreet Action. A true and correct copy of the Waterstreet  
2 UCC Financing Statement is attached hereto as Exhibit "1-FFF."

3 86. As of March 9, 2009, the outstanding balance due and owing under the  
4 Waterstreet Promissory Note, as amended, is \$292,316.47.

5 87. Upon information and belief, on or about March 26, 2008, the Quon Firm  
6 executed a Promissory Note wherein the Quon Firm borrowed the principal amount of  
7 \$500,000.00 from Bank of Nevada (hereinafter the "Merrick Preserve Promissory Note"). The  
8 maturity date of the Merrick Preserve Promissory Note was July 11, 2008. A true and correct  
9 copy of the Merrick Preserve Promissory Note is attached hereto as Exhibit "1-GGG."

10 88. Upon information and belief, on March 26, 2008, in connection with the Merrick  
11 Preserve Promissory Note, the Quon Firm executed a Commercial Pledge Agreement pursuant to  
12 which the Quon Firm granted Bank of Nevada a security interest in all income and proceeds  
13 from the outcome of case CACE08011218, filed on March 14, 2008 in the Circuit Court of the  
14 Seventeenth Judicial Circuit, Broward County, Florida for Plaintiff Merrick Preserve  
15 Condominium Association, Inc. (the Merrick Preserve Action"). A true and correct copy of the  
16 Merrick Preserve Commercial Pledge Agreement is attached hereto as Exhibit "1-HHH."

17 89. On January 28, 2009 SMS Financial recorded a UCC Financing Statement  
18 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
19 proceeds from the outcome of the Merrick Preserve Action. A true and correct copy of the  
20 Merrick Preserve UCC Financing Statement Amendment is attached hereto as Exhibit "1-III."

21 90. As of March 9, 2009, the outstanding balance due and owing under the Merrick  
22 Preserve Promissory Note, as amended, is \$87,405.19.

23 91. Upon information and belief, on or about May 5, 2008, the Quon Firm executed a  
24 Promissory Note wherein the Quon Firm borrowed the principal amount of \$500,000.00 from  
25 Bank of Nevada (hereinafter the "Hamptons Promissory Note"). The maturity date on the  
26 Hamptons Promissory Note was July 11, 2008. A true and correct copy of the Hamptons  
27 Promissory Note is attached hereto as Exhibit "1-JJJ."

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1           92.    Upon information and belief, on May 5, 2008, in connection with the Hamptons  
2 Promissory Note, the Quon Firm executed a Commercial Pledge Agreement pursuant to which  
3 the Quon Firm granted Bank of Nevada a security interest in all income and proceeds from the  
4 outcome of case 48-2008-CA-008235-O, filed on April 11, 2008 in the Ninth Judicial Circuit,  
5 Orange County, Florida for Plaintiff Hamptons at Metrowest Condominium Association, Inc.  
6 (the "Hamptons Action"). A true and correct copy of the Hamptons Commercial Pledge  
7 Agreement is attached hereto as Exhibit "1-KKK."

8           93.    On January 28, 2009 SMS Financial recorded a UCC Financing Statement  
9 Amendment reflecting its assignment of Bank of Nevada's security interest in all income and  
10 proceeds from the outcome of the Hamptons Action. A true and correct copy of the Hamptons  
11 UCC Financing Statement Amendment is attached hereto as Exhibit "1-LLL."

12           94.    As of March 9, 2009, the outstanding balance due and owing under the Hamptons  
13 Promissory Note, as amended, is \$330,159.65.

14           95.    Upon information and belief, on or about August 20, 2003, Quon executed an  
15 unlimited Commercial Guaranty wherein she unconditionally promised to pay any and all  
16 obligations of Quon Professional Corporation then existing or thereafter incurred with Bank of  
17 Nevada. A true and correct copy of the Quon Commercial Guaranty is attached hereto as Exhibit  
18 "1-MMM."

19           96.    Upon information and belief, on or about July 25, 2007, JQ Printing executed an  
20 unlimited Commercial Guaranty wherein it unconditionally promised to pay any and all  
21 obligations of Quon Professional Corporation then existing or thereafter incurred with Bank of  
22 Nevada. A true and correct copy of the JQ Printing Commercial Guaranty is attached hereto as  
23 Exhibit "1-NNN."

24           97.    Upon information and belief, on or about July 25, 2007, SL Public executed an  
25 unlimited Commercial Guaranty wherein it unconditionally promised to pay any and all  
26 obligations of Quon Professional Corporation then existing or thereafter incurred with Bank of  
27 Nevada. A true and correct copy of the SL Public Commercial Guaranty is attached hereto as  
28 Exhibit "1-OOO."



1           98.    Upon information and belief, on or about July 25, 2007, Quon Investments  
2   executed an unlimited Commercial Guaranty wherein it unconditionally promised to pay any and  
3   all obligations of Quon Professional Corporation then existing or thereafter incurred with Bank  
4   of Nevada. A true and correct copy of the Quon Investments Commercial Guaranty is attached  
5   hereto as Exhibit "1-PPP."

6           99.    Upon information and belief, on or about August 20, 2003, Quantum Marketing  
7   executed an unlimited Commercial Guaranty wherein it unconditionally promised to pay any and  
8   all obligations of Quon Professional Corporation then existing or thereafter incurred with Bank  
9   of Nevada. A true and correct copy of the Quantum Marketing Commercial Guaranty is attached  
10   hereto as Exhibit "1-QQQ."

11          100.   Upon information and belief, the Quon Firm has transferred most of the above-  
12   referenced actions to other law firms for prosecution. SMS Financial was not notified of any  
13   transfers and/or the identification of new counsel. To date, SMS Financial has received no  
14   proceeds upon transfer, or received any communications from new counsel indicating any intent  
15   to pay sums due and owing under the above-referenced promissory notes.

16          101.   As set forth above, the Park Avenue Action and the Amber Ridge Action have  
17   settled and funded, however SMS Financial was not paid the amount due and owing under the  
18   Park Avenue Promissory Note as amended, or the Amber Ridge Promissory Note, as amended.  
19   Further, the Quon Firm never even notified SMS Financial that the Amber Ridge Action settled.

20          102.   As set forth above, all of the loans with the Quon Firm have matured. Despite  
21   maturity, Defendants have failed to repay funds as they promised under the various Promissory  
22   Notes and Guaranties. Upon information and belief, Defendants are in default of their payment  
23   obligations under the above-referenced Promissory Notes, as amended, and Guaranties.

24          103.   As of March 9, 2009, SMS Financial was owed \$12,017,579.08. Interest and late  
25   fees continue to accrue on this amount. In addition, SMS Financial has incurred and will likely  
26   to continue to incur attorneys' fees and costs in order to pursue its collection remedies.

27   ...

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II.

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF  
(Breach of Contract Against the Quon Firm)**

104. SMS Financial incorporates by reference, Paragraphs 1 through 103 of this Verified Complaint as though fully set forth herein.

105. Bank of Nevada and the Quon Firm entered into valid and enforceable contracts under Nevada law.

106. Pursuant to the terms of the Promissory Notes, the Quon Firm agreed to pay back the full loan amount under each Promissory Note, plus interest.

107. Bank of Nevada performed its obligations due under the Promissory Notes by loaning the funds as agreed.

108. SMS Financial properly acquired from the FDIC all the right, title and interest in the Promissory Notes.

109. The Quon Firm's failure to adhere to the express terms of the Promissory Notes constitutes a material breach of the Promissory Notes. As a result of the Quon Firm's breach, the Quon Firm is liable for the total outstanding balance due under the Promissory Notes, as amended, which is \$12,017,579.08, as of March 9, 2009.

110. The amount due from Quon Firm's breach is an amount in excess of \$10,000.00. As interest, fees and costs continue to accrue, a specific amount will be proven at the time of trial.

111. It has become necessary for SMS Financial to retain the services of an attorney to prosecute this action, and according to the terms of the Promissory Notes, SMS Financial is entitled to recover its attorneys' fees, together with costs of suit incurred therein.

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**SECOND CLAIM FOR RELIEF**

**(Breach of Contract Against Quon, JQ Printing, SL Public,  
Quon Investments and Quantum Marketing)**

112. SMS Financial incorporates by reference, Paragraphs 1 through 111 of this Verified Complaint as though fully set forth herein.

113. Bank of Nevada and Quon, JQ Printing, SL Public, Quon Investments and Quantum Marketing entered into valid and enforceable contracts under Nevada law.

114. Pursuant to the terms of the Guaranties, Quon, JQ Printing, SL Public, Quon Investments and Quantum Marketing agreed to pay all the obligations of the Quon Firm due under the Promissory Notes.

115. SMS Financial properly acquired from the FDIC all the right, title and interest in the Guaranties.

116. Quon, JQ Printing, SL Public, Quon Investments and Quantum Marketing's failure to adhere to the express terms of the Guaranties constitutes a material breach of the Guaranties. As a result of this breach, Quon, JQ Printing, SL Public, Quon Investments and Quantum Marketing are liable for the total outstanding balance under the Promissory Notes, which is \$12,017,579.08 as of March 9, 2009.

117. The amount due from the guarantor Defendants is in excess of \$10,000.00. As interest, fees and costs continue to accrue, a specific amount will be proven at the time of trial.

118. It has become necessary for SMS Financial to retain the services of an attorney to prosecute this action, and according to the terms of the Commercial Guarantees, SMS Financial is entitled to recover its attorneys' fees, together with costs of suit incurred therein.

**THIRD CLAIM FOR RELIEF**

**(Claim and Delivery Against All Defendants)**

119. SMS Financial incorporates by reference, Paragraphs 1 through 118 of this Verified Complaint as though fully set forth herein.

120. SMS Financial has a security interest in the income and proceeds from the above-described Actions, including the Park Avenue Action and the Amber Ridge Action.

1           121. Upon information and belief, the Park Avenue Action and the Amber Ridge  
2   Action have settled and funded.

122. Defendants are currently in default under the Park Avenue Promissory Note and Amber Ridge Promissory Note. As a secured party, SMS Financial is entitled to immediate possession of all proceeds from the Park Avenue Action and the Amber Ridge Action, but Defendants have failed and refused to surrender the proceeds. Claim and delivery is appropriate.

123. It has become necessary for SMS Financial to retain the services of an attorney to prosecute this action, and according to the terms of the Promissory Notes, SMS Financial is entitled to recover its attorneys' fees, together with costs of suit incurred therein.

#### FOURTH CLAIM FOR RELIEF

**(Appointment of Receiver Pursuant to N.R.S. §32.010)**

12 124. SMS Financial incorporates by reference, Paragraphs 1 through 123 of this  
13 Verified Complaint as though fully set forth herein.

14           125. Between August 19, 2003 and May 5, 2008, the Quon Firm entered into various  
15 Promissory Notes with Bank of Nevada.

16 126. Many of the principal amounts under the Promissory Notes were increased  
17 pursuant to several amendments, and as of March 9, 2009, Defendants owe \$12,017,579.08.

18            127. To secure the Promissory Notes, the Quon Firm executed either a Commercial  
19 Pledge Agreement or other Commercial Security Agreement.

128. On January 12, 2009, SMS Financial acquired from the FDIC all right, title and interest in the Promissory Notes originally entered into between the Quon Firm and Bank of Nevada, as well as the security agreements securing these Promissory Notes.

129. The Quon Firm defaulted under the Promissory Notes by failing to pay the principal plus interest on the date of maturity. All of the Promissory Notes have matured.

25           130. The Quon Firm has received settlement proceeds without remuneration to SMS  
26 Financial, and there has been a transfer of Actions without notification or payment to SMS  
27 Financial.

28

1           131. As a creditor with a security interest in the Quon Firm's accounts receivables,  
2 SMS Financial is entitled to a receivership because there is a danger that the funds paid on theses  
3 accounts receivables will be lost or removed.

4           132.   SMS Financial has an express right for the appointment of a receiver, as well as a  
5   right under Nevada law, at NRS 32.010.

133. It has become necessary for SMS Financial to retain the services of an attorney to prosecute this action, and according to the terms of the Promissory Notes, SMS Financial is entitled to recover its attorneys' fees, together with costs of suit incurred therein.

9 **WHEREFORE, Plaintiff, SMS Financial, prays for relief as follows**

10           1.       Judgment in favor of Plaintiff and against Defendants in an amount in excess of  
11       \$10,000.00;

12      2.      For immediate possession of collateral;

13 3. For an order appointing a receiver over the Quon Firm under the terms and  
14 conditions set forth in the proposed Order Appointing Receiver filed contemporaneously  
15 herewith and fully incorporated herein by this reference;

16 4. For an award of reasonable attorneys' fees and costs pursuant to the Promissory  
17 Notes and Commercial Guarantees:

18      5.      For such other and further relief as the Court deems just and proper.

19 Dated this 16<sup>th</sup> day of April, 2009.

**GORDON SILVER**

Elfin

ERIKA PIKE TURNER

Nevada Bar No. 6454

**KAREN L. HANKS**

**Nevada Bar No. 9578**

3960 Howard Hughes Pkwy., 9th Floor

**Las Vegas, Nevada 89169**


**(702) 796-5555**

**Attorneys for Plaintiff**

VERIFICATION

JONATHAN D. HOFFER, under penalty of perjury states that he is the Manager of SMS Management, LLC, the Manager of SMS Financial, LLC in the above-entitled matter; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except those matters stated on information and belief, and as to those matters, he believes them to be true.

DATED this 16<sup>th</sup> day of April, 2009.

  
JONATHAN D. HOFFER, Manager of  
SMS Management, LLC, Manager of  
Financial, LLC





CLERK OF THE COURT

1 **NOTC**  
2 **GORDON SILVER**  
3 **ERIKA PIKE TURNER**  
4 Nevada Bar No. 6454  
5 **KAREN L. HANKS**  
6 Nevada Bar No. 9578  
7 **KERRI A. SPARKS**  
8 Nevada Bar No. 11282  
9 3960 Howard Hughes Pkwy., 9th Floor  
10 Las Vegas, Nevada 89169  
11 (702) 796-5555  
12 Attorneys for SMS Financial, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

10 **HIGH NOON AT ARLINGTON RANCH**  
11 **HOMEOWNERS ASSOCIATION, a Nevada**  
12 **non-profit corporation, for itself and for all others**  
13 **similarly situated,**

Plaintiff,

vs.

14 **D.R. HORTON, INC., a Delaware Corporation,**  
15 **et al.,**

Defendants.

CASE NO. A542616  
DEPT. NO. XXII

**NOTICE OF SECURITY INTEREST AND  
REQUEST FOR SPECIAL NOTICE**

17 Pursuant to the Commercial Pledge Agreement, executed by the Quon Firm on August  
18 27, 2007, wherein the Quon Firm granted Bank of Nevada a security interest in all income and  
19 proceeds from the outcome of the above-captioned matter, and the UCC Financing Statement  
20 Amendment filed with the Nevada Secretary of State, reflecting SMS Financial, LLC's  
21 assignment of Bank of Nevada's security interest, SMS Financial, LLC ("SMS Financial")  
22 hereby gives notice of its security interest in any income and proceeds in the above-captioned  
23 action. True and correct copies of the Commercial Pledge Agreement and the UCC Financing  
24 Statement Amendment are attached hereto as **Exhibits "1" and "2"** respectively.

25 SMS Financial further requests special notice of all hearings, actions, contested matters,  
26 and adversary proceedings in this case, together with copies of all notices, pleadings, motions,  
27 responses, and other related materials that are issued or filed in connection with these  
28 proceedings. All notices and copies in response to the foregoing should be sent to the following:



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Erika Pike Turner, Esq.  
Kerri A. Sparks, Esq.  
GORDON SILVER  
3960 Howard Hughes Parkway, Ninth Floor  
Las Vegas, Nevada, 89169

Dated this 20th day of April 2009.

GORDON SILVER



ERIKA PIKE TURNER

Nevada Bar No. 6454  
KAREN L. HANKS  
Nevada Bar No. 9578  
KERRI A. SPARKS  
Nevada Bar No. 11282  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
(702) 796-5555  
Attorneys for SMS Financial, LLC

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**CERTIFICATE OF MAILING**

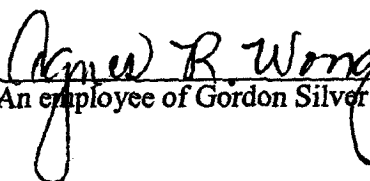
The undersigned, an employee of Gordon Silver, hereby certifies that on the 20th day of April 2009, she served a copy of the **NOTICE OF SECURITY INTEREST AND REQUEST FOR SPECIAL NOTICE**, by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Matthew L. Grode, Esq.  
3993 Howard Hughes Pkwy., #530  
Las Vegas, NV 89169

*Attorney for High Noon at Arlington Ranch  
Homeowners Association*

Joel D. Odou, Esq.  
7670 W. Lake Mead Blvd., #250  
Las Vegas, NV 89128

*Attorney for DR Horton, Inc.*

  
An employee of Gordon Silver

deems advisable, without obtaining the prior written consent of Grantor, and no such act or failure to act shall affect Lender's rights against Grantor or the Collateral.

All Collateral Secures Indebtedness. All Collateral shall be security for the Indebtedness, whether the Collateral is located at one or more offices or branches of Lender. This will be the case whether or not the office or branch where Grantor obtained Grantor's loan knows about the Collateral or relies upon the Collateral as security.

Collection of Collateral. Lender at Lender's option may, but need not, collect the Income and Proceeds directly from the Obligors. Grantor authorizes and directs the Obligors, if Lender decides to collect the Income and Proceeds, to pay and deliver to Lender all Income and Proceeds from the Collateral and to accept Lender's receipt for the payments.

Power of Attorney. Grantor irrevocably appoints Lender as Grantor's attorney-in-fact, with full power of substitution, (a) to demand, collect, receive, receipt for, sue and recover all Income and Proceeds and other sums of money and other property which may now or hereafter become due, owing or payable from the Obligors in accordance with the terms of the Collateral; (b) to execute, sign and endorse any and all instruments, receipts, checks, drafts and warrants issued in payment for the Collateral; (c) to settle or compromise any and all claims arising under the Collateral, and in the place and stead of Grantor, execute and deliver Grantor's release and acquittance for Grantor; (d) to file any claim or claims or to take any action or institute or take part in any proceedings, either in Lender's own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable; and (e) to execute in Grantor's name and to deliver to the Obligors on Grantor's behalf, at the time and in the manner specified by the Collateral, any necessary instruments or documents.

Perfection of Security Interest. Upon Lender's request, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral. When applicable law provides more than one method of perfection of Lender's security interest, Lender may choose the method(s) to be used. Upon Lender's request, Grantor will sign and deliver any writings necessary to perfect Lender's security interest. Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in the Agreement or to demand termination of filings of other secured parties.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for hauling, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

LIMITATIONS ON OBLIGATIONS OF LENDER. Lender shall use ordinary reasonable care in the physical preservation and custody of the Collateral in Lender's possession, but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, Lender shall have no responsibility for (A) any depreciation in value of the Collateral or for the collection or protection of any Income and Proceeds from the Collateral, (B) preservation of rights against parties to the Collateral or against third persons, (C) ascertaining any maturities, calls, conversions, exchanges, offers, tenders, or similar matters relating to any of the Collateral, or (D) informing Grantor about any of the above, whether or not Lender has or is deemed to have knowledge of such matters. Except as provided above, Lender shall have no liability for depreciation or deterioration of the Collateral.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Default. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default in Favor of Third Parties. Should Grantor or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's or any Grantor's ability to repay the Indebtedness or perform their respective obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or foreclosure proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Grantor gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or Guarantor dies or becomes incompetent or revokes or disputes the validity of, or fails to honor, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Cure Provisions. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender

**COMMERCIAL PLEDGE AGREEMENT**  
(Continued)

demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Agreement, at any time thereafter, Lender may exercise any one or more of the following rights and remedies:

**Accelerate Indebtedness.** Declare all indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice of any kind to Grantor.

**Collect the Collateral.** Collect any of the Collateral and, at Lender's option and to the extent permitted by applicable law, retain possession of the Collateral while suing on the Indebtedness.

**Sell the Collateral.** Sell the Collateral, at Lender's discretion, as a unit or in parcels, at one or more public or private sales. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give or mail to Grantor, and other persons as required by law, notice at least ten (10) days in advance of the time and place of any public sale, or of the time after which any private sale may be made. However, no notice need be provided to any person who, after an Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. Grantor agrees that any requirement of reasonable notice as to Grantor is satisfied if Lender mails notice by ordinary mail addressed to Grantor at the last address Grantor has given Lender in writing. If a public sale is held, there shall be sufficient compliance with all requirements of notice to the public by a single publication in any newspaper of general circulation in the county where the Collateral is located, setting forth the time and place of sale and a brief description of the property to be sold. Lender may be a purchaser at any public sale.

**Sell Securities.** Sell any securities included in the Collateral in a manner consistent with applicable federal and state securities laws. If, because of restrictions under such laws, Lender is unable, or believes Lender is unable, to sell the securities in an open market transaction, Grantor agrees that Lender will have no obligation to delay sale until the securities can be registered. Then Lender may make a private sale to one or more persons or to a restricted group of persons, even though such sale may result in a price that is less favorable than might be obtained in an open market transaction. Such a sale will be considered commercially reasonable. If any securities held as Collateral are "restricted securities" as defined in the Rules of the Securities and Exchange Commission (such as Regulation D or Rule 144) or the rules of state securities departments under state "Blue Sky" laws, or if Grantor or any other owner of the Collateral is an affiliate of the issuer of the securities, Grantor agrees that neither Grantor, nor any member of Grantor's family, nor any other person signing this Agreement will sell or dispose of any securities of such issuer without obtaining Lender's prior written consent.

**Foreclosure.** Maintain a judicial suit for foreclosure and sale of the Collateral.

**Transfer Title.** Effect transfer of title upon sale of all or part of the Collateral. For this purpose, Grantor irrevocably appoints Lender as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor and each of them (if more than one) as shall be necessary or reasonable.

**Other Rights and Remedies.** Have and exercise any or all of the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, at law, in equity, or otherwise.

**Application of Proceeds.** Apply any cash which is part of the Collateral, or which is received from the collection or sale of the Collateral, to reimbursement of any expenses, including any costs for registration of securities, commissions incurred in connection with a sale, attorneys' fees and court costs, whether or not there is a lawsuit and including any fees on appeal, incurred by Lender in connection with the collection and sale of such Collateral and to the payment of the Indebtedness of Grantor to Lender, with any excess funds to be paid to Grantor as the interests of Grantor may appear. Grantor agrees, to the extent permitted by law, to pay any deficiency after application of the proceeds of the Collateral to the Indebtedness.

**Election of Remedies.** Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Nevada.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada. (Initial Here MS)

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the

consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Notice.** Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by teletransmit (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addressee shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**Waive Jury.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code.

**Agreement.** The word "Agreement" means this Commercial Pledge Agreement, as this Commercial Pledge Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Pledge Agreement from time to time.

**Borrower.** The word "Borrower" means NANCY QUON, A PROFESSIONAL CORPORATION, a Nevada corporation and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Default.** The word "Default" means the Default set forth in this Agreement in the section titled "Default".

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**Grantor.** The word "Grantor" means NANCY QUON, A PROFESSIONAL CORPORATION, a Nevada corporation.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Income and Proceeds.** The words "Income and Proceeds" mean all present and future income, proceeds, earnings, increases, and substitutions from or for the Collateral of every kind and nature, including without limitation all payments, interest, profits, distributions, benefits, rights, options, warrants, dividends, stock dividends, stock splits, stock rights, regulatory dividends, subscriptions, monies, claims for money due and to become due, proceeds of any insurance on the Collateral, shares of stock of different par value or no par value issued in substitution or exchange for shares included in the Collateral, and all other property Grantor is entitled to receive on account of such Collateral, including accounts, documents, instruments, chattel paper, and general intangibles.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents.

**Lender.** The word "Lender" means First National Bank of Nevada, its successors and assigns.

**Note.** The word "Note" means the Note executed by NANCY QUON, A PROFESSIONAL CORPORATION, a Nevada corporation in the principal amount of \$500,000.00 dated August 27, 2007, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

**Obligor.** The word "Obligor" means without limitation any and all persons obligated to pay money or to perform some other act under the Collateral.

**Property.** The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

**GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL PLEDGE AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AUGUST 27, 2007.**

GRANTOR:

NANCY QUON, A PROFESSIONAL CORPORATION, A NEVADA CORPORATION

By:

  
Nancy Quon, President/Secretary of NANCY  
QUON, A PROFESSIONAL CORPORATION, a  
Nevada corporation.

**EXHIBIT “2”**

**EXHIBIT “2”**

STATE OF NEVADA



**ROSS MILLER**  
*Secretary of State*

**SCOTT W. ANDERSON**  
*Deputy Secretary  
for Commercial Recordings*

OFFICE OF THE  
SECRETARY OF STATE

**Filing Acknowledgement**

January 28, 2009

**Job Number**  
U20090128-0137

**Initial Filing Number**  
2006018858-1

**Filing Description**  
Assignment

**Document Filing Number**  
2009002403-6

**Date/Time of Filing**  
01-28-2009 02:58 PM

**Debtors**

NANCY QUON, A PROFESSIONAL  
CORPORATION; A NEVADA  
CORPORATION  
2330 PASEO DEL PRADO SUITE C-101  
LAS VEGAS NV 89102 USA

**Secured Parties**

FIRST NATIONAL BANK OF NEVADA  
4950 W FLAMINGO RD  
LAS VEGAS NV 89103

SMS FINANCIAL LLC  
2645 NORTH 7TH AVENUE  
PHOENIX AZ 85007 USA

The attached document(s) were filed with the Nevada Secretary of State, Uniform Commercial Code Division. The filing date and time have been affixed to each document, indicating the date and time of filing. A filing number is also affixed and can be used to reference this document in the future.

Nevada Secretary of State  
Electronic Filing  
Filing Officer

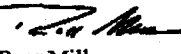
**UCC DIVISION:**  
Tracy Gillespie, Supervisor  
200 N. Carson Street  
Carson City, Nevada 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-5630



# UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

<b>A. NAME &amp; PHONE OF CONTACT AT FILER [optional]</b>	
NANCY FREDRICKSON	602-944-0624
<b>B. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>	
NANCY FREDRICKSON SMS FINANCIAL 2645 N. 7TH AVENUE PHOENIX, AZ 85007	

Filed in the office of  Ross Miller Secretary of State State of Nevada	Document Number <b>2009002403-6</b>
	Filing Date and Time <b>01/28/2009 2:58 PM</b>

(This document was filed electronically.)  
THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #  
2006018858-1

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. ☐ **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☒ **ASSIGNMENT (full or partial):** Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ **CHANGE** name and/or address: Please refer to the detailed instructions in regards to changing the name/address of a party.

☐ **DELETE** name: Give record name to be deleted in item 6a or 6b.

☐ **ADD** name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable).

6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME

OR 6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME  
SMS FINANCIAL LLC

OR 7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
2645 NORTH 7TH AVENUE PHOENIX AZ 85007 USA

7d. **SEE INSTRUCTIONS** ADD'L INFO RE ORGANIZATION DEBTOR 7e. TYPE OF ORGANIZATION 7f. JURISDICTION OF ORGANIZATION 7g. ORGANIZATIONAL ID #, if any  
PHOENIX 86-0739007 ☐ NONE

8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME  
FIRST NATIONAL BANK OF NEVADA

OR 9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. **OPTIONAL FILER REFERENCE DATA**

1301197052

#6904

  
CLERK OF THE COURT

**CERT**  
**GORDON SILVER**  
**ERIKA PIKE TURNER**  
Nevada Bar No. 6454  
**KAREN L. HANKS**  
Nevada Bar No. 9578  
**KERRI A. SPARKS**  
Nevada Bar No. 11282  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
(702) 796-5555  
*Attorneys for SMS Financial, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**HIGH NOON AT ARLINGTON RANCH**  
**HOMEOWNERS ASSOCIATION**, a Nevada  
non-profit corporation, for itself and for all others  
similarly situated,

Plaintiff,

vs.

**D.R. HORTON, INC.**, a Delaware Corporation,  
et al.,

Defendants.

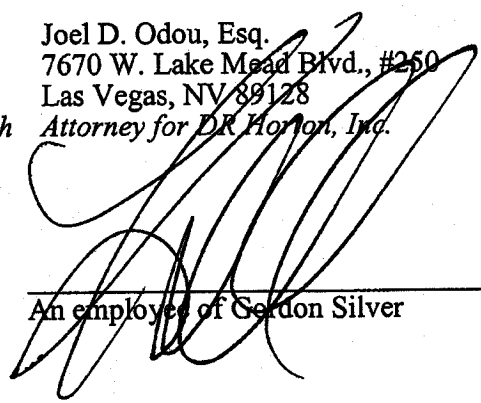
CASE NO. A542616  
DEPT. NO. XXII

**AMENDED CERTIFICATE OF MAILING  
FOR NOTICE OF SECURITY INTEREST  
AND REQUEST FOR SPECIAL NOTICE**

The undersigned, an employee of Gordon Silver, hereby certifies that on the 21<sup>st</sup> day of April 2009, she served a copy of the **NOTICE OF SECURITY INTEREST AND REQUEST FOR SPECIAL NOTICE** in the above captioned matter, by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Matthew L. Grode, Esq.  
3993 Howard Hughes Pkwy., #530  
Las Vegas, NV 89169  
*Attorney for High Noon at Arlington Ranch  
Homeowners Association*

Joel D. Odou, Esq.  
7670 W. Lake Mead Blvd., #250  
Las Vegas, NV 89128  
*Attorney for D.R. Horton, Inc.*

  
An employee of Gordon Silver