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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF WASHOE**

MARK B. STEPPAN,

Plaintiff,

vs.

JOHN ILIESCU JR. and SONIA ILIESCU, as  
Trustees of the JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST AGREEMENT;  
JOHN ILIESCU, individually; DOES I-V, inclusive;  
and ROE CORPORATIONS VI-X, inclusive,

Defendants.

AND RELATED CROSS-CLAIMS AND  
THIRD-PARTY CLAIMS.

Case No. CV07-00341

(Consolidated with  
Case No. CV07-01021)

Dept. No. 10

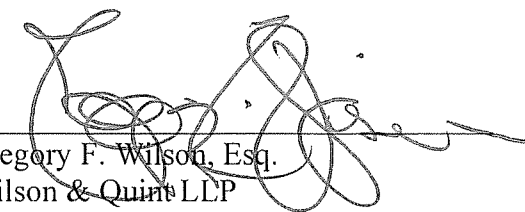
**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on the 5<sup>th</sup> day of January, 2012, this Court entered its  
Stipulation and Order for Dismissal Without Prejudice of all Claims by John Schleining Against  
Hale Lane Peek Dennison and Howard, Holland & Hart, LLP, and R. Craig Howard. A copy of  
said order is attached hereto as Exhibit 1.

1 The undersigned does hereby affirm that the preceding document does not contain the  
2 social security number of any person.

3 DATED this 6<sup>th</sup> day of January, 2012.

4 WILSON & QUINT LLP

5  
6  
7   
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11 *Attorneys for John Schleining*

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DATED this 6<sup>th</sup> day of January, 2012.

*Patricia Wilson*  
Patricia Wilson

INDEX TO EXHIBIT(S)

<u>Exhibit No.</u>	<u>Document</u>	<u>Number of Pages</u>
1	Stipulation and Order for Dismissal Without Prejudice of all Claims by John Schleining Against Hale Lane Peek Dennison and Howard, Holland & Hart, LLP, and R. Craig Howard, filed January 5, 2012	4

**EXHIBIT 1**

**EXHIBIT 1**

1 **CODE: 3995**

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10 Attorneys for John Schleining

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

12 **IN AND FOR THE COUNTY OF WASHOE**

13 MARK B. STEPPAN,

Case No. CV07-00341

14 Plaintiff,

(Consolidated with  
Case No. CV07-01021)

15 v.

Dept. No. 10

16 JOHN ILIESCU JR. and SONIA ILIESCU, as  
17 Trustees of the JOHN ILIESCU, JR. AND SONNIA  
18 ILIESCU 1992 FAMILY TRUST AGREEMENT;  
19 JOHN ILIESCU, individually; DOES I-V, inclusive;  
20 and ROE CORPORATIONS VI-X, inclusive,

21 Defendants.

22  
23 AND RELATED CROSS-CLAIMS AND  
24 THIRD-PARTY CLAIMS.

25 **STIPULATION AND ORDER**  
26 **FOR DISMISSAL WITHOUT PREJUDICE**  
27 **OF ALL CLAIMS BY JOHN SCHLEINING AGAINST HALE LANE PEEK DENNISON**  
28 **AND HOWARD, HOLLAND & HART, LLP, AND R. CRAIG HOWARD**

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- 2 -

1 IT IS SO STIPULATED.

2 Dated: December 22, 2011

3 WILSON & QUINT LLP

4  
5 By: 

6 Gregory F. Wilson

7 417 West Plumb Lane  
8 Reno, Nevada 89509  
9 Telephone: 775.786.7600  
Attorneys for John Schleining

10 Dated: December 22, 2011

11 LEMONS, GRUNDY & EISENBERG

12  
13  
14 By: 

15 Christopher M. Rusby

16 6005 Plumas Street 3<sup>rd</sup> Floor  
17 Reno, Nevada 89519  
18 Telephone: 775.786.6868  
19 Attorneys for Hale Lane Peek Dennison and  
Howard, Holland & Hart, LLP and R. Craig  
Howard

20 ORDER

21 The Court, having considered the foregoing Stipulation of the Parties, and good cause  
22 appearing,  
23

24 IT IS SO ORDERED.

25 Dated: January 5, 2012  
~~December~~

26   
27 DISTRICT COURT JUDGE  
28

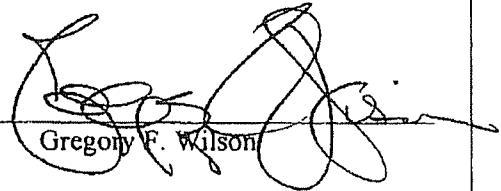


NRS 239B.030 AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: December 22, 2011

By: \_\_\_\_\_

  
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12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
13 **IN AND FOR THE COUNTY OF WASHOE**

14 MARK B. STEPPAN,

Case No. CV07-00341

15 Plaintiff,

(Consolidated with  
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16 vs.

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17 JOHN ILIESCU JR. and SONIA ILIESCU, as  
18 Trustees of the JOHN ILIESCU, JR. AND SONNIA  
19 ILIESCU 1992 FAMILY TRUST AGREEMENT;  
20 JOHN ILIESCU, individually; DOES I-V, inclusive;  
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22 Defendants.

23  
24 AND RELATED CROSS-CLAIMS AND  
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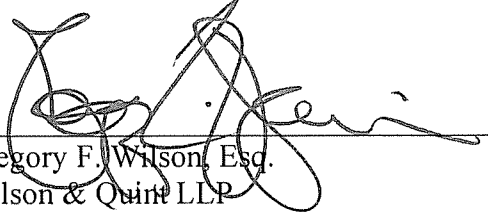
26 **NOTICE OF ENTRY OF ORDER**

27 PLEASE TAKE NOTICE that on the 22<sup>nd</sup> day of November, 2011, this Court entered its  
28 Order Granting Third Party Defendant John Schleining's Motion to Dismiss. A copy of said order  
is attached hereto as Exhibit 1.

1 The undersigned does hereby affirm that the preceding document does not contain the  
2 social security number of any person.

3 DATED this 22<sup>nd</sup> day of November, 2011.

4 WILSON & QUINT LLP

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DATED this 22nd day of November, 2011.

*Patricia Wilson*  
Patricia Wilson

INDEX TO EXHIBIT(S)

<u>Exhibit No.</u>	<u>Document</u>	<u>Number of Pages</u>
1	Order Granting Third Party Defendant John Schleining's Motion to Dismiss, filed November 22, 2011	6

**FILED**  
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Craig Franden  
Clerk of the Court  
Transaction # 2606048

**EXHIBIT 1**

**EXHIBIT 1**

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

MARK B. STEPPAN,

Case No. CV07-00341

Plaintiff,

(Consolidated with  
Case No. CV07-01021)

vs.

Dept. No. 10

JOHN ILIESCU JR. and SONIA ILIESCU, as  
Trustees of the JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST AGREEMENT;  
JOHN ILIESCU, individually; DOES I-V, inclusive;  
and ROE CORPORATIONS VI-X, inclusive,

Defendants.

AND RELATED CROSS-CLAIMS AND  
THIRD-PARTY CLAIMS.

**ORDER GRANTING THIRD PARTY DEFENDANT JOHN SCHLEINING'S**

**MOTION TO DISMISS**

Presently before the Court is a Motion to Dismiss Third Party Complaint ("Motion") filed by Third Party Defendant John Schleining ("Schleining") on November 2, 2011. The Motion seeks dismissal without prejudice of all claims against Schleining filed by John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement and John Iliescu individually (collectively "Iliescu").

1 The Motion is made on grounds that more than 750 days have passed since Schleining  
2 made his first appearance in this action, that Iliescu never filed a Case Conference Report as  
3 required by NRCP Rule 16.1 and that Iliescu's Third Party Complaint should therefore be  
4 dismissed without prejudice pursuant to NRCP Rule 16.1(e)(2).

5 On November 16, 2011, Iliescu filed his Response to Motion to Dismiss ("Response").  
6 Iliescu's Response stated that "Iliescu has no substantive legal defense to the position of Third  
7 Party Defendant John Schleining" and that "the Court should grant the Motion and dismiss  
8 Iliescu's claims against John Schleining, all without prejudice."

9 Later on November 16, 2011, Schleining filed his Request for Submission ("Request").  
10 Schleining's Request stated that "[b]ased upon Iliescu's Response, John Schleining elects not to file  
11 a reply in support of the Motion and requests that the Motion be submitted to the Court for  
12 decision." For the reasons set out below, the Court grants the Motion.

13  
14  
15 **I. Procedural and Factual Background**

16 The pleadings and papers on file herein reflect that this matter arises from a failed real  
17 property development and recordation of a mechanic's lien on the subject property. Plaintiff Mark  
18 B. Steppan ("Steppan") is an architect licensed in Nevada and an employee of the California  
19 architectural firm Fisher-Friedman & Associates ("Fisher-Friedman"). Third Party Plaintiff Iliescu  
20 is the owner of the subject undeveloped real property in downtown Reno (the "Iliescu Property").  
21 A group of developers headed by non-party Consolidated Pacific Development, Inc. (collectively  
22 "Developers") planned to purchase and develop the Iliescu Property. Third-Party Defendants Hale  
23 Lane Peek Dennison & Howard, Professional Corporation, Karen Dennison, Craig Howard and  
24 Jerry Snyder and cross-defendants Holland & Hart LLP and Craig Howard (collectively "Hale  
25 Lane") represented numerous persons and entities regarding development of the Iliescu Property.  
26  
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1 Third-Party Defendant Schleining, a part owner of one of the non-party Developers, signed a  
2 December 8, 2006 indemnity agreement prepared by Hale Lane in favor of Iliescu.

3 In July 2005, Iliescu entered into a written contract with Developers for the sale of the  
4 Iliescu Property. The proposed sale was contingent upon Developers obtaining the necessary  
5 entitlements and permits from the City of Reno ("Governmental Approvals"). The Developers  
6 planned to develop the Iliescu Property into a high-rise condominium project to be known as  
7 Wingfield Towers ("the Project").  
8

9 Developers sought the assistance of architects to help obtain the Governmental Approvals.  
10 The California based architectural firm Fisher-Friedman worked on a time and materials basis to  
11 conceptually design the Project, prepare certain schematic drawings and make presentations to the  
12 Reno Planning Commission and to the Reno City Council in support of Developers' applications  
13 for Governmental Approvals. Developers paid some \$430,870 as compensation for this  
14 architectural work done on a time and materials basis.  
15

16 Developers later signed a more extensive architectural agreement with Steppan, a licensed  
17 Nevada architect and employee of Fisher-Friedman, that included a percentage-based form of  
18 compensation for the Project to be built in the future. By fall of 2006, disputes had arisen between  
19 the architects and Developers. On November 7, 2006, Steppan recorded a Notice of Lien on the  
20 Iliescu Property in the amount of \$1,783,548.85.  
21

22 This litigation commenced over four and a half years ago when Iliescu filed an Application  
23 for release of Steppan's lien in Case No. CV07-00341 on February 14, 2007. On May 4, 2007,  
24 Steppan filed his Complaint to foreclose mechanic's lien against Iliescu in Case No. CV07-01021.  
25 These cases were consolidated by the Court's September 14, 2007 Order.  
26

27 On September 27, 2007, Iliescu filed his Answer and Third-Party Complaint. Iliescu's  
28 Third-Party Complaint against Schleining alleged claims for indemnity based upon a written

1 indemnity agreement dated December 8, 2006 prepared by Hale Lane and signed by Schleining.  
2 Iliescu's Third-Party Complaint against Hale Lane alleged claims of legal malpractice and  
3 negligence.

4 The first Early Case Conference in this matter was held on February 21, 2008. The next  
5 day, February 22, 2008, Judge Adams held an off-the-record Case Management Conference.  
6 Steppan and Iliescu subsequently filed cross-motions for partial summary judgment. On June 22,  
7 2009, Judge Adams granted Steppan's partial motion for summary judgment.

9 Schleining and Hale Lane, each named in Iliescu's Third-Party Complaint, then filed their  
10 responsive pleadings. On September 2, 2009, Schleining made his first appearance and filed both  
11 his Answer to Iliescu's Third-Party Complaint and his own Third-Party Complaint and Cross-  
12 Claim against Hale Lane. On October 7, 2009, Hale Lane filed its Answer to Iliescu's Third-Party  
13 Complaint and Answer to Schleining's Third-Party Complaint and Cross-Claim.

15 By October 7, 2009, all parties had made their first appearances. A second Early Case  
16 Conference was held on October 13, 2009. NRCP Rule 16.1(c) mandates the filing of a Case  
17 Conference Report by plaintiffs, including third party plaintiffs, within 30 days after each Early  
18 Case Conference. Iliescu therefore was required to file a Case Conference Report by November  
19 12, 2009. Iliescu never filed a Case Conference Report.

## 21 II. Legal Analysis

22 NRCP Rule 16.1(b) requires the parties, with exceptions not applicable here, to conduct an  
23 Early Case Conference within 30 days after the filing of an answer by the first answering  
24 defendant. NRCP Rule 16.1(c) requires that a Case Conference Report be filed within 30 days  
25 after each Early Case Conference. *Moon v. McDonald, Carano & Wilson*, 126 Nev. \_\_\_, 245 P.3d  
26 1138, 1139 (2010). The plaintiff bears the burden to file the Case Conference Report. NRCP  
27 Rule 16.1(e)(2) and *Arnold v. Kip*, 123 Nev. 410, 414, 168 P.3d 1050 (2007).  
28

1 //

2 NRCP Rule 16.1(e)(2) states "[i]f the plaintiff does not file a case conference report within  
3 240 days after an appearance by a defendant, the case may be dismissed as to that defendant upon  
4 motion or on the court's own initiative, without prejudice."

5 The Nevada Supreme Court has confirmed that cases should be dismissed where a plaintiff  
6 fails to file a Case Conference Report within the required 240 days. See, Arnold, 123 Nev. 410;  
7 and Moon, 245 P.3d 1138. In this case, Schleining made his first appearance on September 2,  
8 2009 by filing his Answer to Iliescu's Third-Party Complaint. Iliescu thereafter had 240 days, or  
9 until April 30, 2010, to file his Case Conference Report and avoid the consequences of Rule  
10 16.1(e)(2). Iliescu failed to file a Case Conference Report during that time or at any time  
11 thereafter.  
12

13 The Motion was filed on November 2, 2011, more than 750 days after Schleining made his  
14 first appearance in this action on September 2, 2009 and over 500 days after expiration of Rule  
15 16.1(e)(2)'s 240 day deadline for filing a Case Conference Report.  
16

17 The decision to dismiss an action without prejudice for a plaintiff's failure to comply with  
18 requirements of NRCP Rule 16.1(e)(2) is within the sound discretion of the District Court. Arnold  
19 v. Kip, supra at 415, 1053. NRCP Rule 16.1(e)(2) was adopted to promote the prosecution of  
20 litigation within adequate timelines. The sanctions set out in Rule 16.1 exist to ensure compliance  
21 with the specific deadlines identified in the Rule. *Id.*  
22

23 In this case, the Court finds that Schleining made his first appearance in this litigation over  
24 two years ago, that Iliescu never filed a Case Conference Report and that Iliescu's failure to do so  
25 constitutes a gross violation of the requirements of NRCP Rule 16.1. The Court further finds that  
26 Iliescu's failure to file the required Case Conference Report is unexcused and is the fault of Iliescu.  
27  
28

1 The Court has reviewed Iliescu's November 16, 2011 Response to the Motion. The Court  
2 further finds that Iliescu had admitted that Iliescu has no substantive legal defense to the Motion.

3 The Court further finds that Iliescu consents to the grant of the Motion and to the dismissal  
4 of Iliescu's claims against Schleining without prejudice.

5 **III. Conclusion**

6 For each of the foregoing reasons, the Court, in proper exercise of its discretion, hereby  
7 enters the following order:  
8

9 **NOW, THEREFORE, IT IS HEREBY ORDERED** that the Motion to Dismiss Third  
10 Party Complaint filed by Third-Party Defendant Schleining on November 2, 2011 is **GRANTED**  
11 and Third Party Plaintiff Iliescu's claims against Schleining are hereby **DISMISSED WITHOUT**  
12 **PREJUDICE** pursuant to NRCP Rule 16.1(e)(2).  
13

14  
15 Dated this 22 day of November 2011.

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18 STEVEN P. ELLIOTT

19 District Court Judge  
20  
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Document Code: 2490

**HOY & HOY, P.C.**

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Attorneys for: Mark B. Steppan

**In the Second Judicial District Court of the State of Nevada  
In and for the County of Washoe**

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU;  
John Iliescu, Jr. and Sonnia Santee Iliescu, as  
trustees of the JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST,

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

Consolidated Case Nos. CV07-00341 and  
CV07-01021

Dept. No. 10

And Consolidated Action and Related Third-  
party Claims.

**Motion for Leave to File  
Motion for Reconsideration**

Mark B. Steppan ("Steppan" or "Architect") moves for leave to file a motion for reconsideration of the Court's October 25, 2011 "Order Granting Defendants Iliescus' Motion to Dismiss" in the form attached as Exhibit 1. This motion is based upon the affidavit of Hon. Brent Adams attached as Exhibit 2, the following Memorandum of Points and Authorities, all papers and pleadings before the Court, and all further arguments and evidence that the Court entertains in support of this motion.

## Memorandum of Points and Authorities

The Nevada Supreme Court noted:

[A] court may, for sufficient cause shown, amend, correct, resettle, modify or vacate, as the case may be, an order previously made and entered on the motion in the progress of the cause or proceeding.

*Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026 (1975). Reconsideration and rehearing is appropriate when a prior decision is clearly erroneous. *Masonry & Tile Contractors Association of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997).

Before this case was transferred from Department Six, the Court held that Steppan's lien was perfected and valid. The only issue remaining for trial was the amount secured by the mechanic's lien. The District Judge of Department Six directly managed the case, including discovery, and has now provided an affidavit stating:

At all times, your undersigned District Court Judge and the lawyers practicing before me treated the case as one managed by the Court under Rule 16. The Court did not expect any party to file an early case conference report under Rule 16.1(e)(2).

Exhibit 2, Affidavit of Hon. Brent Adams, ¶ 4.

Dr. and Ms. Iliescu ("Iliescu") own the parcels encumbered by the lien. For nearly four years, Iliescu actively participated in case management and "additional" discovery. Technically, Iliescu commenced this action and is the "plaintiff" responsible for filing the case conference report. But Iliescu, Steppan, and the other parties (including a large litigation firm) never suggested the need for an early case conference report. This is so because the District Judge of Department Six managed the discovery process in the February 22, 2008 pretrial hearing.

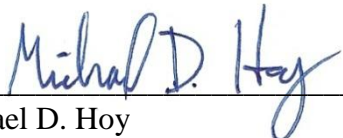
Your undersigned counsel rarely files motions for reconsideration. This is a special case. The October 25, 2011 Order of dismissal for failing to file an early case conference report elevates form over substance in order to avoid a decision of the case on the merits. And, while the Order properly asserts the Court's interest in enforcing the rules for the better administration

1 of justice, that consideration or should be trumped by the manner in which the Court has handled  
2 the case. Here is the crux of this motion: a litigant appearing before one judge should not worry  
3 that the rules of the game will change if a new judge is assigned to preside over the case.  
4 Changing the rules mid-case does not just elevate form over substance; it erodes confidence in  
5 the administration of justice and may also constitute a deprivation of procedural due process.  
6

7 Respectfully, we submit that the Court should, at a minimum, grant leave to file the  
8 attached Motion for Reconsideration, allow the adverse parties to respond, and then consider the  
9 motion on its merits.<sup>1</sup>

10 Dated November 8, 2011.

Hoy & Hoy, PC

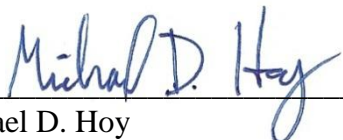
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13 Michael D. Hoy

14 **Privacy Certification**

15 Undersign certifies that the foregoing points and authorities, and the attached declarations  
16 and exhibits do not contain any social security numbers.

17 Dated November 8, 2011.

Hoy & Hoy, PC

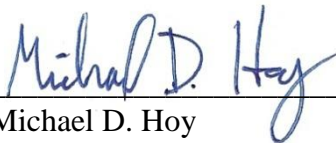
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20 Michael D. Hoy

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27  
28 <sup>1</sup> Movant reserves the right to file a separate motion under NRCP 60(b). Our request for relief is based on  
mistake and upon new evidence. A party is not required to seek leave before filing a Rule 60 motion.

## Certificate of Service

Pursuant to NRCP 5(b), I certify that I am an attorney representing Mark B. Steppan in this litigation and that on November 8, 2011, I electronically filed and true and correct copy of the foregoing Motion for Leave to File Motion for Reconsideration by using the ECF system, which served the following counsel electronically: Thomas J. Hall and Gregory F. Wilson.

Dated November 8, 2011

  
Michael D. Hoy

Hoy & Hoy



**Index to Exhibits**

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- 1 Proposed Motion for Reconsideration
- 2 Affidavit of Hon. Brent Adams

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Craig Franden  
Clerk of the Court  
Transaction # 2578958

# Exhibit 1

Document Code: 2175

**HOY & HOY, P.C.**

Michael D. Hoy (NV Bar 2723)  
4741 Caughlin Parkway, Suite Four  
Reno, Nevada 89519  
775.7868000 (voice)  
775.786.7426 (fax)

Attorneys for: Mark B. Steppan

**In the Second Judicial District Court of the State of Nevada  
In and for the County of Washoe**

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU;  
John Iliescu, Jr. and Sonnia Santee Iliescu, as  
trustees of the JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST,

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

Consolidated Case Nos. CV07-00341 and  
CV07-01021

Dept. No. 10

And Consolidated Action and Related Third-  
party Claims.

**Motion for Reconsideration**

Mark B. Steppan ("Steppan" or "Architect") moves for reconsideration of the Court's October 25, 2011 "Order Granting Defendants Iliescus' Motion to Dismiss" ("Order of Dismiss"). This motion is based upon the attached affidavit of Hon. Brent Adams, the following Memorandum of Points and Authorities, all papers and pleadings before the Court, and all further arguments and evidence that the Court entertains in support of this motion.

## Memorandum of Points and Authorities

For four years, the District Judge in Department Six managed this litigation in a series of hearings and pretrial conferences. In order to avoid the expense of unnecessary discovery, the District Judge specifically phased discovery to meet the threshold issues first, and reserving discovery for a later date. All of this procedural history was laid out in Steppan's Opposition to Iliescu's Motion to Dismiss.

In its Order of Dismissal, this Court said, "A Case Conference Report should have been filed on or before March 22, 2008...." Order of Dismissal, page 4, lines 10-11. But the decision overlooks the undisputed **fact** that, on February 22, 2008, the District Judge in Department Six conducted a pre-trial conference with all of the parties to phase the litigation, including discovery. After a discussion with counsel, the District Judge went on the record to recapitulate:

THE COURT: The record should reflect that counsel and the Court have discussed an appropriate process for proceeding in this case. We've agreed that the plaintiff and the defendant, Iliescu parties and Mr. Steppan, will each prepare motions for summary judgment or partial summary judgment directed to the issue of the validity of the lien which is the subject of this case.

Counsel for those parties will also confer concerning the nature, extent and timing of any additional discovery which appears to be appropriate for presentation and submission of that issue to the Court.

The matter will then be submitted to the Court on the competing summary judgment motions according to a schedule that counsel will agree upon. And the Court will either decide the submitted motion or advise counsel if an oral argument or evidentiary hearing is warranted in this case.

Upon disposition of the summary judgment motions, it is agreed that counsel and the parties will meet with the Court to discuss the appropriate process—processing of the case thereafter including issues such as mediation or arbitration provisions in the agreement, terms of guarantees applicable to some of the parties and also claims that were asserted or may hereafter be asserted concerning the prior counsel of the plaintiff. If counsel believes they need the Court's assistance in scheduling any of these matters, we'll conduct an on-the-record telephone conference for that purpose.

1 Transcript of Pretrial Hearing, Exhibit 2, pages 3-4. The Order of Dismissal does not address  
2 this proceeding at all.

3 The Order of Dismissal dismisses the contention that the case was managed as “complex  
4 litigation,” finding that the case is not “complex.” Notwithstanding one District Judge’s opinion  
5 about the complexity of the case, the District Judge of Department Six clearly managed the case  
6 as “complex litigation,” and did not expect an early case conference report:  
7

8 Although the Court did not enter a written order under NRCP 16.1(f) designating  
9 the case as “complex litigation,” the February 22, 2008 conference was a NRCP  
10 16 pretrial conference for purpose of managing the consolidated cases and staging  
11 discovery. At all times, your undersigned District Court Judge and the lawyers  
12 practicing before me treated the case as one managed by the Court under Rule  
13 16. The Court did not expect any party to file an early case conference report  
14 under Rule 16.1(e)(2).

15 Affidavit of Hon. Brent Adams, ¶ 4.

16 Movant certainly understands and appreciates the concept of enforcing procedural rules.  
17 But, in order to comply with procedural due process, those rules should be applied uniformly  
18 across cases and must apply uniformly within a single case. Here, after four years of litigation,  
19 the Court suddenly changed the applicability of NRCP 16.1 based on no change other than a  
20 transfer of the case from one department to another.

21 The Order of Dismissal argues that dismissal under NRCP 16.1(e)(2) “should address  
22 factors that promote the purpose of the rule, rather than factors that focus on the consequences to  
23 the plaintiff resulting from his or her failure to comply with the rule.” But, on the other hand, the  
24 prime directive of the Nevada Rules of Civil Procedure is contained in Rule 1: “[These rules]  
25 shall be construed and administered to secure the just, speedy, and inexpensive determination of  
26 every action.” (Emphasis added). Nevada has a long-standing policy of adjudicating cases on  
27 their merits rather than on procedural grounds. *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790,  
28 794 (1992).

1  
2 Under the circumstances of this case, a complete forfeiture of a substantive right is so  
3 harsh that it constitutes an abuse of discretion, if not an outright denial of procedural due process.  
4 First, Steppan's former counsel acted based upon the District Judge in Department Six managing  
5 discovery. The District Judge in Department Six did not require an early case conference report.  
6 Second, the District Judge in Department Six has stated that an early case conference report was  
7 not required. Thus, it appears that counsel correctly and reasonably followed the requirements of  
8 the District Judge in Department Six in accordance with the discovery management controlled by  
9 the Court. It would be unreasonable to expect counsel to act contrary to the requirements of the  
10 District Judge in Department Six and unreasonable to dismiss a case when counsel acted  
11 in accordance with the requirements of the District Judge in Department Six.  
12

13  
14 If the Court now finds that, despite the subjective intent of both counsel and the presiding  
15 judge, it was objectively unreasonable not to file the early case conference report, then the Court  
16 should fashion some sanction against counsel that is far short of an outright forfeiture of  
17 substantive lien rights:

18 Inherent in courts is the power to dismiss a case for failure to prosecute or  
19 to comply with its orders. To prevent undue delays and to control their calendars,  
20 courts may exercise this power within the bounds of sound judicial discretion,  
independent of any authority granted under statutes or court rules. []

21 However, dismissal with prejudice is a harsh remedy to be utilized only in  
22 extreme situations. [] It must be weighed against the policy of law favoring the  
23 disposition of cases on their merits. [] Because dismissal with prejudice 'is the  
most severe sanction that a court may apply . . . its use must be tempered by a  
careful exercise of judicial discretion.' []

24 **In keeping with the trend to adjudicate a case on its merits rather than**  
25 **by summary procedures, the trial judge in this case could have assessed lesser**  
26 **penalties against appellants and their attorney and granted their motion for a**  
27 **new trial.** However, on appeal we are limited to the narrow question of whether  
the trial judge abused his discretion by denying the motion.  
28

1 *Moore v. Cherry*, 90 Nev. 390, 393-94, 528 P.2d 1018, 1020-21 (1974)(citations omitted,  
2 emphasis added). Like Nevada, Washington requires that its trial courts consider lesser  
3 sanctions before ordering dismissal for a discovery violation:

4       When the trial court selects one of the “ ‘harsher remedies’ ” under CR 37(b), it  
5 must be apparent from the record that the trial court explicitly considered whether  
6 a lesser sanction would probably have sufficed,’ and whether it found that the  
7 disobedient party’s refusal to obey a discovery order was willful or deliberate and  
substantially prejudiced the opponent’s ability to prepare for trial.

8       [] Further, as a default judgment for discovery violations raises due process  
concerns, the court must first find willfulness and substantial prejudice.

9 *Smith v. Behr Process Corp.*, 113 Wash. App. 306, 324-25, 54 P.3d 665, 675-76 (2002).

10 Likewise, the Alaska Supreme Court said, (1) a party should not be barred from his day in court  
11 where an alternative remedy would suffice to make the adverse party whole, (2) before a court  
12 can impose litigation-ending sanctions for discovery violations, the record must indicate a  
13 reasonable exploration of possible and meaningful alternatives to dismiss, and (3) dismissal is  
14 inappropriate unless the discovery violation deprives a litigant of the ability to prove an element  
15 of a case. *Hughes v. Bobich*, 875 P.2d 749, 752 (Alaska 1994).

16       Here, the Court made no record that it considered any sanctions short of the forfeiture of  
17 a multi-million dollar claim. Had the Court determined that it was going to reverse the  
18 requirements of the District Judge in Depart Six, the Court could have ordered Steppan to file an  
19 early case conference report within ten days (even though Steppan is technically not even the  
20 plaintiff who commenced this consolidated action). Frankly, that would not accomplish much  
21 because discovery is already completed in the case.

22       The Court could have awarded a monetary sanction against a party or counsel, ordered  
23 attendance at CLE courses on discovery, or imposed some other remedy commensurate with the  
24 alleged infraction, which caused absolutely no harm to anybody. But an outright dismissal and  
25 forfeiture is so disproportionate with the supposed crime, that it violates due process.  
26  
27  
28

1 Finally, under the precedents above, the Court should have fashioned a sanction only  
2 after determining that Steppan's counsel willfully violated an order or rule. The record makes  
3 clear that Steppan's counsel and the District Judge of Department Six both understood that no  
4 early case conference report was required for this case.

### 5 **Conclusions and Request for Relief**

6 The penalty of forfeiture is completely disproportionate to the infraction here. The  
7 presiding District Judge did not require an early case conference report. It is certainly true that  
8 the lawyers could have been more diligent and sought entry of a formal order that no early case  
9 conference report was required. It is understandable how the current presiding District Judge did  
10 not fully appreciate and therefore honor the procedural history before the transfer to his  
11 department. But none of this warrants dismissal and the outright forfeiture of a multi-million  
12 dollar claim.

13  
14 Movant submits that the Court must reconsider its October 25, 2011 Order of Dismissal.<sup>1</sup>

15 Dated November \_\_, 2011.

Hoy & Hoy, PC

16  
17 Proposed Form of Motion

18 \_\_\_\_\_  
Michael D. Hoy

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25 \_\_\_\_\_  
26 <sup>1</sup> Movant recognizes that the Court also dismissed Iliescu's claims against Hale Lane, and that the Court  
27 wants to ensure uniformity in the treatment of the parties. Hale Lane initially moved for summary  
28 judgment on the substance of the malpractice claims against it. Seeking dismissal under NRCP 16.1(e)(2)  
was an afterthought, brought to the Court's attention in the form of a "supplement" to Hale Lane's motion  
for summary judgment. Reconsideration of orders of dismissal based on NRCP 16.1(e)(2) would not upset  
the Court's ruling exonerating Hale Lane from malpractice claims on the merits.



# Exhibit 1

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IN THE SECOND JUDICIAL DISTRICT COURT

7

STATE OF NEVADA, COUNTY OF WASHOE

8

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

9

JOHN ILIESCU, ET AL,

10

Plaintiffs,

CV07-00341

11

vs.

Dept. 6

12

MARK STEPPAN,

13

Defendant.

14

Pages 1 to 6, inclusive.

15

16

## TRANSCRIPT OF PROCEEDINGS

17

PRE-TRIAL CONFERENCE

18

Friday, February 22, 2008

19

### A P P E A R A N C E S:

20

FOR HALE, LANE:

DAVE GRUNDY, ESQUIRE

21

FOR ILIESCU:

STEVEN MOLLATH, ESQUIRE

22

FOR SCHLEINING AND DECAL:

SALLIE ARMSTRONG, ESQUIRE

23

FOR STEPPAN:

GREG WILSON, ESQUIRE

24

FOR STEPPAN:

STEVEN HARRIS, ESQUIRE

25

CALIF. PACIFIC CONSOLIDATED:

GAYLE A. KERN, ESQUIRE

26

CALIF. PACIFIC CONSOLIDATED:

JUDITH OTTO, ESQUIRE

27

28

REPORTED BY:

Christina Herbert, CCR #641

Molezzo Reporters, 322.3334

1 RENO, NEVADA -- FRIDAY, FEBRUARY 22, 2008 -- 1:30 P.M.

2 -o0o-

3 THE COURT: This proceeding is in Case CV07-00341,  
4 John Iliescu, Et al versus Mark Steppan and related claims  
5 and parties. The record should reflect the Court has  
6 conducted an off-the-record case management conference with  
7 counsel. And also present is Mr. Steppan, who is one of the  
8 parties in this case.

9 And, counsel, briefly would you just state your  
10 appearances and clients for the record, please, beginning  
11 with Mr. Mollath.

12 MR. MOLLATH: Steven Mollath on behalf of Dr.  
13 Iliescu and the 1992 Iliescu Family Trust.

14 MS. ARMSTRONG: Sallie Armstrong on behalf of the  
15 same parties.

16 MS. KERN: Gayle Kern on behalf of Mark Steppan.

17 MR. WILSON: Greg Wilson and Steve Harris as well  
18 as Mr. Al Kennedy from Portland, Oregon for individual  
19 third-party defendant, John Schleining.

20 MR. HARRIS: Steve Harris also for Decal.

21 THE COURT: Thank you.

22 MR. GRUNDY: David Grundy on behalf of third-party  
23 defendant, Hale, Lane, Dennison, Howard and three  
24 individually named lawyers.

1 MS. OTTO: Judith Otto on behalf of Consolidated  
2 Pacific Corporation.

3 MICHELLE: On behalf of Iliescu.

4 THE COURT: The record should reflect that counsel  
5 and the Court have discussed an appropriate process for  
6 proceeding in this case. We've agreed that the plaintiff and  
7 the defendant, Iliescu parties and Mr. Steppan, will each  
8 prepare motions for summary judgment or partial summary  
9 judgment directed to the issue of the validity of the lien  
10 which is the subject of this case.

11 Counsel for those parties will also confer  
12 concerning the nature, extent and timing of any additional  
13 discovery which appears to be appropriate for presentation  
14 and submission of that issue to the Court.

15 The matter will be then submitted to the Court on  
16 the competing summary judgment motions according to a  
17 schedule that counsel will agree upon. And the Court will  
18 either decide the submitted motion or advise counsel if an  
19 oral argument or evidentiary hearing is warranted in this  
20 case.

21 Upon disposition of the summary judgment motions,  
22 it is agreed that counsel and the parties will meet with the  
23 Court to discuss the appropriate process -- processing of the  
24 case thereafter including issues such as mediation or

1 arbitration provisions in the agreement, terms of guarantees  
2 applicable to some of the parties and also claims that were  
3 asserted or may hereafter be asserted concerning the prior  
4 counsel of the plaintiff. If counsel believes they need the  
5 Court's assistance in scheduling any of these matters, we'll  
6 conduct an on-the-record telephone conference for that  
7 purpose.

8 Is there anything further, counsel?

9 UNIDENTIFIED SPEAKER: I believe, your Honor, we  
10 were going -- to use your term -- park the further pleadings  
11 of the third-party defendants until after your motion for  
12 summary judgment.

13 THE COURT: That's true. I think it is agreed that  
14 other pleadings in this case adding additional claims or  
15 parties will be stayed without prejudice until the  
16 disposition of the summary judgment motion.

17 UNIDENTIFIED SPEAKER: Would that include answers  
18 and --

19 THE COURT: Off the record.

20 (Discussion off the record.)

21 THE COURT: Yes, that would include answers or  
22 other responses.

23 MS. ARMSTRONG: We also agree that we can submit  
24 our motion for authorization to serve Mr. Bailey by

1 publication without waiting for an opposition because --

2 THE COURT: That is true. That will be submitted  
3 ex parte by counsel for the plaintiff and will be entered by  
4 the Court. Thank you. Court is in recess.

5 (Whereupon, proceedings were concluded at  
6 2:07 p.m.)

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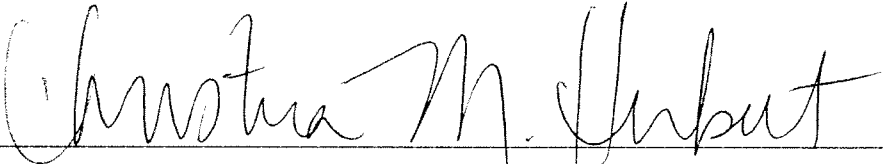
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1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )  
4

5 I, CHRISTINA MARIE HERBERT, a Certified Court Reporter  
6 in and for the states of Nevada and California, do hereby  
7 certify:

8 That I was personally present for the purpose of acting  
9 as Certified Court Reporter in the matter entitled herein;

10 That said transcript which appears hereinbefore was  
11 taken in verbatim stenotype notes by me and thereafter  
12 transcribed into typewriting as herein appears to the best of  
13 my knowledge, skill, and ability and is a true record  
14 thereof.

15  
16   
17

18 Christina Marie Herbert, CCR #641 (NV)  
19 CSR #11883 (CA)

20 -o0o-

21

22

23

24

# Exhibit 2



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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9 JOHN ILIESCU JR., SONNIA SANTEE  
10 ILIESCU, AND JOHN ILIESCU JR. AND  
11 SONNIA ILIESCU AS TRUSTEES OF  
12 THE JOHN ILIESCU, JR. AND SONNIA  
13 ILIESCU 1992 FAMILY TRUST,

14 Applicants,

15 vs.

16 MARK B. STEPPAN,

17 Respondent.  
18 \_\_\_\_\_/

19 MARK STEPPAN,

20 Plaintiff,

21 vs.

22 JOHN ILIESCU, JR. and SONNIA  
23 ILIESCU, as Trustees of the JOHN  
24 ILIESCU, JR., AND SONNIA ILIESCU  
25 1992 FAMILY TRUST AGREEMENT;  
26 JOHN ILIESCU, individually; DOES I-  
27 V, inclusive; and ROE  
28 CORPORATIONS VI-X, inclusive.

29 Defendants.  
30 \_\_\_\_\_/

31 AND RELATED ACTIONS.  
32 \_\_\_\_\_/

33 ///

34 ///

CASE NO.: CV07-00341  
(Consolidated with Case No. CV07-01021)

DEPT. NO.: 6

**AFFIDAVIT OF HON. BRENT ADAMS IN  
SUPPORT OF MOTION FOR  
RECONSIDERATION**

1 STATE OF NEVADA            )  
   : ss.  
2 COUNTY OF WASHOE        )

3           I, Brent Adams, affiant herein, do hereby swear under penalty of perjury that the assertions  
4 of this Affidavit are true.

5  
6           1.       I am a Judge in Department 6 of the Second Judicial District Court of the State of  
7 Nevada.

8           2.       On February 22, 2008, I conducted an in-chambers case management conference in  
9 the above-referenced consolidated cases. Counsel representing all parties were present. After  
10 discussion off the record, I ordered that: (a) the issue whether the property owner was entitled to a  
11 pre-lien notice would be determined by cross-motions for partial summary judgment; (2) that counsel  
12 for the property owner and lien claimant would confer about additional discovery on the pre-lien  
13 issue; (3) upon disposition of the cross-motions for partial summary judgments, the lawyers would  
14 discuss additional case management; and (4) the property owner's claims against third-parties (for  
15 indemnity and professional negligence) were stayed pending disposition of the cross-motions for  
16 partial summary judgment.  
17

18  
19           3.       As discussed in the February 22, 2008 pretrial conference, on March 7, 2008, counsel  
20 filed a stipulation, upon which I entered an order, that claims against individual lawyers sued for  
21 professional negligence were dismissed, and that claims against the defendant law firm was stayed  
22 "for all purposes, including discovery and trial, pending the final resolution of all claims asserted by  
23 plaintiffs against defendants."

24           4.       Although the Court did not enter a written order under NRCP 16.1(f) designating the  
25 case as "complex litigation," the February 22, 2008 conference was a NRCP 16 pretrial conference  
26 for purpose of managing the consolidated cases and staging discovery. At all times, your  
27  
28

undersigned District Court Judge and the lawyers practicing before me treated the case as one managed by the Court under Rule 16. The Court did not expect any party to file an early case conference report under Rule 16.1(e)(2).

5. When the Court entered its Order granting Steppan's motion for summary judgment, it meant that Steppan prevailed substantively on the main issue presented to the Court in both of the cases that had been consolidated. That is, the Court found that the Mechanic's Lien should not be released as it was a valid and lawful lien on the real property and the only issue remaining was the amount of the Mechanic's Lien.

6. Consistent with the February 22, 2008 order in chambers, the parties set a settlement/status conference for January 14, 2010.

7. On August 31, 2010, in accordance with the Court's order regarding the management of the case and counsel agreement, counsel set the matter for trial.

#### AFFIRMATION

#### Pursuant to NRS 239B.030

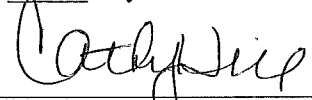
The undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

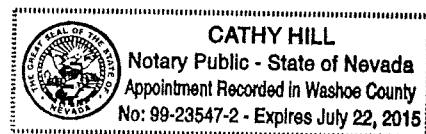
DATED this \_\_\_\_ day of November, 2011.

  
HON. BRENT ADAMS

SUBSCRIBED AND SWORN to before me

this 8th day of November, 2011.

  
NOTARY PUBLIC



**FILED**  
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Clerk of the Court  
Transaction # 2578958

# Exhibit 2

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32 \_\_\_\_\_/

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#### Pursuant to NRS 239B.030

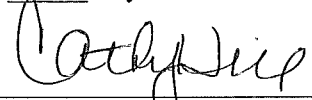
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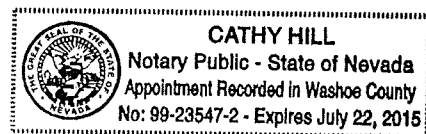
DATED this \_\_\_\_ day of November, 2011.

  
HON. BRENT ADAMS

SUBSCRIBED AND SWORN to before me

this 8th day of November, 2011.

  
NOTARY PUBLIC



**Code 2540**

Thomas J. Hall, Esq.  
Nevada State Bar No. 675  
305 South Arlington Avenue  
Post Office Box 3948  
Reno, Nevada 89505  
Telephone: 775-348-7011  
Facsimile: 775-348-7211

Attorney for John Iliescu, Jr.  
and Sonnia Iliescu and The John  
Iliescu, Jr. and Sonnia Iliescu  
1992 Family Trust

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA****IN AND FOR THE COUNTY OF WASHOE**

MARK B. STEPPAN,

Case No.: CV07-00341

Plaintiff,

Dept. No.: 10

v.

Consolidated with:

JOHN ILIESCU, JR. and SONNIA  
ILIESCU, as Trustees of the JOHN  
ILIESCU, JR. AND SONNIA ILIESCU  
1992 FAMILY TRUST AGREEMENT; JOHN  
ILIESCU, individually; DOES I-V,  
inclusive; and ROE CORPORATIONS  
VI-X, inclusive,

Case No.: CV07-01021

Dept. No.: 10

Defendants.

AND RELATED CROSS-CLAIMS AND  
THIRD-PARTY CLAIMS. /

**NOTICE OF ENTRY OF ORDER**

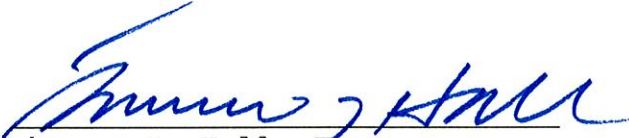
PLEASE TAKE NOTICE that on the 25<sup>th</sup> day of October, 2011,  
this Court entered its Order Granting Defendants Iliescus'  
Motion to Dismiss. A copy of said Order is attached hereto as  
Exhibit 1.



1       The undersigned does hereby affirm that the preceding  
2 document does not contain the social security number of any  
3 person.

4       DATED this 27<sup>th</sup> day of October, 2011.

5                               LAW OFFICES OF THOMAS J. HALL

6  
7  
8       

9       Thomas J. Hall, Esq.

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David R. Grundy, Esq.  
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DATED this 27<sup>th</sup> day of October, 2011.

  
Misti A. Hale

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EXHIBIT LIST

**Exhibit 1:** Order Granting Defendants Iliescus' Motion to Dismiss.

**FILED**  
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Howard W. Conyers  
Clerk of the Court  
Transaction # 2558720

# EXHIBIT 1

# EXHIBIT 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\* \* \*

MARK B. STEPPAN,

Plaintiff,

vs.

Case No: CV07-00341  
(Consolidated with CV07-01021)

Dept. No.: 10

JOHN ILIESCU, JR. and SONNIA ILIESCU,  
as Trustees of the JOHN ILIESCU, JR. AND  
SONNIA ILIESCU 1992 FAMILY TRUST  
AGREEMENT; JOHN ILIESCU, individually;  
DOES I-V, inclusive; and ROE  
CORPORATIONS VI-X, inclusive,

Defendants.

AND RELATED MATTERS.

**ORDER GRANTING DEFENDANTS ILIESCUS' MOTION TO DISMISS**

Presently before the Court is a Motion to Dismiss filed by Defendants JOHN ILIESCU, JR. AND SONNIA ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT AND JOHN ILIESCU, INDIVIDUALLY (hereinafter collectively referred to as "Defendants"), filed on September 3, 2011. The Motion to Dismiss seeks dismissal of all claims against Defendants by Plaintiff Mark B. Stepan (hereinafter referred to as "Plaintiff"). Plaintiff filed an Opposition to Iliescu's

1 Motion to Dismiss on September 16, 2011. Subsequently, Defendants filed a Reply in  
2 Support of Motion to Dismiss on September 22, 2011. Contemporaneously with their  
3 Reply, Defendants also filed a Request for Submission.

4 **I. Factual and Procedural Background.**

5 This matter comes before the Court as the result of a 2005 property transaction that  
6 failed to close. The transaction involved several parcels of real property located in  
7 downtown Reno (hereinafter the "Property"), which Defendants owned and were to be sold  
8 to or developed by a group of developers headed by Consolidated Pacific Development,  
9 Inc. (hereinafter the "Developers").

10 On July 29, 2005, Defendants entered into a Purchase Agreement (hereinafter the  
11 "Agreement") with Developers for the sale of the Property. The parties intended that after  
12 purchasing the Property, the Developers would develop the Property into a high-rise  
13 condominium project to be known as Wingfield Tower (hereinafter the "Project"). The sale  
14 was expressly contingent upon Developers obtaining all the necessary entitlements and  
15 permits for the project from the City of Reno (hereinafter the "Governmental Approvals").

16 Following various modifications to the Agreement by addenda, the Developers  
17 sought assistance from an architect to help obtain the Governmental Approvals. Plaintiff,  
18 an architect licensed in Nevada, and his California firm, Fisher-Friedman & Associates, were  
19 retained by Developers on a time and materials basis to conceptually design the Project, to  
20 prepare certain schematic drawings and to present these drawings to the Reno Planning  
21 Commission and to the Reno City Council in support of gaining Governmental Approvals for  
22 the Project.

23 The Developers paid some \$430,870.00 to Plaintiff as full compensation for the work  
24 done on a time and materials basis. The Developers later signed a more extensive  
25 architectural agreement with Plaintiff which included a percentage-based form of  
26 compensation for the Project to be built in the future.

27 At some point during the entitlement phase of the Project, Developers defaulted on  
28 the Agreement when they were unable to obtain the necessary financing to conclude the

1 purchase of the Property. This gave rise to a Notice of Lien filed by Plaintiff on November  
2 7, 2006, in the amount of \$1,783,548.85, which was later amended on May 3, 2007, to  
3 reflect an amount claimed of \$1,939,347.51.

4 Defendants filed an Application for Release of Mechanic's Lien in Case No. CV07-  
5 00341 on February 14, 2007. Plaintiff in turn filed a Complaint against Defendants to  
6 Foreclose Mechanic's Lien in Case No. CV07-01021 on May 4, 2007, (hereinafter the  
7 "Complaint"). The cases were consolidated by Court Order on September 24, 2007.  
8 Defendants filed an Answer to the Complaint on September 27, 2007 (hereinafter the  
9 "Answer").

10 The parties held an Early Case Conference on February 21, 2008, followed by an off-  
11 the-record Case Management Conference with District Judge Brent Adams the following  
12 day. Plaintiff failed to file a Case Conference Report at any time following the Early Case  
13 Conference held on February 21, 2008. The parties then filed cross motions for partial  
14 summary judgment, and following the Court's grant of partial summary judgment in favor  
15 of Plaintiff on June 22, 2009, the parties held a second Early Case Conference on October  
16 13, 2009. Plaintiff failed to file a Case Conference Report at any time following the October  
17 13, 2009 Case Conference. These facts led to the Court's consideration of Defendant's  
18 Motion to Dismiss pursuant to NRCP 16.1(e)(2).

## 19 **II. Legal Analysis.**

20 NRCP 16.1(b)(1) requires the parties to complete an Early Case Conference within  
21 30 days after the filing of an answer by the first answering defendant, unless the case is  
22 either in the court annexed arbitration program or in the short trial program. Under certain  
23 circumstances, the Early Case Conference may be continued up to 180 days following an  
24 appearance by the defendant. *Id.* NRCP 16.1(c) requires the filing of a Case Conference  
25 Report by the parties within 30 days after each Case Conference to facilitate discovery  
26 among the parties. *Moon v. McDonald Carano & Wilson*, 126 Nev. Adv. Op. 47, 245 P.3d  
27 1138, 1139 (Nev. 2010).

1 NRCP 16.1(e)(2) provides as follows:

2 **(e) Failure or Refusal to Participate in Pretrial Discovery;**  
3 **Sanctions.**

4 (2) If the plaintiff does not file a case conference report within 240  
5 days after an appearance by a defendant, the case may be dismissed as to  
6 that defendant upon motion or on the court's own initiative, without  
7 prejudice.  
8

9 Plaintiff has not filed a Case Conference Report at any time since Defendants filed  
10 an Answer on September 27, 2007. A Case Conference Report should have been filed on  
11 or before March 22, 2008, or 30 days following the Early Case Conference held on February  
12 21, 2008. In addition, a Case Conference Report should also have been filed on or before  
13 November 12, 2009 (within 30 days following the October 13, 2009 Case Conference).  
14 More than 1,489 days have passed since Defendants' first appearance in this matter. More  
15 than 1,312 days have passed since the initial Case Conference Report was due. More than  
16 712 days have passed since the subsequent Case Conference Report was due. A Case  
17 Conference Report has yet to be filed. Thus, as of October 25, 2011, the Plaintiff is  
18 exceedingly delinquent with respect to his obligations to file Case Conference Reports  
19 under NRCP 16.1(c).

20 The decision to dismiss an action without prejudice for a plaintiff's failure to comply  
21 with the timing requirements of NRCP 16.1(e)(2) remains within the district court's  
22 discretion. *Arnold v. Kip*, 123 Nev. 410, 415, 168 P.3d 1050, 1053 (2007). NRCP  
23 16.1(e)(2) was adopted to promote the prosecution of litigation within adequate timelines  
24 and the sanctions exist to ensure compliance with the specific deadlines identified in the  
25 Rule. *Id.*

26 In this case, the Court finds that Plaintiff's lengthy delay in filing the required Case  
27 Conference Reports, which have never been filed, is excessive and is a gross violation of  
28 the requirements of NRCP 16.1. The Court finds that the delay in filing is the responsibility



1 of Plaintiff and that the Defendants have neither induced nor caused the delay. The Court  
2 further finds that nearly four and one-half years have passed since Plaintiff filed his  
3 Complaint without resolution, adversely impacting the timely prosecution of the case.

4 Plaintiff presents, as evidence of good cause for the absence of filing Case  
5 Conference Reports, several arguments. Plaintiff first argues that dismissal of his  
6 Complaint, without prejudice, is improper, because the case has, for all practical purposes,  
7 been conducted as "complex litigation" under NRCP 16.1(f), which states as follows:

8 **(f) Complex Litigation.**

9 In a potentially difficult or protracted action that may involve complex issues,  
10 multiple parties, difficult legal questions, or unusual proof problems, the court  
11 may, upon motion and for good cause shown, waive any or all of the  
12 requirements of this rule. If the court waives all the requirements of this  
13 rule, it shall also order a conference pursuant to Rule 16 to be conducted by  
14 the court or the discovery commissioner.  
15

16 The Court finds that while the present case includes several parties, it does not  
17 involve complex issues, difficult legal questions or unusual problems of proof. The primary  
18 issue in the case between Plaintiff and Defendants centers around an uncomplicated  
19 mechanic's lien claim and third party claims of malpractice and indemnification flowing  
20 from the underlying mechanic's lien claim. Furthermore, the malpractice and  
21 indemnification claims are collateral to the Plaintiff's mechanic's lien case and beyond its  
22 focus. No party to the action has filed a motion requesting that the Court waive any  
23 requirements of NRCP 16.1, nor has good cause for such waiver been demonstrated. No  
24 designation of Complex Litigation has been sought or made. The Court finds that the  
25 requirements of NRCP 16.1 are applicable to Plaintiff's case.

26 Plaintiff also claims that dismissal without prejudice is improper as discovery was  
27 stayed by the Court as to the Defendants' claims against third-party defendant Hale Lane.  
28 The Court finds this argument to be unpersuasive. The stay only applied to Defendants'

1 third-party claims against Hale Lane and did not affect discovery between Plaintiff and  
2 Defendants in the prosecution of Plaintiff's primary claim. As such, Plaintiff was required to  
3 comply with the requirements of NRCP 16.1 at all times during the case, including any stay  
4 of the discovery period for the collateral issues between Defendants and Hale Lane.

5 On September 1, 2011, this Court dismissed Defendants' Third Party Complaint  
6 against their former attorneys, Hale Lane, for a significantly less flagrant violation of Rule  
7 16.1. The Court's determination in this Motion to Dismiss is consistent with that ruling, and  
8 the Court disagrees with Plaintiff's argument that neither party should be subject to  
9 dismissal without prejudice under NRCP 16.1(e)(2).

10 Plaintiff also seeks to exonerate his noncompliance with NRCP 16.1(c) by claiming  
11 that Defendants waived their right to seek dismissal by participating in case management  
12 conferences and by otherwise failing to raise the issue prior to the filing of their Motion to  
13 Dismiss. Plaintiff's argument is also unpersuasive, as its acceptance by the Court would  
14 create a situation where the requirements of NRCP 16.1(c) would be rendered largely  
15 meaningless if the Defendants' acquiescent conduct exonerated Plaintiff's compliance with  
16 NRCP 16.1. This conclusion is inconsistent with case law interpreting the purpose and  
17 application of the rule, and the Plaintiff's obligation to comply therewith. *Arnold v. Kip*, 123  
18 Nev. 410, 415, 168 P.3d 1050, 1053 (2007) (noting that dismissal under NRCP 16.1(e)(2)  
19 does not require a defendant to demonstrate prejudice, as such result would largely  
20 eviscerate the rule because it would allow plaintiffs to exceed the deadline for filing a case  
21 conference report as long as the defendant could not demonstrate prejudice).

22 Plaintiff finally argues that dismissal of his Complaint, without prejudice, would be  
23 unjust as it would effectively bar Plaintiff's claims by virtue of the expired statute of  
24 limitations for Plaintiff's claims. NRS 108.233(1)(a). Plaintiff's argument incorporates the  
25 premise that dismissal of the claims based upon a violation of NRCP 16.1(e)(2) "elevates  
26 technical form over equity and substantive justice." The Court is similarly unpersuaded by  
27 Plaintiff's argument. This Court's consideration of a motion to dismiss without prejudice  
28 under NRCP 16.1(e)(2) should address factors that promote the purpose of the rule, rather

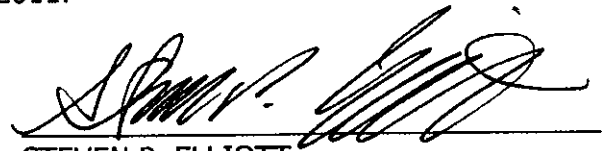
1 than factors that focus on the consequences to the plaintiff resulting from his or her failure  
2 to comply with the rule. *Arnold v. Kip*, 123 Nev. at 416 ("neither is the district court  
3 required to consider the plaintiff's inability to pursue his claim after an NRCP 16.1(e)(2)  
4 dismissal because the statute of limitations may expire").

5 **III. Conclusion.**

6 In its Order Granting Third-Party Defendant Hale Lane's Motion for Summary  
7 Judgment Regarding Third-Party Claims by John Iliescu dated September 1, 2011, this  
8 Court found it appropriate to dismiss Iliescu's Third-Party Complaint against Hale Lane for  
9 failure to timely file a Case Conference Report. Here, 1,489 days have passed since  
10 Defendants' filing of their Answer and 712 days have passed since Plaintiff was required to  
11 file its last Case Conference Report. The Court, as a proper exercise of its discretion,  
12 hereby enters the following order:

13 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Defendants' Motion to  
14 Dismiss Plaintiff's claims is **GRANTED**. Plaintiff's claims are hereby **DISMISSED**  
15 **WITHOUT PREJUDICE** pursuant to NRCP 16.1(e)(2).

16 DATED this 25 day of October, 2011.

17  
18   
19 STEVEN P. ELLIOTT  
20 District Judge  
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**CERTIFICATE OF MAILING**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

GREGORY WILSON, ESQ. for JOHN SCHLEINING

THOMAS HALL, ESQ. for JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. & SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, and JOHN ILIESCU, JR., individually

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R. HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

DATED this 25 day of October, 2011.



HEIDI HOWDEN  
Judicial Assistant

1 **2540**  
2 David R. Grundy, Esq. SBN 864  
3 LEMONS, GRUNDY & EISENBERG  
4 6005 Plumas Street, Suite 300  
5 Reno, Nevada 89519  
6 Telephone: (775) 786-6868  
7 Facsimile: (775) 786-9716

8 Attorneys for Third Party Defendants

9  
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11 **IN AND FOR THE COUNTY OF WASHOE**  
12

13 MARK B. STEPPAN,

14 Plaintiff,

15 vs.

CONSOLIDATED

Case No.: CV07-00341

Dept. No.: 10

16 JOHN ILIESCU JR. and SONNIA ILIESCU, as  
17 Trustees of the JOHN ILIESCU, JR. AND SONNIA  
18 ILIESCU 1992 FAMILY TRUST AGREEMENT; JOHN  
19 ILIESCU, individually; DOES I-V, inclusive; and ROE  
20 CORPORATIONS VI-X, inclusive,

21 Defendants.  
22 \_\_\_\_\_/

23 JOHN ILIESCU, JR. and SONNIA ILIESCU,  
24 as Trustees of the JOHN ILIESCU, JR. AND  
25 SONNIA ILIESCU 1992 FAMILY TRUST  
26 AGREEMENT; JOHN ILIESCU, JR.,  
27 individually; SONNIA ILIESCU, individually,

28 Third-Party Plaintiffs,

vs.

29 CONSOLIDATED PACIFIC DEVELOPMENT,  
30 INC., a Nevada Corporation; DECAL  
31 OREGON, INC., an Oregon Corporation;  
32 CALVIN BATY, individually; JOHN SCHLEINING,  
33 individually; HALE LANE PEEK DENNISON  
34 AND HOWARD PROFESSIONAL CORPORATION,  
35 a Nevada professional corporation, dba HALE  
36 LANE; KAREN D. DENNISON; R. CRAIG  
37 HOWARD; JERRY M. SNYDER; and DOES I  
38 thru X,

Third-Party Defendants.  
\_\_\_\_\_/

1 JOHN SCHLEINING,

2 Cross-Claimant,

3 vs.

4 HALE LANE PEEK DENNISON AND HOWARD  
5 PROFESSIONAL CORPORATION, a Nevada  
6 Professional corporation, dba HALE LANE  
and DOES XXI - XXX, inclusive,

7 Cross-Defendant.  
8

9 JOHN SCHLEINING,

10 Third-Party Plaintiff,

11 vs.

12 HOLLAND & HART, LLP, a professional  
13 corporation, R. CRAIG HOWARD and DOES  
XXXI - XL, inclusive,

14 Third-Party Defendants.  
15

**NOTICE OF ENTRY OF ORDER**

16 PLEASE TAKE NOTICE that on September 1, 2011 an Order granting Third-Party  
17 Defendant Hale Lane's Motion for Summary Judgment Regarding Third-Party Claims by John  
18 Iliescu was entered. A copy of said Order is attached hereto as Exhibit 1.

19 The undersigned does hereby affirm that the preceding document does not contain  
20 the social security number of any person.

21 DATED: September 1, 2011.

22  
23 BY: 

24 David R. Grundy  
25 LEMONS, GRUNDY & EISENBERG  
26 6005 Plumas Street, Suite 300  
27 Reno, Nevada 89519  
28 Phone No.: (775) 786-6868  
Attorneys for Third Party Defendants

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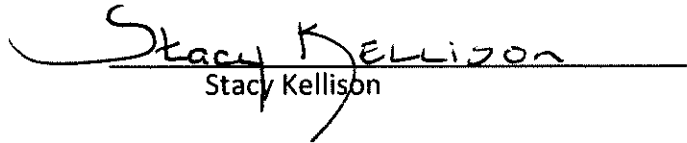
**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on September 1, 2011, I e-filed a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** with the Clerk of the Court through the Court's electronic filing system and notice will be sent electronically by the Court to the following:

THOMAS HALL, ESQ.  
for John Iliescu, Jr., Sonnia Iliescu

MICHAEL D. HOY, ESQ.  
for Mark Steppan

GREGORY WILSON, ESQ.  
for John Schleining

  
Stacy Kellison

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EXHIBIT LIST

EXHIBIT #	DESCRIPTION	# OF PAGES
1	Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu	10

LEMONS, GRUNDY  
& EISENBERG  
6005 PLUMAS ST.  
THIRD FLOOR  
RENO, NV 89519  
(775) 786-6868



**FILED**  
Electronically  
09-01-2011:01:51:39 PM  
Howard W. Conyers  
Clerk of the Court  
Transaction # 2445663

**EXHIBIT 1**

**EXHIBIT 1**

**FILED**

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09-01-2011:08:30:02 AM  
Howard W. Conyers  
Clerk of the Court  
Transaction # 2444422

1 Code: **3095**

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 MARK B. STEPPAN,

10 Plaintiff,

Case No: CV07-00341  
(Consolidated with CV07-01021)

11  
12 vs.

Dept. No.: 10

13 JOHN ILIESCU, JR. and SONNIA ILIESCU,  
14 as Trustees of the JOHN ILIESCU, JR. AND  
15 SONNIA ILIESCU 1992 FAMILY TRUST  
16 AGREEMENT; JOHN ILIESCU, individually;  
17 DOES I-V, inclusive; and ROE  
CORPORATIONS VI-X, inclusive,

18 Defendants.

19  
20 AND RELATED MATTERS.

21  
22 **ORDER GRANTING THIRD-PARTY DEFENDANT HALE LANE'S MOTION FOR  
SUMMARY JUDGMENT REGARDING THIRD-PARTY CLAIMS BY JOHN ILIESCU**

23 Presently before the Court is a Motion for Summary Judgment Regarding Third-Party  
24 Claims by John Iliescu, filed by Third-Party Defendants HALE LANE PEEK DENNISON AND  
25 HOWARD PROFESSIONAL CORPORATION, KAREN D. DENNISON, R. CRAIG HOWARD, and  
26 JERRY M. SNYDER (hereinafter collectively referred to as "Defendants") on March 30, 2011.  
27 Following, on July 22, 2011, Defendants filed a Supplement to Third-Party Defendant Hale  
28 Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu.

1       Thereafter, on August 18, 2011, Third-Party Plaintiffs JOHN ILIESCU, JR. and  
2 SONNIA ILIESCU, individually, and as Trustee of the John Iliescu, Jr. and Sonnia Iliescu  
3 1992 Family Trust (hereinafter collectively referred to as "Plaintiffs") filed an Opposition  
4 and Response to Third-Party Defendant Hale Lane's Motion for Summary Judgment  
5 Regarding Third-Party Claims by John Iliescu. Subsequently, on August 29, 2011,  
6 Defendants filed a Reply in Support of Motion for Summary Judgment Regarding Third-  
7 Party Claims by John Iliescu. Contemporaneously with their Reply, Defendants also filed a  
8 Request for Submission, thereby submitting the matter for the Court's consideration. Later  
9 that same day, Plaintiffs filed an Opposition to Supplement to Third-Party Defendant Hale  
10 Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu.

11       **I. Factual & Procedural Background**

12       This matter comes before the Court as the result of a 2005 property transaction that  
13 fell through, involving a parcel of property located in downtown Reno, which Plaintiffs  
14 owned and was to be developed by a group of developers headed by Consolidated Pacific  
15 Development, Inc. (hereinafter "Developers"). As part of that transaction, Plaintiffs agreed  
16 to sell the parcel of property at issue to the Developers, who would then use the property  
17 to construct a high-rise condominium project known as Wingfield Tower.

18       The Developers first contacted Plaintiffs about purchasing the parcel of property in  
19 July of 2005, when the Developers contacted Plaintiffs through their broker, Sam Canglia.  
20 Following this contact, on July 29, 2005, the Developers and Plaintiffs, acting without the  
21 assistance of counsel, executed a form agreement prepared by Dick Johnson in order to  
22 facilitate the sale of the property. That contract provided that Developers would purchase  
23 the property from Plaintiffs for \$7.5 million, with a \$500,000 non-refundable cash deposit  
24 to be paid to Plaintiffs in advance, as well as Plaintiffs receiving a 3,750 square foot  
25 penthouse and four parking spaces, valued at \$2.2 million, upon the completion of  
26 construction. However, the sale was contingent upon Developers obtaining the necessary  
27 entitlement and permits from the City of Reno, with which Plaintiffs were to assist.  
28 Furthermore, the Contract afforded Developers 270 days to obtain the requisite

1 entitlements, while allowing an extension of time at the cost of \$50,000 per 30 days;  
2 otherwise, the Developers would forfeit their \$500,000 deposit.

3       Following the execution of the form contract, the Parties realized that it was  
4 inadequate for the magnitude of the deal they were entering into. Consequently, the  
5 Parties elected to hire legal counsel to assist in supplementing the contract. As a result,  
6 Dick Johnson brought the contract to Ms. Dennison, who then prepared Addendum No. 3,  
7 which sought to clarify the contract and its terms. Included in these clarifications was a  
8 clause that recognized obtaining the necessary entitlements was a condition precedent to  
9 the completion of the sale, and that the Developers would use their "best efforts and  
10 reasonable diligence to satisfy all Conditions Precedent." Addendum No. 3 further specified  
11 Plaintiffs' interest in completing the sale because of their ability to select the penthouse of  
12 their choice. Following, on October 8, 2005, the Parties executed Addendum No. 3.

13       Thereafter, the Developers sought an architect to help in obtaining the required  
14 entitlements. In doing so, the Developers hired Fisher Friedman & Associates, to design  
15 the building, prepare the architectural plans, and present the information to the Reno City  
16 Council for approval, which it did. Nevertheless, during this process, Plaintiffs signed a  
17 conflict waiver permitting Defendants to assist Developers in obtaining the necessary  
18 entitlements. Moreover, Plaintiffs actively participated in the application process by  
19 submitting an affidavit permitting Developers to submit an application to the City of Reno  
20 on Plaintiffs' behalf and by attending all public hearings on the matter. Subsequently, the  
21 City acted to approve the project and authorized the necessary entitlements.

22       Then, some sixteen months following the commencement of the project, Developers  
23 defaulted when they were unable to obtain the necessary financing to conclude the sale of  
24 the property. As a consequence of this default, Developers were unable to pay Fisher  
25 Friedman & Associates for the services rendered. This caused Fisher Friedman &  
26 Associates to file a \$1.8 million mechanics lien against the property.

27       Following the recording of this lien, the Parties approached Defendants to help  
28 resolve the issue. In doing so, the Parties executed a second conflict waiver. Defendants

1 then brokered an indemnity agreement between the Parties, whereby Developers,  
2 including Co-Third Party Defendant John Schleining, agreed to indemnify Plaintiffs against  
3 any harm that might occur as a result of the lien. Furthermore, the indemnity agreement  
4 also provided that Developers would work to discharge the lien on Plaintiffs' behalf at no  
5 expense to Plaintiffs. As a result, acting on Plaintiffs' behalf, Defendants then filed an  
6 application for release of the lien. This in turn caused Fisher Friedman & Associates to file  
7 a complaint against Plaintiffs in order to foreclose on the lien.

8 Subsequently, on September 27, 2007, Plaintiffs filed their third-party complaint  
9 against Defendants, alleging causes of action for legal malpractice and negligence.  
10 Plaintiffs premised their third-party complaint on allegations that Defendants committed  
11 legal malpractice by failing to file a Notice of Nonresponsibility pursuant to NRS 108.234.  
12 Defendants have now moved for summary judgment on the matter, arguing that Plaintiffs'  
13 claims fail as a matter of law, as there is no evidence of causation or that Plaintiffs suffered  
14 damages. Moreover, Defendants assert that because Plaintiffs executed two conflict  
15 waivers, any claim relating to a conflict of interest must fail. Finally, Defendants assert that  
16 the Court should dismiss Plaintiffs' claims for failure to comply with NRCP 16.1.

## 17 **II. Standard of Review**

18 A court should only grant summary judgment when, based upon the pleadings and  
19 discovery on file, no genuine issue of material fact exists for trial and the moving party is  
20 entitled to judgment as a matter of law. NRCP 56(c). A genuine issue of material fact  
21 exists when a reasonable jury could return a verdict in favor of the nonmoving party.  
22 *Kopicko v. Young*, 114 Nev. 1333, 1336, 971 P.2d 789, 790 (1998). Summary judgment is  
23 properly regarded not as a disfavored procedural shortcut, but rather as an integral part of  
24 civil procedure as a whole. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S.Ct. 2548,  
25 2555 (1986).

26 In reviewing a motion for summary judgment, the Court must view the evidence,  
27 and any reasonable inference drawn there from, in the light most favorable to the  
28 nonmoving party. *Lipps v. S. Nev. Paving*, 116 Nev. 497, 498, 998 P.2d 1183, 1184

1 (2000). However, the nonmoving party may not avoid summary judgment by relying "on  
2 the gossamer threads of whimsy, speculation, and conjecture." *Pegasus v. Reno*  
3 *Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002) (quoting *Collins v. Union*  
4 *Fed. Sav. & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983). Rather, the nonmoving  
5 party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of  
6 a genuine issue for trial. *Pegasus*, 118 Nev. at 713, 57 P.3d at 87.

### 7 **III. Legal Analysis**

8 As noted above, Defendants presently seek an order from the Court granting  
9 summary judgment on Plaintiffs' claims for legal malpractice and negligence. Specifically,  
10 Defendants argue that the claims of Plaintiffs fail as a matter of law because Plaintiffs were  
11 not eligible to file a Notice of Nonresponsibility as they were "Interested Owners," and  
12 thus, no evidence of causation exists. In addition, Defendants assert that even if Plaintiffs  
13 were not "Interested Owners," no evidence of damages exists because Plaintiffs received a  
14 substantial benefit from the actions of Fisher Friedman & Associates, and because  
15 Defendants and Mr. Schleining have reached an agreement releasing the lien without any  
16 cost to Plaintiffs. Furthermore, Defendants assert that because Plaintiffs executed two  
17 conflict waivers, any claim relating to a conflict of interest must fail. Finally, as an  
18 alternative theory, Defendants assert that pursuant to NRCP 16.1(e), the Court should  
19 dismiss Plaintiffs' claims as Plaintiffs failed to file a case conference report within 240 days  
20 following Defendants' appearance as required by NRCP 16.1(c).

21 In opposition to Defendants' arguments, Plaintiffs merely assert that Defendants  
22 breached the legal duties owed to Plaintiffs by failing to advise Plaintiffs to avoid actively  
23 participating in the sale of the property. In addition, Plaintiffs assert that the Court should  
24 not dismiss their claims pursuant to NRCP 16.1 because this matter has been ongoing for  
25 the past four years and there is still time to hold a case conference report. The Court will  
26 address each matter as follows:

27 ///

28 ///

1                   **a. Conflict of Interest**

2                   As it pertains to Plaintiffs' claims regarding a conflict of interest, Defendants argue  
3 that such claims must fail as a matter of law because Plaintiffs suffered no compensable  
4 harm as a result of the conflict and because Plaintiffs knowingly executed two conflict  
5 waivers in accordance with NRPC 1.7(b), waving the conflict of which Plaintiffs now  
6 complain. To this argument, Plaintiffs have not raised any opposition. Accordingly, the  
7 Court must find that Defendants' Motion, as it relates to the conflict of interest claims, is  
8 meritorious. Accordingly, to the extent Defendants seek summary judgment on this issue,  
9 their Motion shall be granted.

10                   **b. Legal Malpractice & Negligence**

11                   In order to recover under the theories of legal malpractice and negligence, Plaintiffs  
12 must demonstrate: (1) the existence of an attorney client relationship; (2) a duty owed to  
13 the client by the attorney to use such skill prudence, and diligence as lawyers of ordinary  
14 skill and capacity possess in exercising and performing the tasks which they undertake; (3)  
15 a breach of that duty; (4) that the lawyer's negligence was the proximate cause of the  
16 client's damages; and (5) actual loss or damage resulting from the negligence. *Mainor v.*  
17 *Nault*, 120 Nev. 750, 774, 101 P.3d 308, 324 (2004). Accordingly, where there is no  
18 evidence of causation or damages, a claim for legal malpractice or negligence must fail as  
19 a matter of law.

20                   In the instant case, Plaintiffs assert that Defendants breached the duty of care owed  
21 to Plaintiffs by failing to file a Notice of Nonresponsibility and by failing to advise Plaintiffs  
22 not to actively participate in the sale of the property at issue. Plaintiffs further assert that  
23 this caused them to suffer damages, in that Defendants' failure permitted Fisher Friedman  
24 & Associates to file a lien against Plaintiffs' property and forced Plaintiffs to incur the legal  
25 expenses of fighting that lien. In contrast, Defendants assert that when they became  
26 involved in the matter, Plaintiffs had already become active participants in the sale of the  
27 property, and therefore, there is nothing Defendants could have done to protect Plaintiffs'  
28 interests. Accordingly, the proper question before the Court is whether Plaintiffs were

1 eligible for the protections afforded by a Notice of Nonresponsibility at the time Defendants  
2 became involved in the case.

3 Pursuant to NRS 108.234(2), a "disinterested owner" can avoid a lien from attaching  
4 to his property by filing a Notice of Nonresponsibility within three days after learning that  
5 improvements are being made to his property. However, in order to qualify as a  
6 "disinterested owner" the property owner must be one who: "(a) Does not record a notice  
7 of waiver as provided in NRS 108.2405; and (b) Does not personally or through an agent  
8 or representative, directly or indirectly, contract for or cause a work of improvement, or  
9 any portion thereof, to be constructed, altered or repaired upon the property or an  
10 improvement of the owner." NRS 108.234(7).

11 As applied to the instant matter, this Court must find that Plaintiffs were no longer  
12 "disinterested owners" at the time Defendants became involved in the case. This is  
13 because the undisputed evidence before the Court demonstrates that Plaintiffs entered into  
14 a contract with Developers for improvements to the property even before Defendants  
15 became involved in the matter. Plaintiffs negotiated and signed this contract by  
16 themselves. Furthermore, that contract contained language that required Plaintiffs to  
17 participate actively in the development of the property. Specifically, the language within  
18 the original contract made the offer contingent upon obtaining the necessary government  
19 approvals, with which Plaintiffs were required to assist. Moreover, the Court will note that  
20 as a result of those negotiations, Plaintiffs were to receive some \$7.5 million in payments  
21 and a penthouse valued at approximately \$2.2 million. Accordingly, these actions clearly  
22 demonstrate that Plaintiffs personally contracted for and were to benefit from the  
23 improvements to their property, thus making Plaintiffs "interested owners" before  
24 Defendants had any part in the matter.

25 It was only after Plaintiffs and Developers completed their negotiations that  
26 Defendants became involved in the matter in order to "fine tune" the agreement.  
27 However, because Plaintiffs had already become "interested owners" at that point in time,  
28 there is nothing Defendants could have said or done to avoid the existing contract. See



1 *Howard S. Wright Construction Co. v. Superior Court*, 106 Cal.App.4th 314, 321, 130  
2 Cal.Rptr.2d 641 (2003); *see also Verdi Lumber Co. v. Bartlett*, 40 Nev. 317, 161 P. 933,  
3 934-35 (1916). Therefore, the Court must conclude that Defendants' alleged malpractice  
4 was not the cause of Plaintiffs' injuries. Furthermore, there is nothing more Plaintiffs could  
5 allege to fix this problem. Consequently, the Court believes that the grant of summary  
6 judgment in favor of Defendants is appropriate.

7 **c. NRCP 16.1**


8 As a final matter, the Court will turn its attention to those NRCP 16.1 arguments  
9 raised by Defendants. Under this rule, once the parties hold their early case conference,  
10 the plaintiff must file a case conference report within 30 days thereof. NRCP 16.1(c); *see*  
11 *also Moon v. McDonald Carano & Wilson*, 245 P.3d 1138, 1139 (Nev. 2010). If the plaintiff  
12 fails to make such a filing within 240 days following the defendant's first appearance, upon  
13 motion or its own initiative, the Court may dismiss the case without prejudice as to that  
14 defendant. NRCP 16.1 (e)(2).

15 As applied to the instant matter, this Court must find that the claims of Plaintiffs are  
16 subject to dismissal pursuant to NRCP 16.1(e)(2). As the Court recognized above, it was  
17 on September 27, 2007, that Plaintiffs filed their third-party complaint against Defendants.  
18 However, because of a stipulation between the Parties, Defendants did not file their answer  
19 until October 7, 2009. Based on this date, Plaintiffs had at the latest, until June 4, 2010, to  
20 file their case conference report. Nevertheless, as of August 30, 2011, Plaintiffs have yet  
21 to file the required report. Accordingly, more than 690 days have passed since Defendants'  
22 appearance without Plaintiffs having filed their case conference report as required by NRCP  
23 16.1(c). Furthermore, Plaintiffs have not offered a single reason for their failure to do so.  
24 Instead, Plaintiffs merely assert that this matter has been ongoing for more than four years  
25 and that there is still time to file a report following another case conference. In the Court's  
26 view, such an argument is unpersuasive and fails to justify Plaintiffs' failure. Given this  
27 analysis, the Court is inclined to grant Defendants' Motion.

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**NOW, THEREFORE, IT IS HEREBY ORDERED** that Defendants' Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu is **GRANTED**.

  
STEVEN P. ELLIOTT  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

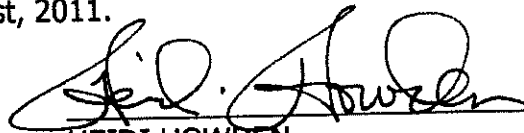
GREGORY WILSON, ESQ. for JOHN SCHLEINING

THOMAS HALL, ESQ. for TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU, JOHN ILIESCU, JR., SONNIA ILIESCU

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R. HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

**DATED** this 31 day of August, 2011.



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Judicial Assistant

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FILED

2009 SEP -2 PM 1:54

HOWARD W. CONYERS  
R. Simpson  
BY DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

vs.

JOHN ILIESCU JR. and SONNIA ILIESCU, as Trustees of the  
JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY  
TRUST AGREEMENT; JOHN ILIESCU, individually; DOES I-  
V, inclusive; and ROE CORPORATIONS VI-X, inclusive,

Defendants.

Case No.: CV07-01021

Dept. No.: B6

JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the  
JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY  
TRUST AGREEMENT; JOHN ILIESCU, JR., individually;  
SONNIA ILIESCU, individually,

Third-Party Plaintiffs,

vs.

CONSOLIDATED PACIFIC DEVELOPMENT, INC., a Nevada  
Corporation; DECAL OREGON, INC., an Oregon Corporation;  
CALVIN BATY, individually; JOHN SCHLEINING,  
individually; HALE LANE PEEK DENNISON AND HOWARD  
PROFESSIONAL CORPORATION, a Nevada professional  
corporation, dba HALE LANE; KAREN D. DENNISON; R.  
CRAIG HOWARD; JERRY M. SNYDER; and DOES I thru X,

Third-Party Defendants.

Consolidated with:

Case No. CV07-00341

Department No. B6

1 JOHN SCHLEINING,

2 Cross-Claimant,

3 vs.

4 HALE LANE PEEK DENNISON AND HOWARD  
5 PROFESSIONAL CORPORATION, a Nevada professional  
corporation, dba HALE LANE and DOES XXI – XXX, inclusive,

6 Cross-Defendant.  
7 \_\_\_\_\_/

8 JOHN SCHLEINING,

9 Third-Party Plaintiff,

10 vs.

11 HOLLAND & HART, LLP, a professional corporation, R.  
12 CRAIG HOWARD and DOES XXXI – XL, inclusive,

13 Third-Party Defendants.  
14 \_\_\_\_\_/

15 **JOHN SCHLEINING'S ANSWER TO THIRD-PARTY COMPLAINT, CROSS-CLAIM**  
16 **AND THIRD-PARTY COMPLAINT**

17 **ANSWER TO THIRD-PARTY COMPLAINT**

18 Third-Party Defendant JOHN SCHLEINING ("Schleining") by and through his attorneys  
19 WILSON & QUINT LLP, hereby answers the THIRD-PARTY COMPLAINT filed by Third-  
20 Party Plaintiffs JOHN ILIESCU, JR. and SONNIA ILIESCU, individually and as Trustees of the  
21 John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement (collectively "Iliescu") and in  
22 support thereof, admit, deny and allege as follows.

23 **PARTIES**

- 24 1. Answering paragraph 1, Schleining lacks sufficient information and belief to form  
25 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.  
26 2. Answering paragraph 2, Schleining lacks sufficient information and belief to form  
27 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.  
28



1           18.     Answering paragraph 18, Schleining lacks sufficient information and belief to form  
2 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

3           19.     Answering paragraph 19, Schleining admits that an Addendum No. 3 was prepared.  
4 Schleining alleges that Addendum No. 3 speaks for itself. Other than as specifically admitted or  
5 alleged, Schleining denies the allegations contained in paragraph 19.

6           20.     Answering paragraph 20, Schleining admits the first sentence thereof but denies  
7 that Calvin Baty was ever a "purchaser". Schleining further admits that a copy of a December 14,  
8 2005 letter is attached as Exhibit A to the Complaint. Schleining alleges that Exhibit A speaks for  
9 itself. Other than as specifically admitted or alleged, Schleining denies the allegations contained  
10 in paragraph 20.

11          21.     Answering paragraph 21, Schleining lacks sufficient information and belief to form  
12 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

13          22.     Answering paragraph 22, Schleining lacks sufficient information and belief to form  
14 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

15          23.     Answering paragraph 23, Schleining lacks sufficient information and belief to form  
16 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

17          24.     Answering paragraph 24, Schleining admits the allegations contained in the first  
18 two sentences thereof. Other than as specifically admitted, Schleining lacks sufficient information  
19 and belief to form an opinion as to the truth of the allegations contained in paragraph 24 and  
20 therefore denies said allegations.

21          25.     Schleining admits the allegations of paragraph 25.

22          26.     Answering paragraph 26, Schleining alleges that the Mechanic's Lien speaks for  
23 itself. Other than as specifically alleged, Schleining lacks sufficient information and belief to  
24 form an opinion as to the truth of the allegations contained in paragraph 26 and therefore denies  
25 said allegations.

26          27.     Answering paragraph 27, Schleining lacks sufficient information and belief to form  
27 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

28          28.     Schleining admits the allegations of paragraph 28.

1           29.     Answering paragraph 29, Schleining admits that an Addendum No. 4 to the  
2 Purchase Agreement was prepared by Hale Lane, et al. Other than as specifically admitted,  
3 Schleining lacks sufficient information and belief to form an opinion as to the truth of the  
4 allegations contained in paragraph 29 and therefore denies said allegations.

5           30.     Answering paragraph 30, Schleining lacks sufficient information and belief to form  
6 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

7           31.     Answering paragraph 31, Schleining admits that Hale Lane, et al. and R. Craig  
8 Howard prepared an indemnity agreement for their clients, a copy of which is attached as Exhibit  
9 C to the Third-Party Complaint. Other than as specifically admitted, Schleining lacks sufficient  
10 information and belief to form an opinion as to the truth of the allegations contained in paragraph  
11 31 and therefore denies said allegations.

12          32.     Answering paragraph 32, Schleining lacks sufficient information and belief to form  
13 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

14          33.     Answering paragraph 33, Schleining lacks sufficient information and belief to form  
15 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

16          34.     Schleining admits the allegations of paragraph 34.

17          35.     Schleining admits the allegations of paragraph 35.

18          36.     The allegations contained in paragraph 36 are legal conclusions to which no  
19 response is required.

20                   **ANSWER TO FIRST CLAIM FOR RELIEF**

21          37.     Answering paragraph 37, Schleining realleges and incorporates herein by reference  
22 his responses to paragraphs 1 through 36, inclusive, as though fully set forth.

23          38.     Schleining admits the allegations of paragraph 38.

24          39.     Answering paragraph 39, Schleining admits that Third-Party Plaintiffs so contend.  
25 Other than as specifically admitted, Schleining denies the allegations contained in paragraph 39.

26          40.     Answering paragraph 40, Schleining admits that he disputes Iliescu's interpretation  
27 and assertion of rights.  
28



1           41.     Answering paragraph 41, Schleining denies that a judicial declaration of the  
2 parties' respective rights, duties and obligations is appropriate under the circumstances alleged in  
3 the Third-Party Complaint.

4                           **ANSWER TO SECOND CLAIM FOR RELIEF**

5           42.     Answering paragraph 42, Schleining realleges and incorporates herein by reference  
6 his responses to paragraphs 1 through 41, inclusive, as though fully set forth.

7           43.     Schleining denies the allegations contained in paragraph 43. Without limiting the  
8 generality of the foregoing, Schleining denies that he has any obligation whatsoever to indemnify  
9 Iliescu under any circumstances, or that he is liable to Iliescu in any amount whatsoever.

10                          **ANSWER TO THIRD THROUGH SIXTH CLAIMS FOR RELIEF**

11           44.     Neither the Third, Fourth, Fifth or Sixth Claims For Relief purport to allege any  
12 claims against Schleining. Therefore, Schleining need not respond to the factual allegations set  
13 forth therein.

14           WHEREFORE, Schleining prays for judgment as hereinafter set forth.

15                          **SEPARATE, ADDITIONAL AND AFFIRMATIVE DEFENSES**

16           Schleining further alleges the following as his separate, additional and affirmative defenses  
17 to the causes of action alleged in the Third-Party Complaint.

18           1.     The Third-Party Complaint fails to state a claim upon which relief can be granted  
19 against Schleining.

20           2.     The claims alleged in the Third-Party Complaint are barred by the doctrine of  
21 unclean hands.

22           3.     The claims alleged in the Third-Party Complaint are barred by the doctrine of laches.

23           4.     The claims alleged in the Third-Party Complaint are barred by the doctrines of  
24 waiver, release, acquiescence or ratification.

25           5.     The claims alleged in the Third-Party Complaint are barred by the doctrine of  
26 estoppel.

27           6.     The claims alleged in the Third-Party Complaint are barred by the doctrine of  
28 superior equities.

1           7.     Third-Party Plaintiffs have failed to take reasonable action to mitigate their alleged  
2 damages, if any, and therefore the contracts alleged in the Third-Party Complaint are void,  
3 unenforceable and exonerated as to Schleining.

4           8.     Third-Party Plaintiffs are barred from the relief requested in the Third-Party  
5 Complaint because of the absence of consideration, insufficiency of consideration or failure of  
6 consideration for the alleged indemnity agreement.

7           9.     Third-Party Plaintiffs failed to disclose to Schleining facts known to Third-Party  
8 Plaintiffs as to Third-Party Plaintiffs' conduct with respect to the transactions alleged in the Third-  
9 Party Complaint at such times when Third-Party Plaintiffs had reason to believe such facts  
10 materially increased the risk beyond which Schleining intended to assume, at which times Third-  
11 Party Plaintiffs had reason to believe that such facts were unknown to Schleining, and at which  
12 times Third-Party Plaintiffs had reasonable opportunities to communicate such facts to Schleining.  
13 Third-Party Plaintiffs breached their legal duties to Schleining by such failures to disclose. The  
14 indemnity agreement alleged in the Third-Party Complaint is therefore void, unenforceable and  
15 exonerated as to Schleining.

16          10.    Third-Party Plaintiffs breached the covenant of good faith and fair dealing implied  
17 in the contracts alleged in the Third-Party Complaint and therefore such contracts are void,  
18 unenforceable and exonerated as to Schleining.

19          11.    Third-Party Plaintiffs are barred from the relief requested in the Third-Party  
20 Complaint by the doctrine of mutual mistake.

21          12.    Third-Party Plaintiffs are barred from the relief requested in the Third-Party  
22 Complaint by the doctrine of unilateral mistake.

23          13.    Third-Party Plaintiffs are barred from the relief requested in the Third-Party  
24 Complaint because Schleining has been discharged and exonerated from any and all obligations  
25 and duties arising out of the indemnity agreement alleged in the Third-Party Complaint.

26          14.    Third-Party Plaintiffs are barred from the relief requested in the Third-Party  
27 Complaint because Schleining is excused from performance on any indemnity agreement between  
28 Schleining and Third-Party Plaintiffs by reason of mistake of fact or mistake of law.

1           15.     Third-Party Plaintiffs are barred from the relief requested in the Third-Party  
2 Complaint because the indemnity agreement alleged in the Third-Party Complaint is void and/or  
3 unenforceable.

4           16.     Third-Party Plaintiffs are barred from the relief requested in the Third-Party Complaint  
5 because the indemnity agreement alleged in the Third-Party Complaint with Schleining and others, as  
6 written and as performed by Third-Party Plaintiffs, is unconscionable.

7           17.     Third-Party Plaintiffs are barred from the relief requested in the Third-Party  
8 Complaint because Third-Party Plaintiffs substantially and materially breached their agreements  
9 with Defendants, Schleining, and others, which conduct extinguishes Third-Party Plaintiffs' right  
10 to maintain its claim against Schleining.

11           18.     Third-Party Plaintiffs are barred from the relief requested in the Third-Party  
12 Complaint because of Third-Party Plaintiffs' misrepresentations, concealments and false promises.

13           19.     Schleining reserves his right to amend this Answer to allege additional affirmative  
14 defenses in light of the subsequently discovered or appreciated facts.

15           WHEREFORE, Third-Party Defendant JOHN SCHLEINING prays for judgment as  
16 follows.

17           1.     That Third-Party Plaintiffs take nothing by reason of their Third-Party Complaint  
18 and that judgment be entered thereon in favor of Schleining;

19           2.     For costs of suit incurred in this action;

20           3.     For his attorney's fees and costs to the extent permitted by law, contract, or equity; and

21           4.     For such other and further relief as may be deemed just and proper in the  
22 circumstances.

23           **CROSS-CLAIM OF JOHN SCHLEINING AGAINST HALE LANE PEEK DENNISON**

24                   **AND HOWARD**

25           Schleining JOHN SCHLEINING, by and through his counsel, alleges as follows.

26                   **PARTIES**

27           1.     Schleining JOHN SCHLEINING is an individual and resident of the State of  
28 Oregon.

1           2.       Schleining is informed and believes and on that basis alleges that Cross-Defendant  
2 HALE LANE PEEK DENNISON AND HOWARD ("Hale Lane") is and was at all relevant times  
3 a Nevada professional corporation doing business as a firm of lawyers licensed to practice law in  
4 the State of Nevada.

5           3.       Schleining is unaware of the true names or capacities of persons or entities sued  
6 herein as DOES XXI – XXX, inclusive, and therefore sues said persons or entities by such  
7 fictitious names. Schleining is informed and believes and therefore alleges that each of said DOE  
8 Cross-Defendants' wrongful acts or omissions proximately caused the injuries alleged herein by  
9 Schleining.

10          4.       Schleining reserves his right to amend his Cross-Claim after the identities of said  
11 DOE Cross-Defendants and the nature of their wrongful acts becomes known.

12          5.       Schleining is informed and believes and therefore alleges that at all times relevant  
13 herein each of the Cross-Defendants was the agent, partner or employee of each of the other  
14 Cross-Defendants and, in committing the acts or omissions hereinafter alleged, was acting within  
15 the course and scope of such agency, partnership or employment.

16                               **GENERAL ALLEGATIONS**

17          6.       Schleining is informed and believes and therefore alleges that on or about August  
18 2005, John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu Jr. and Sonnia Iliescu  
19 1992 Family Trust Agreement, John Iliescu, Jr. and Sonnia Iliescu (collectively "Iliescu") entered  
20 into a contract to sell certain real property located in Washoe County commonly known as 219  
21 Court Street, Reno, Nevada, 0 Court Street, Reno, Nevada, and 223 Court Street, Reno, Nevada  
22 (collectively "the Property") to Consolidated Pacific Development, Inc. ("CPD"). That contract,  
23 as subsequently modified and/or amended, is hereafter referred to as the "Purchase Agreement".

24          7.       Schleining is informed and believes and therefore alleges that on or before  
25 September 22, 2005, Iliescu retained Hale Lane to represent them in connection with the Purchase  
26 Agreement and the sale of the Property to CPD and that Hale Lane continued to represent Iliescu  
27 as their lawyers at all relevant times thereafter.

1           8.     Schleining is informed and believes and therefore alleges that, on or before  
2 December 14, 2005, CPD and Calvin Baty retained Hale Lane to represent them and their  
3 successors-in-interest in connection with their acquisition of the Property under the Purchase  
4 Agreement, and that said representation included but was not limited to obtaining certain  
5 entitlements on the Property.

6           9.     CPD assigned its rights in and under the Purchase Agreement to DeCal Custom  
7 Homes and Construction ("DeCal"), an entity owned and controlled by Schleining. Thereafter,  
8 Calvin Baty, Sam Caniglia, President of CPD, and Schleining formed BSC Financial, LLC  
9 ("BSC"). DeCal thereafter assigned its rights in and under the Purchase Agreement to BSC and  
10 continued with the task of obtaining the necessary entitlements on the Property as contemplated by  
11 the Purchase Agreement.

12          10.    Upon obtaining the assignment of the buyers' rights in and under the Purchase  
13 Agreement and prior to December 8, 2006, Schleining, Baty, and BSC retained Hale Lane to  
14 represent them as purchasers of the Property and in connection with obtaining the desired  
15 entitlements. At all relevant times thereafter, Hale Lane continued to represent Iliescu as sellers of  
16 the Property on the one hand and Schleining, Baty, and BSC as buyers of the Property on the other  
17 hand.

18          11.    On or about November 7, 2006, Architect Mark Steppan ("Steppan") recorded a  
19 mechanic's lien on the Property. In that mechanic's lien, Steppan claimed he was owed in excess  
20 of \$1.7 million for work performed for the benefit of the Property.

21                               **FIRST CAUSE OF ACTION**  
22                               **(Negligent Misrepresentation)**

23          12.    Schleining realleges and incorporates herein as though fully set forth paragraphs 1  
24 through 11 of this Cross-Claim.

25          13.    On or about December 8, 2006, following the recordation of the mechanic's lien by  
26 Steppan, Hale Lane, acting on behalf of its Iliescu clients, prepared a document entitled  
27 "Indemnity". A true and correct copy of the Indemnity is attached hereto as Exhibit 1 and  
28 incorporated herein by reference as though fully set forth.

1           14.     The Indemnity provides, in pertinent part, at paragraph 1:

2                     "Indemnity. Baty, Schleining and BSC hereby, jointly and severally, agree  
3           to indemnify, defend, protect and hold Iliescu harmless against all damages, losses,  
4           expenses, costs, liabilities, including, without limitation, payments due or which  
5           may be due to the architect [Steppan] ...."

6           15.     On or about December 8, 2006, Hale Lane presented the Indemnity to  
7           Schleining for signature. At that time, Hale Lane was purporting to act as lawyers both for  
8           Iliescu as indemnitees and for Schleining, Baty and BSC as indemnitors.

9           16.     In order to induce their client Schleining to sign the Indemnity, Hale Lane  
10          negligently represented to Schleining and advised him as follows: (1) as a result of their legal  
11          research, Hale Lane had concluded that Steppan had no right to record or enforce a lien against the  
12          Property because Steppan had failed to serve or record the required pre-lien notices; (2) under no  
13          circumstances could Steppan obtain a judgment against Iliescu as owners of the Property and (3)  
14          Schleining would have absolutely "no exposure" to Iliescu if he signed the Indemnity. Hale Lane  
15          then asked and advised Schleining to sign the Indemnity.

16          17.     The representations and legal advice made by Hale Lane to Schleining set forth in  
17          paragraph 16 above were false and negligently made. For example and without limitation, as this  
18          Court has found, Steppan's mechanic's lien is enforceable notwithstanding Steppan's failure to  
19          serve or record pre-lien notices and therefore Schleining may have exposure to Iliescu under the  
20          Indemnity.

21          18.     At the time Hale Lane made the misrepresentations and rendered the advice set  
22          forth in paragraph 16 above, Hale Lane did not have sufficient basis or information on which to  
23          make such representations and render such legal advice and Hale Lane failed to exercise  
24          reasonable care or competence in so doing.

25          19.     Schleining was ignorant of the falsity of Hale Lane's representations. Given the  
26          nature of his relationship with Hale Lane, Schleining justifiably relied on Hale Lane's  
27          representations and advice. Schleining executed the Indemnity in reliance on Hale Lane's  
28          representations and advice.

1           20.     As a direct, proximate and consequential result of executing the Indemnity,  
2 Schleining has been damaged in an amount in excess of ten thousand dollars (\$10,000).

3                               **SECOND CLAIM FOR RELIEF**

4                               **(Breach of Fiduciary Duty)**

5           21.     Schleining realleges and incorporates herein as though fully set forth paragraphs 1  
6 through 20 of this Cross-Claim.

7           22.     As a result of its attorney-client relationships with Schleining, Baty and BSC, Hale  
8 Lane was a fiduciary of Schleining and owed to Schleining the highest duty of loyalty and fidelity.

9           23.     Hale Lane breached its fiduciary obligations to Schleining as follows:

10               a.     By failing to advise Schleining that there was an inherent conflict of interest  
11 in Hale Lane's joint representation of Schleining, Baty and BSC as indemnitors and Iliescu as  
12 indemnitees;

13               b.     By failing to advise Schleining of the consequences of its conflict of interest  
14 in purporting to represent both the indemnitors and the indemnitees;

15               c.     By favoring the interests of its indemnitee clients, Iliescu, over the interests  
16 of its indemnitor clients, Schleining, Baty and BSC;

17               d.     By advising Schleining to sign and asking Schleining to sign the Indemnity  
18 when it was not in Schleining's best interest to do so; and

19               e.     By violating Nevada Rule of Professional Conduct 1.7.

20           24.     As a direct and proximate result of Hale Lane's breaches of its fiduciary duties as  
21 alleged above, Schleining has been damaged in an amount in excess of ten thousand dollars  
22 (\$10,000).

23                               **THIRD CLAIM FOR RELIEF**

24                               **(Legal Malpractice)**

25           25.     Schleining realleges and incorporates herein as though fully set forth paragraphs 1  
26 through 24 of this Cross-Claim.

27           26.     As Schleining's, Baty's and BSC's lawyers, Hale Lane owed Schleining the duty to  
28 use such skill, prudence and diligence as lawyers of ordinary skill and capacity possessed in  
exercising and performing the tasks which Hale Lane undertook, particularly in this instance the

1 duty to apply that level of diligence and judgment held by reputable licensed lawyers in northern  
2 Nevada engaged in the types of business and transactions described above.

3 27. Hale Lane breached its duties to Schleining set forth hereinabove in committing the  
4 acts and omissions alleged herein.

5 28. As a direct and proximate result of said breaches, Schleining has been damaged in  
6 an amount in excess of ten thousand dollars (\$10,000).

7 WHEREFORE, JOHN SCHLEINING prays for judgment as follows:

- 8 1. For damages in an amount in excess of ten thousand dollars (\$10,000);  
9 2. For reasonable attorney's fees incurred in the prosecution and defense of this action  
10 to the extent permitted by law, equity, or contract;  
11 3. For costs of suit; and  
12 4. For such other and further relief as this Court may deem just and proper.

13 **THIRD-PARTY COMPLAINT OF JOHN SCHLEINING AGAINST HOLLAND & HART,**

14 **LLP AND R. CRAIG HOWARD**

15 Third-Party Plaintiff JOHN SCHLEINING, by and through his counsel, alleges as follows.

16 **PARTIES**

17 1. Third-Party Plaintiff JOHN SCHLEINING ("Schleining") is an individual and  
18 resident of the State of Oregon.

19 2. Schleining is informed and believes and on that basis alleges that (a) Cross-  
20 Defendant HALE LANE PEEK DENNISON AND HOWARD ("Hale Lane") is and was at all  
21 relevant times a Nevada professional corporation doing business as a firm of lawyers licensed to  
22 practice law in the State of Nevada; (b) on or about May 2008, Cross-Defendant Hale Lane  
23 publicly announced that it had "combined" with Third Party Defendant HOLLAND & HART,  
24 LLP, a Colorado limited liability partnership doing business as a law firm in the Western United  
25 States; (c) thereafter Cross-Defendant Hale Lane and Third Party Defendant HOLLAND &  
26 HART, LLP together represented themselves to the public as a single law firm and single legal  
27 entity and (d) on and after May 2008, Third Party Defendant HOLLAND & HART, LLP assumed  
28 and continues to assume all of the past, present and future duties, obligations and liabilities of



1 Cross-Defendant Hale Lane.

2 3. Third Party Defendant R. CRAIG HOWARD ("Howard") is an attorney licensed to  
3 practice law in the State of Nevada and at all relevant times was and is a principal, partner or  
4 shareholder of Cross-Defendant Hale Lane and/or Third Party Defendant HOLLAND & HART,  
5 LLP. Cross-Defendant Hale Lane and Third Party Defendants HOLLAND & HART, LLP and  
6 Howard are collectively hereinafter referred to as "Attorneys."

7 4. Schleining is unaware of the true names or capacities of persons or entities sued  
8 herein as DOES XXXI – XL, inclusive, and therefore sues said persons or entities by such  
9 fictitious names. Schleining is informed and believes and therefore alleges that each of said DOE  
10 Third Party Defendants' wrongful acts or omissions proximately caused the injuries alleged herein  
11 by Schleining. Schleining reserves his right to amend his pleadings after the identities of said  
12 DOE Third Party Defendants and the nature of their wrongful acts becomes known.

13 5. Schleining is informed and believes and therefore alleges that at all times relevant  
14 herein each of the Third-Party Defendants was the agent, partner or employee of each of the other  
15 Third-Party Defendants and, in committing the acts or omissions hereinafter alleged, was acting  
16 within the course and scope of such agency, partnership or employment.

17 **GENERAL ALLEGATIONS**

18 6. Schleining is informed and believes and therefore alleges that on or about August  
19 2005, John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu Jr. and Sonnia Iliescu  
20 1992 Family Trust Agreement, John Iliescu, Jr. and Sonnia Iliescu (hereinafter, collectively,  
21 "Iliescu") entered into a contract to sell certain real property located in Washoe County commonly  
22 known as 219 Court Street, Reno, Nevada, 0 Court Street, Reno, Nevada, and 223 Court Street,  
23 Reno, Nevada (collectively "the Property") to Consolidated Pacific Development, Inc. ("CPD").  
24 That contract, as subsequently modified and/or amended, is hereafter referred to as the "Purchase  
25 Agreement".

26 7. Schleining is informed and believes and therefore alleges that on or before  
27 September 22, 2005, Iliescu retained Attorneys to represent them in connection with the Purchase  
28

1 Agreement and the sale of the Property to CPD and that Attorneys continued to represent Iliescu  
2 as their lawyers at all relevant times thereafter.

3 8. Schleining is informed and believes and therefore alleges that, on or before  
4 December 14, 2005, CPD and Calvin Baty retained Attorneys to represent them and their  
5 successors-in-interest in connection with their acquisition of the Property under the Purchase  
6 Agreement, and that said representation included but was not limited to obtaining certain  
7 entitlements on the Property.

8 9. CPD assigned its rights in and under the Purchase Agreement to DeCal Custom  
9 Homes and Construction ("DeCal"), an entity owned and controlled by Schleining. Thereafter,  
10 Calvin Baty, Sam Caniglia, President of CPD, and Schleining formed BSC Financial, LLC  
11 ("BSC"). DeCal assigned its rights in and under the Purchase Agreement to BSC, which  
12 continued with the task of obtaining the necessary entitlements on the Property as contemplated by  
13 the Purchase Agreement.

14 10. Upon obtaining the assignment of the buyers' rights in and under the Purchase  
15 Agreement and prior to December 8, 2006, Schleining, Baty, and BSC retained Attorneys to  
16 represent them as purchasers of the Property and in connection with obtaining the desired  
17 entitlements. At all relevant times thereafter, Attorneys continued to represent Iliescu as sellers of  
18 the Property on the one hand and Schleining, Baty, and BSC as buyers of the Property on the other  
19 hand.

20 11. On or about November 7, 2006, Architect Mark Steppan ("Steppan") recorded a  
21 mechanic's lien on the Property. In that mechanic's lien, Steppan claimed he was owed in excess  
22 of \$1.7 million for work performed for the benefit of the Property.

23 **FIRST CAUSE OF ACTION**

24 **(Negligent Misrepresentation)**

25 12. Schleining realleges and incorporates herein as though fully set forth paragraphs 1  
26 through 11 of this Cross-Claim.

27 13. On or about December 8, 2006, following the recordation of the mechanic's lien by  
28 Steppan, Attorneys, acting on behalf of their Iliescu clients, prepared a document entitled

1 "Indemnity". A true and correct copy of the Indemnity is attached hereto as Exhibit 1 and  
2 incorporated herein by reference as though fully set forth.

3 14. The Indemnity provides, in pertinent part, at paragraph 1:

4 "Indemnity. Baty, Schleining and BSC hereby, jointly and severally, agree  
5 to indemnify, defend, protect and hold Iliescu harmless against all damages, losses,  
6 expenses, costs, liabilities, including, without limitation, payments due or which  
may be due to the architect [Steppan] ...."

7 15. On or about December 8, 2006, Attorneys presented the Indemnity to  
8 Schleining for signature. At that time, Attorneys were purporting to act as lawyers both for  
9 Iliescu as indemnitees and for Schleining, Baty and BSC as indemnitors.

10 16. In order to induce their client Schleining to sign the Indemnity, Attorneys  
11 represented to Schleining and advised him as follows: (1) as a result of their legal research,  
12 Attorneys had concluded that Steppan had no right to record or enforce a lien against the Property  
13 because Steppan had failed to serve or record the required pre-lien notices; (2) under no  
14 circumstances could Steppan obtain a judgment against Iliescu as owners of the Property and (3)  
15 Schleining would have absolutely "no exposure" to Iliescu if he signed the Indemnity. Attorneys  
16 then asked and advised Schleining to sign the Indemnity.

17 17. The representations made and legal advice rendered by Attorneys to Schleining set  
18 forth in paragraph 16 above were false and negligently made. For example and without limitation,  
19 as this Court has found, Steppan's mechanic's lien is enforceable notwithstanding Steppan's  
20 failure to serve or record pre-lien notices and therefore Schleining may have exposure to Iliescu  
21 under the Indemnity.

22 18. At the time Attorneys made the misrepresentations and rendered the legal advice  
23 set forth in paragraph 16 above, Attorneys did not have sufficient basis or information on which to  
24 make such representations and render such legal advice and Attorneys failed to exercise  
25 reasonable care or competence in so doing.

26 19. Schleining was ignorant of the falsity of the representations. Given the nature of  
27 his relationship with Attorneys, Schleining justifiably relied on Attorneys' representations and  
28 advice. Schleining executed the Indemnity in reliance on Attorneys' representations and advice.

1           20.     As a direct, proximate and consequential result of executing the Indemnity,  
2 Schleining has been damaged in an amount in excess of ten thousand dollars (\$10,000).

3                               **SECOND CLAIM FOR RELIEF**  
4                               **(Breach of Fiduciary Duty)**

5           21.     Schleining realleges and incorporates herein as though fully set forth paragraphs 1  
6 through 20 of this Cross-Claim.

7           22.     As a result of their attorney-client relationships with Schleining, Baty and BSC,  
8 Attorneys were fiduciaries of Schleining and owed to Schleining the highest duty of loyalty and  
9 fidelity.

10          23.     Attorneys breached their fiduciary obligations to Schleining as follows:

11               a.     By failing to advise Schleining that there was an inherent conflict of interest  
12 in Attorneys' joint representation of Schleining, Baty and BSC as indemnitors and Iliescu as  
13 indemnitees;

14               b.     By failing to advise Schleining of the consequences of their conflict of  
15 interest in purporting to represent both the indemnitors and the indemnitees;

16               c.     By favoring the interests of its indemnitee clients, Iliescu, over the interests  
17 of its indemnitor clients, Schleining, Baty and BSC;

18               d.     By advising Schleining to sign and asking Schleining to sign the Indemnity  
19 when it was not in Schleining's best interest to do so; and

20               e.     By violating Nevada Rule of Professional Conduct 1.7.

21          24.     As a direct and proximate result of Attorneys' breaches of their fiduciary duties as  
22 alleged above, Schleining has been damaged in an amount in excess of ten thousand dollars  
23 (\$10,000).

24                               **THIRD CLAIM FOR RELIEF**  
25                               **(Legal Malpractice)**

26          25.     Schleining realleges and incorporates herein as though fully set forth paragraphs 1  
27 through 24 of this Cross-Claim.

28          26.     As Schleining's, Baty's and BSC's lawyers, Attorneys owed Schleining the duty to  
use such skill, prudence and diligence as lawyers of ordinary skill and capacity possessed in

1 exercising and performing the tasks which Attorneys undertook, particularly in this instance the  
2 duty to apply that level of diligence and judgment held by reputable licensed lawyers in northern  
3 Nevada engaged in the types of business and transactions described above.

4 27. Attorneys breached their duties to Schleining set forth hereinabove in committing  
5 the acts and omissions alleged herein.

6 28. As a direct and proximate result of said breaches, Schleining has been damaged in  
7 an amount in excess of ten thousand dollars (\$10,000).

8 WHEREFORE, JOHN SCHLEINING prays for judgment as follows:

- 9 1. For damages in an amount in excess of ten thousand dollars (\$10,000);  
10 2. For reasonable attorney's fees incurred in the prosecution and defense of this action  
11 to the extent permitted by law, equity, or contract;  
12 3. For costs of suit; and  
13 4. For such other and further relief as this Court may deem just and proper.

14  
15 DATED: September 2, 2009

WILSON & QUINT LLP

16  
17 By: 

18 Gregory F. Wilson, Esq.  
19 417 West Plumb Lane  
20 Reno, NV 89509  
21 Telephone: 775.786.7600  
22 Facsimile: 775.786.7764  
23 Email: gfwilson@wilsonquint.com  
24 Attorneys for JOHN SCHLEINING  
25  
26  
27  
28

NRS 239B.030 AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: September 2, 2009

WILSON & QUINT LLP

By: 

Gregory F. Wilson, Esq.  
417 West Plumb Lane  
Reno, NV 89509  
Telephone: 775.786.7600  
Facsimile: 775.786.7764  
Email: gfwilson@wilsonquint.com  
Attorneys for JOHN SCHLEINING

CERTIFICATE OF SERVICE

I certify that I am an employee of Wilson & Quint LLP, and that on this date, pursuant to NRCp 5(b), I am serving a true copy of the following:

**JOHN SCHLEINING'S ANSWER TO THIRD-PARTY COMPLAINT, CROSS-CLAIM  
AND THIRD-PARTY COMPLAINT**

on the parties set forth below:

Gayle A. Kern, Esq.  
Gayle A. Kern, Ltd.  
5421 Kietzke Lane, No. 200  
Reno, Nevada 89511  
Telephone: 775.324.5930  
Email: gaylekern@kernltd.com

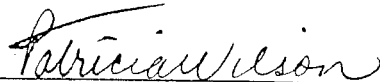
Steven M. Wilker, Esq.  
Tonkon Torp LLP  
1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, Oregon 97204  
Telephone: 503.221.1440  
Email: steven.wilker@tonkon.com

Stephen C. Mollath, Esq.  
Prezant & Mollath  
6560 SW McCarran Blvd., Suite A  
Reno, Nevada 89509  
Telephone: 775.786.3011  
Email: scmpc@gbis.com

David R. Grundy, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
Telephone: 775.786.9716  
Email: drg@lge.net

XXX Placing a true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, postage prepaid, following ordinary business practices.

DATED this 2nd day of September 2009.

  
Patricia Wilson

THIRD-PARTY DEFENDANT'S INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Document</u>	<u>Number of Pages</u>
1	"Indemnity"	2



# EXHIBIT 1

# EXHIBIT 1

## INDEMNITY

THIS INDEMNITY ("Agreement") is executed by BSC FINANCIAL, LLC, a limited liability company ("BSC"), CALVIN BATY, individually ("Baty"), and JOHN SCHLEINING, individually ("Schleining") (collectively, the "Indemnifying Parties"), in favor of JOHN ILIESCU, JR., and SONNIA SANTEE ILIESCU, individually and as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST (collectively, "Iliescu"), and is effective as of the date set forth by the parties' respective signatures.

### RECITALS:

A. Consolidated Pacific Development, Inc., a Nevada corporation ("Consolidated"), entered into a Land Purchase Agreement with Iliescu dated July 29, 2005, together with Addendum No. 1 dated August 1, 2005, Addendum No. 2 dated August 2, 2005, Addendum No. 3 dated October 8, 2005, and Addendum No. 4 dated as of September 18, 2006 (collectively, "Purchase Agreement"), concerning certain real property located in the City of Reno, County of Washoe, State of Nevada, identified as APNs 011-112-05, 06, 07 and 12, and more particularly described in the Title Report attached to Addendum No. 3 ("Property"). Sam Caniglia, President of Consolidated, Baty and Schleining formed BSC in order to proceed with the entitlement of the project on the Property.

B. BSC entered into an AIA Architectural Agreement ("AIA Contract") with Mark Steppan, AIA ("Architect"), for architectural services for a mixed-use development including residential, retail, and parking ("Project"). The architectural schematic drawings were necessary to obtain the land use entitlements for the Project. The land use entitlements were approved by the City of Reno.

C. On November 7, 2006, the Architect recorded in Washoe County, Nevada, a Notice and Claim of Lien against the Property in the amount of \$1,783,548.85 for claims of unpaid architectural services ("Mechanic's Lien"). These unpaid amounts are contested by BSC. In addition, the Mechanic's Lien is an improper lien not in compliance with Nevada law because the Architect failed to deliver to Iliescu (i) a Notice of Right to Lien pursuant to NRS 108.245, and (ii) a Notice of Intent to Lien pursuant to NRS 108.226(6).

D. Baty and Schleining are principals of BSC.

E. Baty, Schleining and BSC desire to indemnify Iliescu for any and all claims and costs related to the Architect's recording of the Mechanic's Lien on the Property.

NOW, THEREFORE, for valuable consideration, Baty, Schleining and BSC hereby agree as follows:

1. Indemnity. Baty, Schleining and BSC hereby, jointly and severally, agree to indemnify, defend, protect and hold Iliescu harmless against all damages, losses, expenses, costs, liabilities, including, without limitation, payments due or which may be due to the Architect arising out of services performed pursuant to the AIA Contract or any change order or extras

related thereto, including interest, penalties and attorney fees which may be claimed by Architect to be owed by either BSC or Consolidated.

2. Attorneys' Fees. Baty, Schleining and BSC hereby jointly and severally agree to pay all attorney's fees and costs incurred to contest and discharge the Mechanic's Lien. In the event that a discharge of the Mechanic's Lien does not occur pursuant to a resolution of the dispute with Architect within ten (10) days of the date of this Indemnity, the Indemnifying Parties agree to initiate an action in the Washoe County District Court to contest and to discharge the Mechanic's Lien for (i) failing to comply with Nevada law, and (ii) the excessive amount. The Indemnifying Parties agree to diligently prosecute such action in an expedited manner to eliminate the Mechanic's Lien.

IN WITNESS WHEREOF, the Indemnifying Parties have executed this Indemnity as of the date set forth below.


BSC FINANCIAL, LLC, a limited liability company

Dated: December 8, 2006

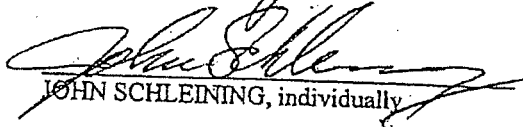
By: 

Calvin Baty  
Manager

Dated: December 8, 2006

  
CALVIN BATY, individually

Dated: December 8, 2006

  
JOHN SCHLEINING, individually

1 CODE \$1130  
CODE 4180  
2 PREZANT & MOLLATH  
STEPHEN C. MOLLATH (BAR NO. 922)  
3 6560 S.W. McCarran Boulevard, Suite A  
Reno, NV 89509  
4 Telephone: (775) 786-3011  
Facsimile: (775) 786-1354

5 DOWNEY BRAND LLP  
6 SALLIE ARMSTRONG (BAR NO. 1243)  
427 W. Plumb Lane  
7 Reno, NV 89509  
Telephone: (775) 329-5900  
8 Facsimile: (775) 786-5443

9 Attorneys for John Iliescu, Jr. and Sonnia Iliescu and The  
John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11 **IN AND FOR THE COUNTY OF WASHOE**  
12

13 MARK B. STEPPAN,  
14  
15 Plaintiff,  
16 v.

17 JOHN ILIESCU JR. and SONIA ILIESCU,  
as Trustees of the JOHN ILIESCU, JR.  
18 AND SONNIA ILIESCU 1992 FAMILY  
TRUST AGREEMENT; JOHN ILIESCU,  
19 individually; DOES I-V, inclusive; and  
ROE CORPORATIONS VI-X, inclusive.

20 Defendants.  
21

22 JOHN ILIESCU, JR. and SONIA  
ILIESCU, as Trustees of the JOHN  
23 ILIESCU, JR. AND SONNIA ILIESCU  
1992 FAMILY TRUST AGREEMENT;  
24 JOHN ILIESCU, JR., individually;  
SONNIA ILIESCU, individually,

25 Third-Party Plaintiffs,  
26 v.

27 CONSOLIDATED PACIFIC  
28 DEVELOPMENT, INC., a Nevada

Case No. CV07-01021

Department No. B6

Consolidated with:

Case No. CV07-00341

Department No. B6

1 Corporation; DECAL OREGON, INC., an  
2 Oregon Corporation; CALVIN BATY,  
3 individually; JOHN SCHLEINING,  
4 individually; HALE LANE PEEK  
5 DENNISON AND HOWARD  
6 PROFESSIONAL CORPORATION, a  
7 Nevada professional corporation, dba  
8 HALE LANE; KAREN D. DENNISON;  
9 R. CRAIG HOWARD; JERRY M.  
10 SNYDER; and DOES I thru X,

11 Third-Party Defendants.

12 **ANSWER AND THIRD PARTY COMPLAINT**

13 **ANSWER TO COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND  
14 FOR DAMAGES**

15 Defendants John Iliescu, Jr. and Sonnia Iliescu as Trustees of the John Iliescu, Jr. and  
16 Sonnia Iliescu 1992 Family Trust Agreement, and John Iliescu individually, by and through their  
17 attorneys Prezant & Mollath and Downey Brand LLP, hereby answer the COMPLAINT TO  
18 FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES ("Complaint")<sup>1</sup>, filed by Plaintiff  
19 Mark Stepan, on May 4, 2007, and in support thereof, states as follows:

20 **GENERAL ALLEGATIONS**

- 21 1. Defendants are without knowledge or information sufficient to form a belief as to  
22 the truth of the allegations of Paragraph 1 of the Complaint, and they are therefore denied.  
23 2. Admitted.  
24 3. The allegations of Paragraph 3 are legal conclusions to which no response is  
25 required and/or Defendants are without knowledge or information sufficient to form a belief as to  
26 the truth of the allegations of Paragraph 3 of the Complaint, and they are therefore denied.  
27 4. The allegations of Paragraph 4 are legal conclusions to which no response is  
28 required and/or Defendants are without knowledge or information sufficient to form a belief as to  
the truth of the allegations of Paragraph 4 of the Complaint, and they are therefore denied.

<sup>1</sup> Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Complaint.

**FIRST CLAIM FOR RELIEF**  
**(FORECLOSURE OF MECHANIC'S LIEN)**

5. Defendants restate their responses to Paragraphs 1 - 4 above as though fully set forth herein.

6. The allegations of Paragraph 6 are legal conclusions to which no response is required. To the extent a response is required, Defendants admit that they currently hold legal title to the Real Property.

7. Answering paragraph 7, Defendants admit that the referenced Land Purchase Agreement and associated documents contain certain terms that speak for themselves. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in said paragraph relating to characterization of the agreement, and thus, specifically and generally deny said allegations at this time.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint, and they are therefore denied.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint, and they are therefore denied.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint, and they are therefore denied.

11. Denied.

12. Answering paragraph 12, Defendants admit that the referenced documents contain certain terms that speak for themselves, and may have been recorded or served by Plaintiff. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in said paragraph relating to characterization of the documents and who recorded or served them, and thus, specifically and generally deny said allegations at this time.

13. Denied.

**AFFIRMATIVE DEFENSES**

(Each of the separate and distinct affirmative defenses hereinafter set forth has a descriptive heading. Such descriptive heading is for convenience only and it is not intended to

1 limit the legal basis upon which any affirmative defense to the allegations of the Complaint is  
2 asserted.)

3 **FIRST AFFIRMATIVE DEFENSE**

4 (Failure to State Any Claim For Relief)

5 As an affirmative defense to each and every claim for relief, Defendants are informed and  
6 believe and on that basis allege that the claim for relief fails to constitute any claim for relief.

7 **SECOND AFFIRMATIVE DEFENSE**

8 (Lack of Standing)

9 As an affirmative defense to each and every claim for relief, Defendants are informed and  
10 believe and on that basis allege that the Plaintiff lacks standing, because he failed to comply with  
11 the provisions of NRS 108.221 et seq.

12 **THIRD AFFIRMATIVE DEFENSE**

13 (Statute of Limitations and Statutory Requirements)

14 As an affirmative defense to each and every claim for relief, Defendants are informed and  
15 believe and on that basis allege that each and every claim for relief is barred by the statute of  
16 limitations in that Plaintiff failed to follow statutory requirements in connection with his  
17 mechanic's lien.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 (Laches)

20 As an affirmative defense to each and every claim for relief, Defendants are informed and  
21 believes and on that basis allege that each and every claim for relief is barred, in whole or in part,  
22 by the equitable doctrine of laches.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 (Privilege)

25 As an affirmative defense to each and every claim for relief, Defendants are informed and  
26 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or  
27 in part, by the doctrines of privilege.

28 **SIXTH AFFIRMATIVE DEFENSE**

(Justification)

As an affirmative defense to each and every claim for relief, Defendants are informed and

1 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or  
2 in part, by the doctrines of justification.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 (Equity)

5 As an affirmative defense to each and every claim for relief, Defendants are informed and  
6 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or  
7 in part, by principles of equity and fairness.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 (Unclean Hands)

10 As an affirmative defense to each and every claim for relief, Defendants are informed and  
11 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or  
12 in part, by the doctrine of unclean hands.

13 **NINTH AFFIRMATIVE DEFENSE**

14 (Consent)

15 As an affirmative defense to each and every claim for relief, Defendants are informed and  
16 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or  
17 in part, by the doctrine of consent and/or acquiescence.

18 **TENTH AFFIRMATIVE DEFENSE**

19 (Estoppel)

20 As an affirmative defense to each and every claim for relief, Defendants are informed and  
21 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or  
22 in part, by the doctrine of estoppel.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 (Failure to Mitigate)

25 As an affirmative defense to each and every claim for relief, and while denying that  
26 Plaintiff has incurred any damages, Defendants are informed and believe and thereon allege that  
27 Plaintiff has failed to act reasonably to mitigate, minimize or avoid damages, if any there be. As  
28 a result, Plaintiff's recovery, if any, should be barred or reduced.



1 **TWELFTH AFFIRMATIVE DEFENSE**

2 (Failure to Join Indispensable Parties)

3 As an affirmative defense to each and every claim for relief, Defendants are informed and  
4 believe and on that basis allege that Plaintiff has failed to join indispensable parties.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 (Waiver)

7 As an affirmative defense to each and every claim for relief, Defendants allege that each  
8 and every claim for relief thereof is barred, in whole or in part, by waiver.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 (Uncertainty)

11 As an affirmative defense to each and every claim for relief thereof, Defendants allege  
12 that each and every claim for relief thereof is barred, in whole or in part, as the allegations of the  
13 Complaint are uncertain to include the amount claimed as Plaintiff's lien.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 (Intentional Acts)

16 As an affirmative defense to each and every claim for relief, Defendants are informed and  
17 believe and on that basis allege that each and every claim for relief is barred, in whole or in part,  
18 by the intentional acts, omissions, commissions and/or intentional conduct of the Plaintiff, and/or  
19 his respective agents, representatives, attorneys and employees, if any.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 (Failure To Do Equity)

22 As an affirmative defense to each and every claim for relief, Defendants are informed and  
23 believe and on that basis allege that each and every claim for relief is barred, in whole or in part,  
24 by reason of the Plaintiff's failure to do equity.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 (Attorneys' Fees and Costs)

27 As an affirmative defense to each and every claim for relief, Defendants are informed and  
28 believe and on that basis allege that Plaintiff is not entitled to any attorney fees or costs of suit.

**CONCLUDING PRAYER FOR RELIEF**

WHEREFORE, Defendants pray for judgment as follows:

1. Plaintiff takes nothing by way of his Complaint;
2. Plaintiff's Complaint be dismissed in its entirety with prejudice;
3. Defendants be awarded his costs of this suit;
4. Defendants be awarded attorneys' fees; and
5. For such other and further relief as the Court deems just and proper.

### **THIRD PARTY COMPLAINT**

Third Party Plaintiffs, by and through counsel, Prezant & Mollath and Downey Brand, LLP, allege:

#### **The Parties**

1. Third Party Plaintiffs John Iliescu, Jr. and Sonnia Iliescu (hereinafter referred to as Iliescu or Third Party Plaintiffs) are residents of Washoe County, Nevada, and are the Trustees of the John Iliescu, Jr., and Sonnia Iliescu 1992 Family Trust Agreement.

2. Third Party Plaintiff John Iliescu, Jr. is an individual and a resident of Washoe County, Nevada.

3. Third Party Plaintiff Sonnia Iliescu is an individual and a resident of Washoe County, Nevada.

4. Third Party Defendant Consolidated Pacific Development, Inc. is a Nevada corporation.

5. Third Party Defendant DeCal Oregon, Inc. is an Oregon corporation and the successor, by name, to DeCal Custom Homes and Construction, Inc.

6. Third Party Defendant Indemnitor Calvin Baty is an individual and a resident of Oregon.

7. Third Party Defendant Indemnitor John Schleining is an individual and a resident of Oregon.

8. Third Party Defendant Hale Lane Peek Dennison and Howard, a Nevada professional corporation, dba Hale Lane, are attorneys licensed to practice law in the State of Nevada (hereinafter referred to as the "Hale Lane law firm").



1 and executed by Iliescu on August 3, 2005. Addendum No. 2 specifically provided, and the  
2 parties contemplated, that the Purchase Agreement would be reviewed, "fine tuned" and clarified  
3 by legal counsel retained by Iliescu before finalization.

4 17. On or about August 11, 2005, unbeknownst to Iliescu, CPD had unilaterally  
5 purported to assign and transfer all of its interests in the Purchase Agreement to an entity known  
6 as DeCal Custom Homes and Construction ("DeCal").

7 18. On or before September 22, 2005, pursuant to Addendum No. 3, Iliescu retained  
8 the Hale Lane law firm to review, "fine tune", clarify and, in all respects, advise Iliescu relative to  
9 the Purchase Agreement.

10 19. An Addendum No. 3 to the Purchase Agreement was thereafter prepared by Karen  
11 D. Dennison of the Hale Lane law firm. Addendum No. 3 was executed by Iliescu and CPD on  
12 or about October 8, 2005 and provided that, in certain circumstances, CPD could assign its  
13 interests in the Purchase Agreement to another entity. The assignment referred to in Paragraph 17  
14 above, however, was not addressed, disclosed or contained in Addendum No. 3.

15 20. On or before December 14, 2005, the Hale Lane law firm undertook to represent  
16 both Iliescu and Purchasers Calvin Baty and Consolidated Pacific Development, Inc. in relation to  
17 obtaining the necessary entitlements on the property as contemplated by the Purchase Agreement.  
18 A copy of the December 14, 2005 Waiver of Conflict letter is attached hereto and marked Exhibit  
19 "A". A major component of the entitlement was the work and drawings of an architect.

20 21. The Hale Lane law firm never discussed with or advised Iliescu at any time to  
21 record a Notice of Non-Responsibility with the Washoe County Recorder to ensure the Property  
22 would not be encumbered by mechanics or architect's liens recorded by individuals hired by CPD  
23 as contemplated by the Purchase Agreement. On October 31, 2005, unbeknownst to Iliescu, an  
24 architect, Mark Steppan, AIA, entered into a contract with BSC Financial, LLC in relation to the  
25 property subject to the Purchase Agreement.

26 22. Despite being aware and/or involved in the purported assignment to DeCal and  
27 representing the purchaser in connection with the entitlement process, the Hale Lane law firm  
28 never advised or discussed with Iliescu the assignment, whether DeCal was an appropriate

1 assignee and purchaser of the Property, whether it had the means and financial viability to close  
2 the sale, whether or how the purported assignment to DeCal affected Iliescu's interests under the  
3 Purchase Agreement and the existence of BSC Financial, LLC as it may relate to the property and  
4 Purchase Agreement and the October 31, 2005 contract with Mark Steppan, AIA..

5 23. Iliescu first became aware of the DeCal assignment on or about October 2, 2006 in  
6 connection with a TMWA consent form related to the development application for the property  
7 with the City of Reno (Case No. LDC06-00321, Wingfield Towers). The original Owner's  
8 Affidavit of Iliescu that accompanied the City of Reno application made reference to only CPD  
9 and Sam Caniglia.

10 24. On November 7, 2006, Mark Steppan, AIA recorded a mechanic's lien on the  
11 property in the sum of \$1,783,548.00. A copy of said Notice and Claim of Lien is attached hereto  
12 and marked Exhibit "B". The Hale Lane law firm never informed Iliescu that there was a dispute  
13 with the project architect over non-payment for his services.

14 25. On November 28, 2006, the Wingfield Towers project (Case No. LDC06-00321)  
15 was approved by the Reno City Council. The Clerk's Letter of Approval was issued November  
16 30, 2006.

17 26. The Mechanic's Lien recorded by Mark Steppan, AIA on November 7, 2006 made  
18 reference, at its Paragraph 2, to BSC Financial, LLC, as the entity that employed Mark Steppan,  
19 AIA and who furnished the work and services in connection with Iliescu's property. Prior to said  
20 date, Iliescu had no knowledge of the existence of or involvement of BSC Financial, LLC relative  
21 to the property.

22 27. At some point subsequent to August 10, 2005, without the knowledge and/or  
23 consent of Iliescu, Consolidated Pacific Development, Inc. and DeCal Custom Homes &  
24 Construction transferred or assigned their interest in the Land Purchase Agreement to BSC  
25 Financial, LLC. The Hale Lane law firm never informed Iliescu of any such assignment or even  
26 the existence of BSC Financial, LLC.

27 28. As of December 14, 2005, and at all times thereafter, BSC Financial, LLC,  
28 Consolidated Pacific Development, Inc., DeCal Custom Homes & Construction, Calvin Baty and

1 John Schleining (all related entities or persons) were represented in connection with the property  
2 and project referred to in this litigation by the Hale Lane law firm. At the same time, the Hale  
3 Lane law firm represented Iliescu.

4 29. An Addendum No. 4 to the Purchase Agreement was prepared by the Hale Lane  
5 law firm on or about September 18, 2006, and executed by Iliescu and CPD on or about  
6 September 19, 2006. Again, in said Addendum, there was no disclosure of or reference to DeCal  
7 or BSC Financial, LLC.

8 30. The Hale Lane law firm also represented Iliescu in regard to a) the Mechanic's  
9 Lien recorded by Mark Steppan, AIA, and b) closing the Land Purchase Agreement. During said  
10 time, the Hale Lane law firm did not advise Iliescu of the nature and extent of the problems that  
11 existed relative to the transaction, the Purchase Agreements, the Mechanic's Lien filed by Mark  
12 Steppan, AIA, the inherent conflicts that now existed between Iliescu, the inter-related Buyers as  
13 referred to above, and the complications of the transaction.

14 31. On or about December 8, 2006, as a result of the recordation of the Mechanic's  
15 Lien by Mark Steppan, AIA, the Hale Lane law firm and R. Craig Howard prepared an Indemnity  
16 Agreement for their clients referred to in Paragraph 28 above. A copy of said Indemnity  
17 Agreement is attached hereto and marked Exhibit "C". Said Indemnity Agreement was submitted  
18 to Iliescu on December 12, 2006. Again, the Hale Lane law firm did not advise Iliescu of the  
19 problems that existed as set forth in the above paragraphs.

20 32. On or about December 26, 2006, the Hale Lane law firm drafted a Conflict of  
21 Interest Waiver Agreement and submitted it to Iliescu and BSC Financial, LLC for signature.  
22 The Agreement was executed by the parties. A copy of said Agreement is attached hereto and  
23 marked Exhibit "D". The Hale Lane law firm never advised Iliescu that the conflict of interest  
24 that existed might not be waivable, nor did it advise Iliescu of the problems that now existed as  
25 set forth in the above paragraphs.

26 33. Thereafter, the Hale Lane law firm embarked upon a course of advising Iliescu and  
27 preparing documents so as to allow the Purchase Agreement to close with BSC Financial, LLC.  
28 Such conduct included dealing with the Mechanic's Lien of Mark Steppan, AIA, recommending

1 to and obtaining Iliescu's consent to the assignment of the Land Purchase Agreement to BSC  
2 Financial, LLC. Such consent was not in the best legal interests of Iliescu, given the existence of  
3 the Mechanic's Lien and other problems as set forth in the above paragraphs.

4 34. On February 14, 2007, Jerry M. Snyder and the Hale Lane law firm, on behalf of  
5 Iliescu, filed an Application for Release of the Mark Steppan, AIA Mechanic's Lien in Case No.  
6 CV07-00341. Said Application is still pending. On May 4, 2007, Mark Steppan, AIA filed a  
7 Complaint to Foreclose Mechanic's Lien and Damages in Case No. CV07-01021.

8 35. BSC Financial, LLC filed for Chapter 11 bankruptcy protection on April 25, 2007.

9 36. The Architect's Lien remains a cloud on Iliescu's title, Steppan has filed suit for  
10 foreclosure of the Architect's Lien and seeks judicial foreclosure of his purported Architect's Lien  
11 upon Iliescu's real property.

12 **FIRST CLAIM FOR RELIEF**

13 (Declaratory Relief—Against the Indemnitors Baty and Schleining)

14 37. Iliescu realleges and incorporates by reference Paragraphs 1 through 36 of this  
15 Complaint, as if fully set forth herein.

16 38. A dispute and actual controversy has arisen and now exists between Iliescu and  
17 Defendants regarding the rights, duties, and obligations of the parties.

18 39. Specifically, Iliescu is informed and believes, and based thereon allege, that the  
19 Indemnitors, both pursuant to the Indemnity Agreement and an implied indemnity, owe Iliescu a  
20 duty to defend this action and make Iliescu whole for any and all costs, damages, claims, or losses  
21 suffered as a result of the Architect's Lien and the BSC Financial, LLC contract or agreement  
22 with Steppan and its bankruptcy filing.

23 40. Iliescu is informed and believes, and based thereon allege, that the Indemnitors  
24 dispute Iliescu's interpretation and assertion of rights.

25 41. In view of the actual conflict and controversy between the parties, Iliescu desires a  
26 judicial determination of the respective rights, duties, and obligations of Iliescu, and the  
27 Indemnitors.  
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42. Iliescu realleges and incorporates by reference Paragraphs 1 through 41 of this Complaint, as if fully set forth herein.

### THIRD CLAIM FOR RELIEF

44. Iliescu realleges and incorporates by reference Paragraphs 1 through 43 of this Complaint, as if fully set forth herein.

46. CPD is obligated under the terms of the contract as the original contracting party.

48. Iliescu has performed, stands ready to perform, and has the ability to perform as required under the terms of the Purchase Agreement.

50. Iliescu has been harmed by CPD and DeCal's breaches of the Purchase Agreement and they have been unable to obtain the benefit of their bargain, which includes, among other consequential damages, interest on, and the principal of, the remainder of the purchase price for the Property due under the terms of the Purchase Agreement and CPD and DeCal's failure in causing recordation of the Steppan Mechanic's Lien and their failure to indemnify Iliescu from.



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51. Iliescu realleges and incorporates by reference Paragraphs 1 through 50 of this Complaint, as if fully set forth herein.

53. CPD and DeCal have failed to satisfy their obligations under the Purchase Agreement.

### **FIFTH CLAIM FOR RELIEF**

55. Iliescu realleges and incorporates by reference Paragraphs 1 through 54 of this Complaint, as if fully set forth herein.

57. The Hale Lane law firm breached the duties enumerated above, and failed to perform these duties, as addressed herein.

(Against the Hale Lane law firm – Negligence)

14

1           59.     The Hale Lane law firm, Dennison, Howard and Snyder were negligent because,  
2     among other things, they failed to advise Iliescu to record a Notice of Non-Responsibility, failed  
3     to properly advise Iliescu of the consequence of their conflict of interest in representing Iliescu in  
4     the transaction addressed herein, and continued to represent Iliescu in the face of a non-waivable  
5     conflict of interest.

6           60.     The Hale Lane law firm's negligence has damaged Iliescu, has caused them to  
7     incur attorneys fees, and has resulted in the Mechanic's Lien and potential loss of the Property  
8     through foreclosure.

9           61.     The Hale Lane law firm owed a duty to Iliescu to exercise reasonable care in how  
10    they handled the sale transaction, the Purchase Agreement, and their advice to Iliescu regarding  
11    the Property, and breached that duty by way of the breaches and omissions set forth above.

12           WHEREFORE, Iliescu prays for judgment as follows:

13           1.     For damages in an amount in excess of \$10,000.00 to compensate for the losses,  
14    damages, and expenses incurred by Iliescu;

15           2.     For a declaration that the Indemnitors are fully responsible for any and all costs or  
16    damages suffered by Iliescu arising out of the Architect's Lien and/or the BSC Financial, LLC  
17    contract or agreement with Steppan;

18           3.     For a decree of specific performance requiring CPD and DeCal to perform as  
19    required under the terms of the Purchase Agreement, to include damages and indemnification  
20    from the Steppan Mechanic's Lien.

21           5.     For attorneys' fees incurred in the prosecution of this action;

22    ///

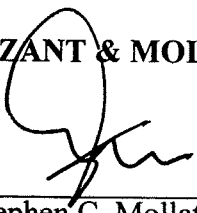
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1           6.       For costs of suit; and,

2           7.       For such other and further relief as the court deems proper.

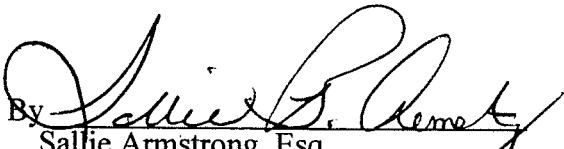
3  
4           DATED this 27th day of September, 2007.

5           **PREZANT & MOLLATH**

6  
7           By   
              Stephen C. Mollath, Esq.

8           and

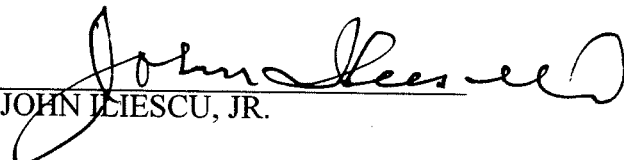
9           **DOWNEY BRAND LLP**

10  
11           By   
12           Sallie Armstrong, Esq.  
13           Attorneys for John Iliescu, Jr. and Sonnia Iliescu  
14           and The John Iliescu, Jr. and Sonnia Iliescu  
              1992 Family Trust

1 STATE OF NEVADA )  
2 COUNTY OF WASHOE ) ss.

3  
4 JOHN ILIESCU, JR., being duly sworn, deposes and says:

5 That he is a Third Party Plaintiff herein; that he has read the foregoing Third Party  
6 Complaint and knows the contents thereof, and that the same is true of his own knowledge,  
7 except as to the matters therein stated to be alleged upon information and belief, and as to those  
8 matters, he believes it to be true.

9   
JOHN ILIESCU, JR.

10 SUBSCRIBED AND SWORN to before me,  
11 this 27<sup>th</sup> day of September, 2007.

12  
13   
14 NOTARY PUBLIC



# **EXHIBIT A**

# HALE LANE

ATTORNEYS AT LAW

5441 Kietzka Lane | Second Floor | Reno, Nevada 89511  
Telephone (775) 327-3000 | Facsimile (775) 786-6179  
www.halelane.com

December 14, 2005

Edward Everett Hale  
(1929-1993)  
Steve Lane  
J. Stephen Peck  
Karen D. Dennison  
R. Craig Howard  
Stephen V. Novacek  
Richard L. Elmore  
Richard Bennett  
Robert C. Anderson  
Alex J. Flanagan  
James L. Kelly  
Kelly Tanselin  
N. Patrick Flanagan  
Matthew E. Woodhead  
Michelle D. Mullins  
Roger W. Jeppson  
Lance C. Earl  
Jeremy J. Nork  
David A. Garcia  
Elissa F. Cadish  
Timothy A. Lufkin  
Frederick J. Schmidt  
James Newman  
Terry R. Sorenson  
Patrick J. Raibley  
Scott D. Fleming  
Scott Scherer  
Anthony L. Hall  
Jerry M. Snyder  
Grant C. Eckerley  
Frederick R. Reischer  
Patricia C. Halstead  
Matthew J. Kretzer  
Matthew G. Hippler  
Brad M. Johnston  
Bryce K. Kunkemo  
Douglas C. Powers  
Justin C. Jones  
Nicole M. Vance  
KimberLee Rotoby  
Dana V. Djilmanova  
Simon Johnson\*  
Sarah E. L. Claus  
Helen E. Mandrosian

## Of Counsel

Roy Farrow  
Pauline Ng Lee  
Andrew Pearl

\*Admitted in New York  
and New Jersey only

John Iliescu, Jr., an individual  
Sonnia Santee Iliescu, an individual  
John Iliescu, Jr. and Sonnia Iliescu,  
as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust  
200 Court Street  
Reno, Nevada 89501

Calvin Baty, an individual  
c/o Consolidated Pacific Development, Inc.  
932 Parker Street  
Berkeley, California 94710-2524

Consolidated Pacific Development, Inc.  
932 Parker Street  
Berkeley, California 94710-2524

Re: Court Street/Island Avenue Condominium Project

Lady and Gentlemen:

As you are aware, this law firm has an existing attorney-client relationship with John Iliescu, Jr., an individual, and Sonnia Santee Iliescu, an individual, and John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust (collectively "Iliescu") the owners of property located between Court Street and Island Avenue in Reno, Nevada (the "Property"). Our law firm has been requested to act as special counsel to the buyers of the Property in obtaining the necessary entitlements for a condominium project to be developed on the Property.

With your consent, we will represent Calvin Baty, an individual ("Baty"), and Consolidated Pacific Development, Inc., a Nevada corporation ("Consolidated") in assisting in obtaining the condominium entitlements and any entity to be formed by them (Baty, Consolidated and such new entity being collectively referred to as "Buyer").

## HALE LANE PECK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone (702) 322-2500 | Facsimile (702) 365-6940  
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-8000 | Facsimile (775) 684-6001

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December 14, 2005  
Page 2

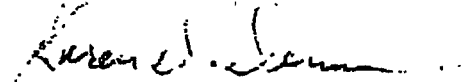
**HALE LANE**  
ATTORNEYS AT LAW

It is understood and agreed that in the event a conflict between Iliescu and Buyer should arise in matters involving the Property, this law firm will continue to represent Iliescu in such matter. It is also understood and agreed by Buyer that our representation of Buyer on this one matter will not preclude our representation of Iliescu in matters not involving the Property in the event that Buyer, or any of them, is an adversary to Iliescu on such other matters.

If you consent to our representation of Buyer as set forth in this letter and waive any and all potential conflicts of interest which may exist as a result of such representation, please execute the acknowledgement of your consent which follows and return a signed copy of this letter to us.

Please call if you have any questions or if you wish to discuss this matter further.

Very truly yours,



Karen D. Dennison

KDD:csr

**Acknowledgement**

Iliescu and Buyer consent to joint representation in the above-referenced matter and waiver of any potential conflict is hereby given as of the date set forth below.

**Iliescu:**

Date: \_\_\_\_\_

\_\_\_\_\_  
John Iliescu, Jr., individually, and as Trustee of the  
John Iliescu, Jr. and Sonnia Iliescu 1992 Family  
Trust

Date: \_\_\_\_\_

\_\_\_\_\_  
Sonnia Santee Iliescu, individually, and as Trustee  
of the John Iliescu Jr. and Sonnia Iliescu 1992  
Family Trust

**BSC Financial LLC:**

BSC Financial LLC, a limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Calvin Baty, Manager

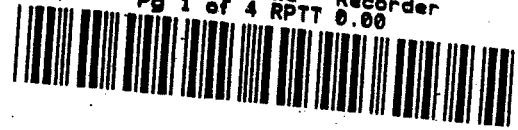


# **EXHIBIT B**

When Recorded Mail To:

Gayle A. Kern, Esq.  
Gayle A. Kern, Ltd.  
5421 Kietzke Lane, Suite 200  
Reno, NV 89511

DOC # 3460499  
11/07/2008 04:21P Fee:17.00  
BK1  
Requested By  
GAYLE A KERN LTD  
Washoe County Recorder  
Kathryn L. Burke - Recorder  
Pg 1 of 4 RPTT 0.00



APN: 011-112-03; 011-112-06; 011-112-07; 011-112-12

GRANTEE'S ADDRESS:  
Mark B. Steppan, AIA, CSI, NCARB  
1485 Park Avenue, #103  
Emeryville, CA 94608



### NOTICE AND CLAIM OF LIEN

NOTICE IS HEREBY GIVEN that Mark Steppan, AIA, CSI, NCARB claims a Mechanic's and Materialman's Lien upon the property hereinafter particularly described, which property is located in Washoe County, Nevada, and which claim is made pursuant to the laws of the State of Nevada, particularly Chapter 108 of the Nevada Revised Statutes, as amended, for the value of work, labor, materials and/or services furnished by lien claimant for the improvement of real property hereinafter particularly described, located in the County of Washoe, State of Nevada.

That the whole or real property hereinafter particularly described has been or is in the process of improvement and is reasonably necessary for the convenient use and occupation of said property.

Claimant further states:

1. That the name of the owner or reputed owner of the premises sought to be charged is as follows: 011-112-03; 011-112-07; 011-112-12 - JOHN ILIESCU, JR., and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; and 011-112-06 - John Iliescu, a married man as his sole and separate property.

2. That the name of the person by whom lien claimant was employed and to whom lien claimant furnished work, labor, materials and/or services in connection with the project is: BSC Financial, LLC, c/o Consolidated Pacific Development, Inc., 932 Parker Street, Berkeley, CA 94710; Job name: Residential Project, Reno, Nevada, Job Address: North Arlington Avenue, Island Avenue and Court Street; Owner's Designated Representative: Sam Caniglia.

3. That the terms, time given and conditions of the contract were: Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Statement of services for the building, structure or other work of improvement located at North Arlington Avenue, Island Avenue and Court Street, Reno, Nevada. All services were to be invoiced based on work performed as reflected in applications for payment, no retainage to be withheld from monthly progress payments. All invoices are due in fifteen days.



4. That work, labor, materials and/or services have been furnished to and actually used upon the above-described project in the remaining amount of ONE MILLION SIX-HUNDRED THIRTY-NINE THOUSAND ONE-HUNDRED THIRTY AND NO/100 DOLLARS (\$1,639,130.00), reimbursable expenses of ONE-HUNDRED FIFTEEN THOUSAND THREE HUNDRED SIXTY-TWO AND NO/100 DOLLARS (\$115,362.00) plus interest through October 31, 2006 in the amount of TWENTY-NINE THOUSAND FIFTY-SIX DOLLARS AND 85/100 (\$29,056.85), continuing interest, attorney's fees and costs and the amount is now due and owing to lien claimant.

5. That the first labor and materials furnished by lien claimant to and incorporated in the project was on or about April 21, 2006 and that the last labor and materials furnished by lien claimant and incorporated in the project was within the past ninety days; that there are no other just credits or off-sets to be deducted and the total amount due and owing to lien claimant is the sum of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FOURTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85), plus continuing interest, attorney's fees and costs.

6. That a demand for payment has been made by lien claimant and that no part or portion of the amount due and owing has been paid; that there are no further off-sets to the claim and that the sum of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FOURTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85), plus continuing interest, attorney's fees and costs is now due and owing to lien claimant on account of the work, labor, materials and/or services furnished as above specified and that the undersigned claims a lien upon the real property particularly described herein for said sum, together with continuing interest and attorney's fees as provided by law.

7. That the real property sought to be charged with this Claim of Lien upon which the above described work of improvement has been made is located in Washoe County of State of Nevada, and is particularly described as:

Commencing at a point formed by the intersection of the East line of Flint Street (if protracted Northerly) with the North line of Court Street in the City of Reno; running thence Easterly, along the North line of Court Street, a distance of 100 feet, thence at a right angle Northerly, a distance of 140 feet to the true point of beginning; said true point of beginning being the Southeast corner of the parcel of land heretofore conveyed to Atha Carter by Antonio Rebori and wife, by deed duly recorded in Book 64 of Deeds, Page 294, Washoe County Records; running thence Easterly, parallel with the North line of Court Street, a distance of 50 feet to the Southwest corner of the property formerly owned by H. F. Holmshaw and wife thence Northerly at a right angle, along the west line of the property formerly owned by said H. F. Holmshaw and wife, to the South bank of the South channel of the Truckee River; thence Westerly along the South bank of said channel of the Truckee River to a point which would intersect a line drawn northerly and parallel with the East line of said property from the said true point of beginning; thence southerly along said line to the true point of beginning.



SAVE AND EXCEPTING, however, from the above described premises, all that portion thereof conveyed by Antonio Rebori and Charlotta Rebori, his wife, to the City of Reno, a municipal corporation, by deed dated February 16, 1922, and recorded in Book 59 of Deeds, Page 297, Washoe County, Records.  
APN: 011-112-03

Commencing at the point 129.6 feet West of where the center line of Hill Street projected Northerly will intersect the North line of Court Street thence running Westerly along the North line of Court Street, 75 feet; thence running Northerly at an angle of 89°58' 140 feet; thence running Easterly at an angle of 90°05" 75 feet; thence running Southerly at an angle 80°55', 140 feet to the place of beginning, comprising a parcel of land 75 by 140 feet.  
APN: 011-112-06

BEGINNING at the intersection of the Northerly extension of the Eastern line of Flint Street with the Northern line of Court Street, in the City of Reno, County of Washoe, State of Nevada, thence Easterly along the Northern line of Court Street, 125 feet, more or less to the Western line of the parcel conveyed to WALKER J. BOUDWIN, et ux, by Deed recorded in Book 143, File No. 100219, Deed Records; thence Northerly along said last mentioned line 140 feet; thence Westerly parallel to the Northern line of Court Street, 125 feet; thence Southerly parallel to the Western line of Said Boudwin parcel 140 feet to the point of beginning.  
APN: 011-112-07

Commencing on the North line of Court Street, at the intersection of the North line of Court Street with the West line of Hill Street, if said Hill Street was protracted Northerly to said point of inter-section according to the official plat of Lake's South Addition to Reno, Washoe County, State of Nevada; thence running westerly and along the North line of said Court Street 100 feet; thence Northerly and parallel with the West line of said Hill Street, if protracted, 276 feet more or less to the South Bank of the Truckee River; thence Easterly and along the south bank of the Truckee River to the West line of Hill Street, protracted, 324 feet more or less to the North line of Court Street and the place of beginning, being the same lands conveyed by Antonio Robori and Carlotta Robori, his wife, to Charles Snyder, May 27, 1907, and by Antonio Robori to Charles Snyder, January 12, 1905, by deeds duly recorded in Book 32 of Deeds, page 405, and book 26 of deeds, page 296, Records of said Washoe County.

EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded August 4, 1922, as Document No. 26097, in Book 61, Page 280, of Deeds.  
FURTHER EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded December 17, 1971, as Document No. 229332, in Book 600, Page 759 of Official Records.  
APN: 011-112-12



3468499  
11/67/2696  
4 of 4

8. That the four parcels are to be developed as the project and it is appropriate to equally apportion the amount due between the four parcels identified herein.

DATED: This 7<sup>th</sup> day of November, 2006.

By Gayle A. Kern  
Gayle A. Kern, Esq.

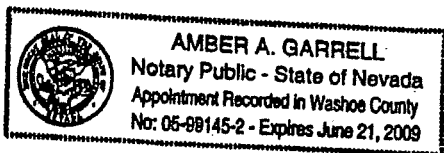
STATE OF NEVADA            )  
  ) ss.  
COUNTY OF WASHOE        )

Gayle A. Kern, Esq., being first duly sworn, deposes and says that: I am the Attorney for Mark Steppan, the lien claimant in the foregoing Notice and Claim of Lien. I have read the above and foregoing Notice and Claim of Lien, know the contents thereof and state that the same is true based on the information provided by my client. I further state that I have been informed and based thereon believe that it contains, among other things, a correct statement of the demand of said lien claimant, after deducting all just credits and off-sets.

Gayle A. Kern  
Gayle A. Kern, Esq.

SUBSCRIBED AND SWORN to before me  
this 7<sup>th</sup> day of November, 2006.

Amber A. Garrell  
Notary Public



# **EXHIBIT C**

## INDEMNITY

THIS INDEMNITY ("Agreement") is executed by BSC FINANCIAL, LLC, a limited liability company ("BSC"), CALVIN BATY, individually ("Baty"), and JOHN SCHLEINING, individually ("Schleining") (collectively, the "Indemnifying Parties"), in favor of JOHN ILIESCU, JR., and SONNIA SANTEE ILIESCU, individually and as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST (collectively, "Iliescu"), and is effective as of the date set forth by the parties' respective signatures.

### RECITALS:

A. Consolidated Pacific Development, Inc., a Nevada corporation ("Consolidated"), entered into a Land Purchase Agreement with Iliescu dated July 29, 2005, together with Addendum No. 1 dated August 1, 2005, Addendum No. 2 dated August 2, 2005, Addendum No. 3 dated October 8, 2005, and Addendum No. 4 dated as of September 18, 2006 (collectively, "Purchase Agreement"), concerning certain real property located in the City of Reno, County of Washoe, State of Nevada, identified as APNs 011-112-05, 06, 07 and 12, and more particularly described in the Title Report attached to Addendum No. 3 ("Property"). Sam Caniglia, President of Consolidated, Baty and Schleining formed BSC in order to proceed with the entitlement of the project on the Property.

B. BSC entered into an AIA Architectural Agreement ("AIA Contract") with Mark Steppan, AIA ("Architect"), for architectural services for a mixed-use development including residential, retail, and parking ("Project"). The architectural schematic drawings were necessary to obtain the land use entitlements for the Project. The land use entitlements were approved by the City of Reno.

C. On November 7, 2006, the Architect recorded in Washoe County, Nevada, a Notice and Claim of Lien against the Property in the amount of \$1,783,548.85 for claims of unpaid architectural services ("Mechanic's Lien"). These unpaid amounts are contested by BSC. In addition, the Mechanic's Lien is an improper lien not in compliance with Nevada law because the Architect failed to deliver to Iliescu (i) a Notice of Right to Lien pursuant to NRS 108.245, and (ii) a Notice of Intent to Lien pursuant to NRS 108.226(6).

D. Baty and Schleining are principals of BSC.

E. Baty, Schleining and BSC desire to indemnify Iliescu for any and all claims and costs related to the Architect's recording of the Mechanic's Lien on the Property.

NOW, THEREFORE, for valuable consideration, Baty, Schleining and BSC hereby agree as follows:

1. Indemnity. Baty, Schleining and BSC hereby, jointly and severally, agree to indemnify, defend, protect and hold Iliescu harmless against all damages, losses, expenses, costs, liabilities, including, without limitation, payments due or which may be due to the Architect arising out of services performed pursuant to the AIA Contract or any change order or extras

related thereto, including interest, penalties and attorney fees which may be claimed by Architect to be owed by either BSC or Consolidated.

2. Attorneys' Fees. Baty, Schleining and BSC hereby jointly and severally agree to pay all attorney's fees and costs incurred to contest and discharge the Mechanic's Lien. In the event that a discharge of the Mechanic's Lien does not occur pursuant to a resolution of the dispute with Architect within ten (10) days of the date of this Indemnity, the Indemnifying Parties agree to initiate an action in the Washoe County District Court to contest and to discharge the Mechanic's Lien for (i) failing to comply with Nevada law, and (ii) the excessive amount. The Indemnifying Parties agree to diligently prosecute such action in an expedited manner to eliminate the Mechanic's Lien.

IN WITNESS WHEREOF, the Indemnifying Parties have executed this Indemnity as of the date set forth below.

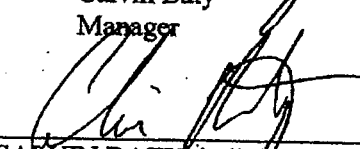
BSC FINANCIAL, LLC, a limited liability  
company

Dated: December 8, 2006

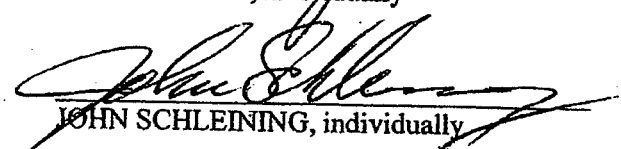
By: 

Calvin Baty  
Manager

Dated: December 8, 2006

  
CALVIN BATY, individually

Dated: December 8, 2006

  
JOHN SCHLEINING, individually



# **EXHIBIT D**

# HALE LANE

ATTORNEYS AT LAW

5441 Kietzke Lane | Second Floor | Reno, Nevada 89511  
Telephone (775) 327-3000 | Facsimile (775) 786-6179  
www.halelane.com

December 26, 2006

John Iliescu, Jr., individually  
Sonnia Santee Iliescu, individually  
John Iliescu, Jr. and Sonnia Iliescu,  
as Trustees of the John Iliescu, Jr.  
and Sonnia Iliescu 1992 Family Trust  
200 Court Street  
Reno, Nevada 89501

BSC Financial LLC  
c/o DeCal Custom Homes  
440 Columbia Blvd.  
St. Helens, OR 97051

BSC Financial LLC  
c/o Decal Nevada, Inc.  
6121 Lakeside Drive, Suite 125  
Reno, NV 89511

**Re: Wingfield Towers  
Court Street/Island Avenue Condominium Project**

Dr. and Mrs. Iliescu and Messrs Baty, Caniglia and Schleining:

As you are aware, this law firm has an existing attorney-client relationship with John Iliescu, Jr., an individual, and Sonnia Santee Iliescu, an individual, and John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust (collectively "Iliescu") the owners of property located between Court Street and Island Avenue in Reno, Nevada (the "Property"). Our law firm also has an existing attorney-client relationship with Decal Custom Homes and BSC Financial LLC, the Buyers of the Property. BSC Financial LLC is referred to herein as "Buyer". Our law firm has been requested to act as counsel to both Iliescu and Buyers because of the unity of interest in resolving the dispute with the Architect for the Property involving the AIA Architectural Services Contract, and the mechanic's lien recorded by the Architect and related issues.

We will represent both Iliescu and Buyer jointly regarding the resolution of the mechanic's lien issue with the Architect. An Indemnity Agreement has been executed by Buyer

## HALE LANE PEEK DENNISON AND HOWARD

LAS VEGAS OFFICE: 3930 Howard Hughes Parkway | Fourth Floor | Las Vegas, Nevada 89169 | Phone (702) 222-2500 | Facsimile (702) 365-6940  
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Facsimile (775) 684-6001

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December 26, 2006  
Page 2



indemnifying the Seller as more fully set forth therein which includes provisions that Buyer is responsible, among other obligations, to pay this law firm's fees regarding the mechanic's lien issue with the Architect.

It is understood and agreed that in the event a conflict between Iliescu and Buyer should arise in matters involving the mechanic's lien issue, this law firm may continue to represent Iliescu in such matter. This law firm will continue to represent Iliescu in the closing of the purchase and sale of the Property transaction.

If you consent to our joint representation as set forth in this letter and waive any and all potential conflicts of interest which may exist as a result of such representation, please execute the Acknowledgement of your consent attached hereto and return a signed copy of this letter to us.

Please call if you have any questions or if you wish to discuss this matter further.

Sincerely,

R. Craig Howard

RCH:dvt

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**CERTIFICATE OF SERVICE**

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 427 West Plumb Lane, Reno, NV 89509. On September 27, 2007, I served the attached document(s):

**ANSWER AND THIRD PARTY COMPLAINT**

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ **BY HAND:** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth below.

*Gayle Kern, Esq.*  
*5421 Kietzke Lane, Suite 200*  
*Reno, NV 89511*

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Executed on September 27, 2007, at Reno, Nevada.



Kim Kakunes

1  
2 **SECOND JUDICIAL DISTRICT COURT**  
3 **COUNTY OF WASHOE, STATE OF NEVADA**  
4

5 **AFFIRMATION**  
6 **Pursuant to NRS 239B.030**

7 The undersigned does hereby affirm that the preceding document, **ANSWER AND**  
8 **THIRD PARTY COMPLAINT**, filed in Case No. CV07-01021, consolidated with CV07-  
9 00341.

10 ☒ Document does not contain the social security number of any person  
11

12 **-OR-**

13 ☐ Document contains the social security number of a person as required by:  
14

15 ☐ A specific state or federal law, to wit:  
16

17 **-or-**

18 ☐ For the administration of a public program  
19

20 **-or-**


21 ☐ For an application for a federal or state grant  
22

23 **-or-**

24 ☐ Confidential Family Court Information Sheet (NRS 125-130, NRS 125.230 and  
25 NRS 125B.055)

26 DATED this 22<sup>nd</sup> day of September, 2007.

27 **PREZANT & MOLLATH**  
28

By   
Stephen C. Mollath, Esq.  
Attorney for Iliescu

**CODE \$1425**  
GAYLE A. KERN, ESQ.  
Nevada Bar No. 1620  
GAYLE A. KERN, LTD.  
5421 Kietzke Lane  
Reno, Nevada 89511  
Phone: (775) 324-3930  
Fax: (775) 324-1011  
E-Mail: gaylekern@kernltd.com

Attorneys for MARK STEPPAN

**FILED**  
2007 MAY -4 PM 12: 51  
RONALD A. LONGTIN, JR.  
BY Y. Lloyd  
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

MARK STEPPAN,  
  
Plaintiff,  
  
vs.

CASE NO.: CV07 01021  
DEPT. NO.: 1

JOHN ILIESCU, JR. and SONNIA  
ILIESCU, as Trustees of the JOHN  
ILIESCU, JR., AND SONNIA  
ILIESCU 1992 FAMILY TRUST  
AGREEMENT; JOHN ILIESCU,  
individually; DOES I-V, inclusive;  
and ROE CORPORATIONS VI-X,  
inclusive.

Defendants.  
/

**COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES**

Plaintiff, MARK STEPPAN ("Plaintiff"), by and through his attorney, Gayle A. Kern,  
Ltd., for his complaint against the defendants, above- named, does allege and aver as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff is, and at all times herein mentioned was, an individual licensed as an  
architect under the laws of the State of Nevada.

2. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 are, and at all times herein-mentioned, were residents of Washoe County, Nevada.

2  
3 3. Plaintiff is unaware of the true names and capacities of other defendants  
4 designated herein as DOES I-V, inclusive, and therefore sues these defendants under such  
5 fictitious names. Plaintiff will amend this complaint to allege their true names and capacities  
6 when ascertained. Plaintiff is informed and believes that each of these defendants designated  
7 herein as a DOE may have some liability in the debt at issue in this complaint.  
8

9 4. Defendants, ROE CORPORATIONS VI-X, were and are corporations doing  
10 business in the State of Nevada, and are sued herein, by their fictitious names for the reason  
11 that their respective true names are unknown to Plaintiff at this time; that when their true  
12 names are ascertained Plaintiff will amend this complaint to allege their true names and  
13 capacities when ascertained. Plaintiff is informed and believes that each of these defendants  
14 designated as a ROE CORPORATION may have some liability in the debt at issue in this  
15 complaint.  
16  
17

18 **FIRST CLAIM FOR RELIEF**  
19 **(FORECLOSURE OF MECHANIC'S LIEN)**

20 5. Plaintiff incorporates by reference each and every allegation contained in  
21 paragraphs 1 through 4 of Plaintiff's General Allegations, as if set forth herein.

22 6. On information and belief, Defendants are the owners or reputed  
23 owners of that certain real property situated in the City of Reno, County of Washoe, known  
24 as Assessor's Parcel Numbers: 011-112-03; 011-112-07; 011-112-12, and Defendant, John  
25 Iliescu, Jr. is the owner of 011-112-06 as his sole and separate property (collectively "the  
26 Real Property").  
27  
28

1           7.     On information and belief, Defendants entered into a Land Purchase  
2 Agreement to sell the Real Property, and that such Land Purchase Agreement provided that  
3 the purchasers had the right to develop and obtain improvements on the Real Property prior  
4 to the close of escrow.  
5

6           8.     On or about April 2006, Plaintiff entered into a contract with the purchaser of  
7 the Real Property to provide architectural services.  
8

9           9.     Pursuant to the contract with the purchaser, Plaintiff did supply the services  
10 required of him under contract, however, Plaintiff has not been paid in full for the services.  
11

12           10.    There is now due, owing and unpaid as of April 19, 2007, from the Defendants,  
13 for which demand has been made, the sum of \$1,939,347.51, together with interest until paid.  
14

15           11.    Plaintiff, in order to secure its claim, has perfected a mechanic's lien upon the  
16 property described above by complying with the statutory procedure pursuant to NRS §  
17 108.221 through NRS § 108.246 inclusive.  
18

19           12.    Plaintiff recorded its Notice of Lien on November 7, 2006, as Document No.  
20 3460499 in the Office of the County Recorder of Washoe County, Nevada; a 15-day Notice  
21 of Intent to Claim Lien was served on March 7, 2007; and Amended Notice and Claim of  
22 Lien was recorded on May 3, 2007, as Document No. 3528313.  
23

24           13.    That pursuant to the provisions of NRS Chapter 108, Plaintiff is entitled to  
25 recover its costs of recording and perfecting its mechanic's lien, interest upon the unpaid  
26 balance at a rate of 24 percent per annum and reasonable attorney's fees and costs.  
27

28           **WHEREFORE**, Plaintiff prays for judgment against the Defendants, jointly and



severally, as follows:

As to Plaintiff's First Claim For Relief:

1. Judgment in a sum in excess of \$10,000.00, together with interest from April 19, 2007, until paid at the per diem rate of \$955.82;

2. Costs of recording and perfecting Notice of Claim of Lien, costs of suit incurred herein, and a reasonable attorney's fee;

3. That the sums set forth above be adjudged a lien upon the land and premises described herein, owned or reputedly owned by defendants and that the Court enter an order that the real property, land and improvements, or such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of the sale be applied to the payment of sums due the Plaintiff;

4. For such other and further relief as the Court may deem just and proper in the premises.

Dated this 4<sup>th</sup> day of May, 2007.

GAYLE A. KERN, LTD.



GAYLE A. KERN, ESQ.

Attorneys for MARK STEPPAN

VERIFICATION

STATE OF CALIFORNIA)

: ss.

COUNTY OF \_\_\_\_\_)

I, MARK STEPPAN, am the Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are thereon alleged on information and belief, and as to those matters I believe them to be true.

---

MARK STEPPAN

Subscribed and sworn to before me

this \_\_\_\_\_ day of May, 2007.

---

NOTARY PUBLIC

GAYLE A. KERN, LTD.

5421 Kietzke Lane, Suite 200

Reno, Nevada 89511

Telephone: (775) 324-5930

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document,  
**COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES** filed in case  
number to be assigned.

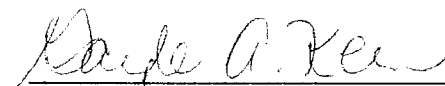
☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
Dated this 4<sup>th</sup> day of May, 2007.



\_\_\_\_\_  
GAYLE A. KERN, ESQ.  
Nevada Bar No. 1620  
GAYLE A. KERN, LTD.  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
Telephone: (775) 324-5930  
Facsimile: (775) 324-6173  
E-mail: gaylekern@kernltd.com  
Attorneys for MARK STEPPAN

Washoe County, Nevada

(Assigned by Clerk's Office)

Defendant(s) (name/address/phone): JOHN ILIESCU, JR.  
DOB: AND SONNIA ILIESCU, as Trustees of  
the JOHN ILIESCU, JR. AND SONNIA ILIESCU  
1992 FAMILY TRUST AGREEMENT, ET AL.  
Attorney (name/address/phone):

☐ Arbitration Requested

Form PA 201  
Rev. 2-4E

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

MARK B. STEPPAN, Appellant

vs.

JOHN ILIESCU, JR. AND SONNIA SANTEE  
ILIESCU AS TRUSTEES OF THE JOHN ILIESCU,  
JR. AND SONNIA ILIESCU 1992 FAMILY TRUST  
AGREEMENT; HOLLAND & HART; KAREN DENISE  
DENNISON; R. CRAIG HOWARD; JERRY M. SNYDER;  
HALE LANE PEEK DENNISON HOWARD & ANDERSON;  
AND JOHN SCHLEINING, Respondents

No.

60036

Electronically Filed  
Jan 31 2012 10:55 a.m.

DOCKETING STATEMENT  
CIVIL APPEALS  
Tate K. Mindeman  
Clerk of Supreme Court

## GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District SECOND Department 10  
County WASHOE Judge ELLIOT  
District Ct. Case No. CV07-00341 CONSOLIDATED WITH CASE NO. CV07-01021

**2. Attorney filing this docketing statement:**

Attorney Michael D. Hoy ; Michael S. Kimmel Telephone 775.786.8000  
Firm Hoy & Hoy, P.C.  
Address 4741 Caughlin Parkway  
Suite Four  
Reno, Nevada 89519  
Client(s) Mark B. Steppan

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Thomas J. Hall Telephone 775.348.7011  
Firm \_\_\_\_\_  
Address 305 South Arlington Avenue  
Post Office Box 3948  
Reno, Nevada 89505  
Client(s) John Iliescu, Jr. and Sonnia Iliescu, Trustees; John Iliescu individually

Attorney David R. Grundy Telephone 775.786.6868  
Firm Lemons, Grundy & Eisenberg  
Address 6005 Plumas St. Third Floor  
Reno, NV 89519

Client(s) HOLLAND & HART; KAREN DENISE DENNISON; R. CRAIG HOWARD; JERRY M. SNYDER;  
HALE LANE PEEK DENNISON HOWARD & ANDERSON

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |  |
|---|--|
| <input type="checkbox"/> Judgment after bench trial         | <input checked="" type="checkbox"/> Dismissal:   |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction  |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim  |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute  |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input checked="" type="checkbox"/> Other (specify): <u>Failure to file NRCP 16.1</u><br><u>Case Conference Report</u> |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:   |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification  |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____  |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This action came before the district court on an Application for Release of Mechanic's Lien, which matter was consolidated with Appellant's Complaint to Foreclose Mechanic's Lien. For four years, the District Judge in Department Six managed this litigation in a series of hearings and pretrial conferences. In or to avoid the expense of unnecessary discovery, the District Judge specifically phased discovery to meet the threshold issues first, and reserved discovery for a later date. The District Judge ordered the filing of specific dispositive motions to narrow certain issues and he actively the progression of the case. Under that management, the parties exchanged witness lists, more than 10,000 pages of documents, written discovery requests and responses, and spent ten days in depositions. The District Judge also conducted a multi-day settlement conference which resulted in a tentative settlement agreement in March of 2010. Unfortunately, the tentative settlement did not become final due to the demands of Dr. Iliescu. The District Judge in Department Six, who presided over case management and the settlement conference, became frustrated and recused himself from hearing the trial on the merits. Upon transfer to a different department, the newly assigned District Judge granted motions to dismiss based upon the purported failure to file an NRCP 16.1 early case conference report.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The principal issue in this case is whether the Department 10 District Judge erred in dismissing Steppan's (Appellant's) claims against Iliescu for purported failure to file an NRCP 16.1 early case conference after the original presiding judge in Department 6 had actively managed the case as "complex" for four years. Appellant's Notice of Appeal and Amended Notice of Appeal reflect the series of Orders entered by the District Court dismissing claims as between various parties, none of which contained NRCP 54(b) certification. Appellant did so only in an effort to present the timing of the various interlocutory orders leading up to the final order dismissing the last remaining claims as between any parties to the case. Appellant did not intend to imply that he has standing to appeal the interlocutory orders dismissing claims as between other parties as Appellant concedes that he does not have standing to appeal those interlocutory orders unrelated to Appellant's claims.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A



**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

**14. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

## TIMELINESS OF NOTICE OF APPEAL

**15. Date of entry of written judgment or order appealed from** November 22, 2011

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

A Stipulation and Order dismissing claims as between the last remaining parties was also filed on January 5, 2012, with Written Notice of Entry of Order filed on January 6, 2012 and served electronically. As a result, Appellant filed and Amended Notice of Appeal on January 12, 2012 to reflect the entry of the additional order which dismissed the last remaining claims as between any parties in the action.

**16. Date written notice of entry of judgment or order was served** November 22, 2011

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCp 50(b)      Date of filing N/A

☐ NRCp 52(b)      Date of filing N/A

☐ NRCp 59      Date of filing N/A

**NOTE: Motions made pursuant to NRCp 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

The District Court Order dismissing Appellant's claims was entered on October 25, 2011. That Order, however, was not certified pursuant to NRCp 54(b) and did not dismiss all claims as between all parties. On November 8, 2011, Appellant filed his Motion for Leave to File Motion for Reconsideration of the October 25, 2011 Order. No decision has been entered on that Motion. Subsequently, the Court entered orders dismissing remaining claims as between remaining parties. To protect his appellate rights, Appellant filed his Notice of Appeal and Amended Notice of Appeal based on the entry of the last order dismissing claims in the case.

**18. Date notice of appeal filed** December 22, 2011

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Steppan (Appellant): Amended Notice of Appeal filed January 12, 2012  
John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the  
John Iliescu Jr. and Sonnia Iliescu 1992  
Family Trust Agreement  
and John Iliescu, individually: Notice of Cross-Appeal January 17, 2012

**19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

**SUBSTANTIVE APPEALABILITY**

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

**(b) Explain how each authority provides a basis for appeal from the judgment or order:**

NRAP 3A(b)(1) permits an appeal from the final judgment entered in an action. Although a formal final "judgment" was not entered by the District Court, a series of Orders were entered by the District Court dismissing all claims as between all parties, the last of which was entered on January 5, 2012.

Appellant's Notice of Appeal and Amended Notice of Appeal reflect the series of Orders entered by the District Court dismissing claims as between various parties, none of which contained NRCP 54(b) certification. Appellant did so only in an effort to present the timing of the various interlocutory orders leading up to the final order dismissing the last remaining claims as between any parties to the case. Appellant did not intend to imply that he has standing to appeal the interlocutory orders dismissing claims as between other parties as Appellant concedes that he does not have standing to appeal those interlocutory orders unrelated to Appellant's claims.

**21. List all parties involved in the action or consolidated actions in the district court:**  
(a) Parties:

MARK B. STEPPAN, JOHN ILIESCU, JR. AND SONNIA SANTEE, ILIESCU AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; HOLLAND & HART; KAREN DENISE DENNISON; R. CRAIG HOWARD; JERRY M. SNYDER; HALE LANE PEEK DENNISON HOWARD & ANDERSON; AND JOHN SCHLEINING, CONSOLIDATED PACIFIC DEVELOPMENT, INC., DECAL OREGON, INC., CALVIN BATY

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Decal Oregon, Inc., Consolidated Pacific Development, Inc. and Calvin Baty were served but are not parties to this appeal. Calvin Baty filed for Chapter 7 Bankruptcy protection on 05/30/2008. Decal Oregon, Inc. and Consolidated Pacific Development, Inc. were sued by Iliescu, but Iliescu did not continue litigation as against Decal Oregon, Inc. and Consolidated Pacific Development.

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Steppan v. Iliescu - Foreclosure of Mechanic's Lien -	Dismissed October 25, 2011
Iliescu v. Schleining - Declaratory Relief, Indemnification, Breach of Contract, Specific Performance -	Dismissed November 22, 2011
Iliescu v. Hale Lane Defendants -	Summary Judgment granted September 1, 2011
Schleining v. Hale Lane Defendants -	Dismissed through stipulation January 5, 2012

**23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

- ☒ Yes  
☐ No

**24. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:

Iliescu appears to have abandoned its claims as against Decal Oregon, Inc. and Consolidated Pacific Development, Inc.

(b) Specify the parties remaining below:

Iliescu appears to have abandoned its claims as against Decal Oregon, Inc. and Consolidated Pacific Development, Inc.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

The District Court entered a series of orders dismissing all active claims as between all parties in the case below.

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Mark B. Steppan

Name of appellant

Michael D. Hoy; Michael S. Kimmel

Name of counsel of record

Date

1/31/2012

Signature of counsel of record



Washoe County, Nevada

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 31<sup>st</sup> day of January, 2012, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Thomas J. Hall, Esq.  
305 S. Arlington Ave.  
P.O. Box 3948  
Reno, Nevada 89520

David R. Grundy, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St. Third Floor  
Reno, Nevada 89519

Gregory F. Wilson  
Wilson & Quint LLP  
417 West Plumb Ln.  
Reno, Nevada 89509

Dated this

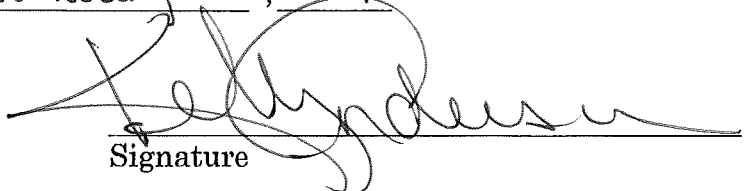
1/31/12

day of

January

, 2012

Signature



Attorney(s) representing respondents (cont.):

Attorney: Gregory F. Wilson Telephone: 775.786.7600

Firm: Wilson & Quint

Address: 417 West Plumb Lane  
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Client(s): John Schleining