

1 Further, Defendant American Vantage Brownstone LLC (AVB) signed the Term Sheet  
2 (see Exhibit 1 to the Complaint). The signature block for AVB is signed by Defendant Tassinari  
3 as its chairman.

4  
5 Defendants managed, lead, acted on behalf of and owned the Brownstone Plaintiffs and  
6 therefore, for purposes of privity, their interests and motivations were and are perfectly aligned.  
7 Indeed, it is difficult to conceive a way in which they were *not* privies to the Brownstone  
8 Plaintiffs. After all, Tassinari signed the contract or Term Sheet in his capacity as chairman of  
9 AVB and on behalf of AVB the owner of Brownstone Gold Town, LLC. See *Bloom v*  
10 *Claimetrics Management*, 2011 U.S. Dist. Lexis. 75841 (Nev. 2011) (Since defendants in  
11 second case were managing agents, members and owners of defendant limited liability company  
12 in first case, they were privies for purposes of claim preclusion.)

14 **b. The Order of Dismissal With Prejudice in the First Case is Valid.**

15 As to the second factor, there can be no question that the Order of Dismissal of Action  
16 with Prejudice (the “Order of Dismissal”) filed in the First Case is valid. The Order of  
17 Dismissal was submitted by and signed by counsel for Robert Mendenhall and Sunridge  
18 Corporation, the Defendants in the First Case and the Plaintiffs in the instant case, the Order of  
19 Dismissal was signed by District Court Judge Ronald J. Israel and filed in the First Case, and  
20 the Order of Dismissal specifically provides in part that: “...the above entitled action **BE AND**  
21 **IS HEREBY DISMISSED WITH PREJUDICE, FULLY DISCHARGED AND**  
22 **RELEASED**, with respect to any and all claims as alleged, or that could have been alleged in  
23 this action by ROBERT L. MENDENHALL, SUNRIDGE CORPORATION...” (Emphasis in  
24 original).

25 Plaintiff’s Opposition does not dispute the validity of the Order of Dismissal.

1                   c.           **Plaintiff's Claims Herein, or Any Part of Them, Were or Could Have**  
2                                   **Been Brought in the First Case.**

3                   Claim preclusion applies to prevent a second suit based *on all grounds of recovery* that  
4                   were or *could have been brought* in the first suit. *Five Star Capital v Ruby*, 108 Nev. 149.

5  
6                   Mendenhall's Motion to Amend in the First Case seeking to assert the same claims now  
7                   brought in the case at bar, clearly demonstrates that the claims in this case could have been  
8                   brought in the First Case.

9                   Plaintiff's Opposition incorrectly argues that there is some requirement that the second  
10                  suit arise from the "same cause of action" as the first suit in order for claim preclusion to apply.

11  
12                  The same argument was presented to the Court in *Five Star Capital* and rejected. The  
13                  Nevada Supreme Court in *Five Star Capital* explained in part as follows:

14                         "Next, **Five Star's** argument that claim preclusion cannot apply because  
15                         the second suit included an additional claim for breach of contract damages is  
16                         erroneous. As explained above, claim preclusion applies to prevent a second suit  
17                         based on all grounds of recovery that were or could have been brought in the  
18                         first suit." (Emphasis Supplied)

19  
20                  Despite the undisputed fact the Plaintiffs actually attempted to bring the same claims  
21                  asserted in this Second Case in the First Case by filing Mendenhall's Motion to Amend in the  
22                  First Case, Plaintiffs now claim they could not have brought their claims in the First Case  
23                  because Plaintiffs' argue that Mendenhall could not have been aware that Mr. Tassinari signed  
24                  the Undisputed Term Sheet in the Other Investor(s) signature block. However, Plaintiff's  
25                  argument is not supported by Mendenhall's own admissions (See above).  
26  
27  
28

1 Contrary to the assertions in Plaintiff's Opposition, Mendenhall admits: a) that  
2 Mendenhall signed the Term Sheet first when no other signatures were present; and b) that on  
3 December 5, 2007 Mendenhall had possession the Undisputed Term Sheet. The Undisputed  
4 Term Sheet plainly shows that Ronald Tassinari signed the Undisputed Term Sheet both on  
5 behalf of American Vantage Brownstone, LLC and for Other Investor(s).  
6

7 Mendenhall's admission that he was in possession of the Undisputed Term Sheet since  
8 December 5, 2007 irrefutably demonstrates that Plaintiffs discovered, or should have  
9 discovered, that Mr. Tassinari signed the Undisputed Term Sheet in the Other Investor(s)  
10 signature block.  
11

12 There is no question that claims Plaintiff are asserting in this action could have been  
13 brought in the First Case.

14 Plaintiff incorrectly argues that claim preclusion only applies to compulsory  
15 counterclaims under NRCP 13(a). However, there simply is no such requirement under Nevada  
16 law as set out by the Nevada Supreme Court in *Five Star Capital Corp v Ruby*, 124 Nev. 1048,  
17 194 P3d 709, 713 (2008).  
18

19 Plaintiff's argument that Plaintiff was somehow precluded by NRCP 11 from asserting  
20 in current claims in the First Case is without merit. Plaintiff did in fact attempt to assert the  
21 same claims in the First Case through the Motion to Amend.  
22

23 Finally, Plaintiff incorrectly argues that there is an equitable prong to the standard for  
24 claim preclusion set out in *Five Star Capital*. There simply is no such prong in the *Five Star*  
25 *Capital* standard. In fact the Court in *Five Star Capital* specifically rejected an equitable public  
26 policy argument.  
27

1 Further, the Order of Dismissal by its express terms extends to claims which could have  
2 been alleged by Plaintiffs herein in pertinent part as follows:

3 “...the above entitled action **BE AND IS HEREBY DISMISSED WITH**  
4 **PREJUDICE, FULLY DISCHARGED AND RELEASED**, with respect to any  
5 and all claims as alleged, or that could have been alleged in this action by  
6 ROBERT L. MENDENHALL, SUNRIDGE CORPORATION, BROWNSTONE  
7 GOLD TOWN, LLC and BROWNSTONE GOLD TOWN CV, LLC, including  
8 but not limited to, those asserted in the Complaint, as well as any related or  
9 potential claims that could be asserted in this action against one another,...”  
10

11 (Emphasis Supplied).

12  
13 The August 29, 2014 Order of Dismissal specifically dismissed with prejudice any and  
14 all claims that could have been alleged in the First Case, including any related or potential  
15 claims that could be asserted. The Order of Dismissal was entered well after the Motion to  
16 Amend filed by Mendenhall on July 21, 2014. Plaintiff’s claims in this action, which Plaintiff  
17 attempted to assert through the Motion to Amend is absolutely barred by the express terms of  
18 the Order of Dismissal.  
19

20 Since all three requirements for claim preclusion are met, this action must be dismissed.

21 ///

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28 REPLY RE MOTION TO DISMISS - 11




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**CONCLUSION**

The Defendants in this case were officers and managing agents and members of the Plaintiffs in the First Case, Brownstone Gold Town, LLC and Brownstone Gold Town CV, LLC. The Defendants herein were and are privies of the Brownstone Plaintiffs in the First Action. The Order of Dismissal of Action with Prejudice filed in the First Case is valid. The claims in this case could have been brought in the First Case. Therefore this action is barred and must be dismissed.

DATED this 10<sup>th</sup> day of March, 2015.

**HARRY PAUL MARQUIS, CHARTERED**



HARRY PAUL MARQUIS, ESQ.

Nevada Bar no. 1252

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Tel. No.: (702) 382-6700

Fax No.: (702) 384-0715

Email: [harry@marquislaw.net](mailto:harry@marquislaw.net)

*Attorney for Defendants*

In Association with:

**JAMES J. LEE, ESQ.**

Nevada Bar No. 01909

Legal Offices of James J Lee

2620 Regatta Drive, Suite 102

Las Vegas, Nevada 89128


Telephone (702) 664-6545

Email: [james@leelawonline.com](mailto:james@leelawonline.com)

*Attorney for Defendants*

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Gwen Rutar Mullins, Esq.  
Wade B. Gochnour, Esq.  
**HOWARD & HOWARD ATTORNEYS PLLC**  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, Nevada 89169  
Telephone: (702) 257-1483  
Facsimile: (702) 567-1568  
Email: [grm@h2law.com](mailto:grm@h2law.com)  
Email: [wbg@h2law.com](mailto:wbg@h2law.com)  
*Attorneys for Defendants*

  
An employee of  
**HARRY PAUL MARQUIS, CHTD**

## **Exhibit “F”**

**AMERICAN VANTAGE BROWNSTONE, LLC** A SUBSIDIARY OF AMERICAN VANTAGE COMPANIES

Phone: (702) 227-9800 — Fax: (702) 227-8525

P.O. Box 61920, Las Vegas, NV 89180

**CARSON VALLEY CASINO PROJECT  
TERM SHEET**Transaction:

This term sheet shall serve as an outline of the basic business terms and conditions upon which Brownstone GoldTown, LLC ("Brownstone GoldTown"), a subsidiary of American Vantage Brownstone, LLC ("AVE"), Robert L. Mendenhall, Ph.D. or an entity wholly-owned by Mr. Mendenhall ("Mendenhall"), and other potential equity investor(s) (the "Other Investor(s)"), will acquire membership interests in the Nevada limited liability company, Brownstone GoldTown CV, LLC (the "Company") for the primary purpose of constructing, owning and operating a hotel casino to be located in Carson Valley, Douglas County, Nevada (the "Project").

Project Description:

GoldTown Hotel and Casino Resort, to be constructed on 45 acres, with approximately 300 hotel rooms and suites, 92,000+ square feet of casino space, three full service restaurants, 8,000 square feet of convention space and multiple retail outlets. The project site is located within a few miles of Carson City and Lake Tahoe, Nevada and forty-five minutes from Reno, Nevada.

The Project also includes the exclusive option to purchase an adjoining 300-acre, 7,000 yard, par 72, championship golf course ("Sunridge Golf Club") with pro shop. The option to purchase Sunridge Golf Club expires on January 11, 2008.

Ownership of the  
Company:

The Project membership interests (the "Membership Interests") will be allocated based on the following:

- For contribution of the 45-acre project site, valued at \$15,000,000.00, Mendenhall will receive a 27.0% Membership Interest. The acreage will be contributed in full on or before the option expiration date of December 27, 2007 or as mutually agreed between Brownstone GoldTown and Mendenhall.

**CONFIDENTIAL**

FILE NAME: GoldTown\_term sheet\_AVM-e-mailed to R.Mendenhall\_12 04 07.doc

MEN00670

Brownstone GoldTown, LLC  
Carson Valley Casino Project  
Term Sheet  
Page Two

- It is expected that the Other Investor(s) will contribute \$7,000,000.00 U.S. dollars for a 12.5% Membership Interest.
- Brownstone GoldTown will contribute \$1,500,000.00 U.S. dollars for a 2.7% Membership Interest.
- The option to purchase Sunridge Golf Club provides that, at the discretion of Brownstone GoldTown:
  - The total Purchase Price of \$2,500,000.00 U.S. dollars; or,
  - A Purchase Price of \$1,000,000.00 U.S. plus assumption of the golf cart loan, in an amount not to exceed \$150,000.00, and an equity percentage share of the Company in the same manner and terms as the other equity investors of the Company. The equity percentage share is currently equal to a 2.7% Membership Interest.

If Brownstone GoldTown elects to purchase the Sunridge Golf Course for the total Purchase Price of \$2,500,000.00, the related 2.7% Membership Interest will be allocated on a pro rata basis to Mendenhall, the Other Investor(s) and Brownstone GoldTown.

- The above contributions are collectively defined as the "Project Contributions."
- Brownstone GoldTown will retain the remaining Membership Interest as its founder.

The total Membership Interests may be impacted if there is an increase in the current investment banking equity requirement of \$25,000,000.00.

Allocation of Casino  
And Retail Business  
Cash Flows:

The Operating Agreement will provide for quarterly distribution, if and when available, of the Company's Casino cash flow, after payment of operating expenses (including a development fee of 3.0% of the total development costs and an annual management fee of \$1,000,000.00), senior debt covenants and any required reserves, in the following manner:

- Fifty-percent (50%) to the pro rata repayment of the Project Contributions until, together with the distributions from the Retail Business cash flow (see below), the full value of the Project Contributions is repaid. Distributions from the Company's Casino

CONFIDENTIAL

FILENAME: Gold Town\_term sheet\_AMM e-mailed to R.Mendenhall\_12-04-07.doc

MEN00671

0183

Brownstone GoldTown, LLC  
Cotton Valley Casino Project  
Term Sheet  
Page Three

cash flow will first satisfy the pro rata repayment of the Project Contributions, with repayment interest terms based on the higher of 90-Day LIBOR (London Interbank Offered Rate) at the date of the contribution or an annual rate of 6%.

- Remaining 50% to be allocated based upon the percentage of Membership Interests held by each member in the Company.

The Operating Agreement will also provide for monthly distributions of the Company's Retail Business cash flow, if and when available, after payment of operating expenses (including development and management fees), senior debt covenants and any required reserves, in the following manner:

- Seventy-percent (70%) to the pro rata repayment of the Project Contributions until, together with the distributions from the Company's Casino cash flow (as discussed above), the full value of the Project Contributions is repaid. Distributions from the Company's Retail Business cash flow will first satisfy the pro rata repayment of the Project Contributions, with repayment interest terms based on the higher of 90-Day LIBOR (London Interbank Offered Rate) at the date of the contribution or an annual rate of 6%.
- Remaining 30% to be allocated based upon the percentage of Membership Interests held by each member in the Company.

The Operating Agreement shall provide that, upon the repayment of the full value of the Remaining Membership Interests, the Company's Casino and Retail Business cash flows will be distributed according to the percentage of Membership Interests held by each member in the Company.

#### Refinancing

In the event a refinancing of the Project is approved by the Company, after payment of the senior debt, any excess capital realized from the refinancing shall be applied, collectively determined on a pro rata basis from capital contributions, in the following manner to: (i) the Other Investor(s), Mendenhall, Brownstone GoldTown, and as applicable, the Sunridge Golf Club seller, to the extent that the Project Contributions have not been repaid from the distributions of Casino cash flow and Retail Business cash flow; and (ii) distributed according to the percentage of Membership Interests held by each member in the Company.

CONFIDENTIAL

FILE NAME: GoldTown\_term sheet\_AK44 e-mailed to R Mendenhall\_12 04 07.doc

Brownstone GoldTown, LLC  
Carson Valley Casino Project  
Term Sheet  
Page Four

Licensing

The Project owners will be required to satisfactorily obtain a Nevada gaming license. Costs associated with obtaining a Nevada gaming license for a director, employee or consultant directly associated with the development or management of the Project are the only licensing costs that will be borne by the Project.

Exclusivity:

Non-exclusive arrangement.

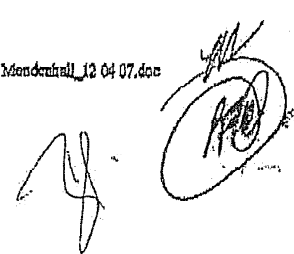
Termination of  
Agreement

The Term Sheet may be terminated if not executed by the parties on or before \_\_\_\_\_.

\*\*\*

CONFIDENTIAL

FILENAME: Gold Town term sheet\_AMM e-mailed to R.Mendenhall\_12 04 07.doc



Brownstone GoldTown, LLC  
Carson Valley Casino Project  
Term Sheet  
Page Five

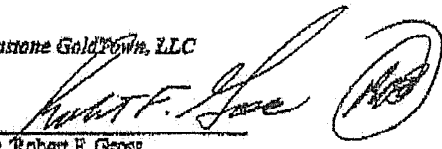
IN WITNESS WHEREOF, the parties have agreed upon the above terms and conditions of this Term Sheet. This Term Sheet consent may be executed by one or more of the signers hereto in any number of separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same instrument. Execution of this Term Sheet and delivery thereof by facsimile or email transmission shall be sufficient for all purposes and shall be binding upon any party who so executes.

Dated: 12/4, 2007

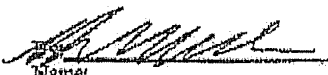
  
American Vantage Brownstone, LLC

By: \_\_\_\_\_  
Name: Ronald A. Tassanari  
Title: Chairman

Brownstone GoldTown, LLC

  
By: \_\_\_\_\_  
Name: Robert F. Gross  
Title: Chief Executive Officer

Robert L. Mendonhall, Ph.D. or Other:

  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_

Other Investor(s):

  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONFIDENTIAL

FILENAME: Gold Town term sheet\_AJMD e-mailed to R.Mendonhall\_12 04 07.doc



## **Exhibit “G”**

**AMERICAN VANTAGE BROWNSTONE, LLC** A SUBSIDIARY OF AMERICAN VANTAGE COMPANIES

Phone: (702) 227-9830 - Fax: (702) 227-8525

P.O. Box 81920, Las Vegas, NV 89180

**CARSON VALLEY CASINO PROJECT  
TERM SHEET**Transaction:

This term sheet shall serve as an outline of the basic business terms and conditions upon which Brownstone GoldTown, LLC ("Brownstone GoldTown"), a subsidiary of American Vantage Brownstone, LLC ("AVB"), Robert L. Mendenhall, Ph.D. or an entity wholly-owned by Mr. Mendenhall ("Mendenhall"), and other potential equity investor(s) (the "Other Investor(s)"), will acquire membership interests in the Nevada limited liability company, Brownstone GoldTown CV, LLC (the "Company") for the primary purpose of constructing, owning and operating a hotel casino to be located in Carson Valley, Douglas County, Nevada (the "Project").

Project Description:

GoldTown Hotel and Casino Resort, to be constructed on 46 acres, with approximately 300 hotel rooms and suites, 92,000+ square feet of casino space, three full service restaurants, 8,000 square feet of convention space and multiple retail outlets. The project site is located within a few miles of Carson City and Lake Tahoe, Nevada and forty-five minutes from Reno, Nevada.

The Project also includes the exclusive option to purchase an adjoining 300-acre, 7,000 yard, par 72, championship golf course ("Sunridge Golf Club") with pro shop. The option to purchase Sunridge Golf Club expires on January 11, 2008.

Ownership of the Company:

The Project membership interests (the "Membership Interests") will be allocated based on the following:

- For contribution of the 46-acre project site, valued at \$15,000,000.00, Mendenhall will receive a 27.0% Membership Interest. The acreage will be contributed in full on or before the option expiration date of December 27, 2007 or as mutually agreed between Brownstone GoldTown and Mendenhall.

**CONFIDENTIAL**

FILE NAME: GoldTown\_term sheet\_AVM - e-mailed to R Mendenhall\_12-05-07.doc

Brownstone GoldTown, LLC  
Cusack Valley Casino Project  
Term Sheet  
Page Two

- It is expected that the Other Investor(s) will contribute \$7,000,000.00 U.S. dollars for a 12.6% Membership Interest.
- Brownstone GoldTown will contribute \$1,500,000.00 U.S. dollars for a 2.7% Membership Interest.
- The option to purchase Sunridge Golf Club provides that, at the discretion of Brownstone GoldTown:
  - o The total Purchase Price of \$2,500,000.00 U.S. dollars; or,
  - o A Purchase Price of \$1,000,000.00 U.S. plus assumption of the golf cart loan, in an amount not to exceed \$150,000.00, and an equity percentage share of the Company in the same manner and terms as the other equity investors of the Company. The equity percentage share is currently equal to a 2.7% Membership Interest.

If Brownstone GoldTown elects to purchase the Sunridge Golf Course for the total Purchase Price of \$2,500,000.00, the related 2.7% Membership Interest will be allocated on a pro rata basis to Mendenhall, the Other Investor(s) and Brownstone GoldTown.

- The above contributions are collectively defined as the "Project Contributions."
- Brownstone GoldTown will retain the remaining Membership Interest as its founder.

The total Membership Interests may be impacted if there is an increase in the current investment banking equity requirement of \$25,000,000.00.

Allocation of Casino  
And Retail Business  
Cash Flows:

The Operating Agreement will provide for quarterly distribution, if and when available, of the Company's Casino cash flow, after payment of operating expenses (including a development fee of 3.0% of the total development costs and an annual management fee of \$1,000,000.00), senior debt covenants and any required reserves, in the following manner:

- Fifty-percent (50%) to the pro rata repayment of the Project Contributions until, together with the distributions from the Retail Business cash flow (see below), the full value of the Project Contributions is repaid. Distributions from the Company's Casino

CONFIDENTIAL

FILE NAME: Gold Town\_term sheet\_1104 executed to R Mendenhall\_12.04.07.doc

Brownstone GoldTown, LLC  
Citron Valley Casino Project  
Term Sheet  
Page Three

cash flow will first satisfy the pro rata repayment of the Project Contributions, with repayment interest terms based on the higher of 90-Day LIBOR (London Interbank Offered Rate) at the date of the contribution or an annual rate of 6%.

- Remaining 50% to be allocated based upon the percentage of Membership Interests held by each member in the Company.

The Operating Agreement will also provide for monthly distributions of the Company's Retail Business cash flow, if and when available, after payment of operating expenses (including development and management fees), senior debt covenants and any required reserves, in the following manner:

- Seventy-percent (70%) to the pro rata repayment of the Project Contributions until, together with the distributions from the Company's Casino cash flow (as discussed above), the full value of the Project Contributions is repaid. Distributions from the Company's Retail Business cash flow will first satisfy the pro rata repayment of the Project Contributions, with repayment interest terms based on the higher of 90-Day LIBOR (London Interbank Offered Rate) at the date of the contribution or an annual rate of 6%.
- Remaining 30% to be allocated based upon the percentage of Membership Interests held by each member in the Company.

The Operating Agreement shall provide that, upon the repayment of the full value of the Remaining Membership Interests, the Company's Casino and Retail Business cash flows will be distributed according to the percentage of Membership Interests held by each member in the Company.

#### Refinancing

In the event a refinancing of the Project is approved by the Company, after payment of the senior debt, any excess capital realized from the refinancing shall be applied, collectively determined on a pro rata basis from capital contributions, in the following manner to: (i) the Other Investor(s), Mendenhall, Brownstone GoldTown, and as applicable, the Sunridge Golf Club seller, to the extent that the Project Contributions have not been repaid from the distributions of Casino cash flow and Retail Business cash flow; and (ii) distributed according to the percentage of Membership Interests held by each member in the Company.

CONFIDENTIAL

FILE NAME: GoldTown\_term sheet\_and covenants to R Mendenhall\_12 04 07.doc

Brownstone GoldTown, LLC  
Carson Valley Casino Project  
Term Sheet  
Page Four

Licensing

The Project owners will be required to satisfactorily obtain a Nevada gaming license. Costs associated with obtaining a Nevada gaming license for a director, employee or consultant directly associated with the development or management of the Project are the only licensing costs that will be borne by the Project.

Exclusivity:

Non-exclusive arrangement.

Termination of  
Agreement:

The Term Sheet may be terminated if not executed by the parties on or before \_\_\_\_\_.

\*\*\*

CONFIDENTIAL

FILE NAME: Gold Town\_terminated\_AAMM e-mailed to R.McDonnell\_12 04 07.doc

*[Handwritten signature/initials]*

Brownstone GoldTown, LLC  
Carson Valley Casino Project  
Term Sheet  
Page Five

IN WITNESS WHEREOF, the parties have agreed upon the above terms and conditions of this Term Sheet. This Term Sheet consent may be executed by one or more of the signers hereto in any number of separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same instrument. Execution of this Term Sheet and delivery thereof by facsimile or email transmission shall be sufficient for all purposes and shall be binding upon any party who so executes.

Dated: 12/14 2007

*American Vantage Brownstone, LLC*

By: [Signature]  
Name: Ronald J. Tassinari  
Title: Chairman

*Brownstone GoldTown, LLC*

By: [Signature] [Circular Stamp]  
Name: Robert F. Gross  
Title: Chief Executive Officer

*Robert L. Mandanhall, Ph.D. or Other:*

By: [Signature]  
Name:  
Title:  
Company Name:

*Other Investor(s):*

By: [Signature]  
Name:  
Title:

CONFIDENTIAL

FILE NAME: Gold Town\_term sheet\_AND consented to R Mandanhall\_12.04.07.doc

Dec 5, 2007 7:56AM

No. 6205

General Engineering  
Contractors  
Since 1958



4420 South Decatur Blvd.  
Las Vegas, Nevada 89109-5803  
(702) 251-5800  
Fax (702) 251-1988  
lasvegaspaving.com

**FACSIMILE TRANSMITTAL SHEET**

TO: ASB  
MENDEL

**FAX NUMBERS**

Corporate	(702) 251-1968
Credit/Payables	(702) 251-7026
Engineering/Estimates	(702) 251-4891
Dispatch & Shop	(702) 399-0522

DATE: 12/5 2007

THIS PAGE PLUS 5 TO FOLLOW, MAIL ORIGINAL? YES NO

TO: FAX NUMBER (702) 222-8525

ATTENTION: Ann M Morrison CPA

COMPANY: \_\_\_\_\_

SUBJECT: Term Sheet

**-MESSAGE-**

BY: [Signature]

*Innovators in Recycling Asphalt Pavements*

BROW00272

## REGISTER OF ACTIONS

CASE NO. A-14-708281-C

Robert Mendenhall, Plaintiff(s) vs. Ronald Tassinari, Defendant  
(s)

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§

Case Type: **Other Tort**  
Date Filed: **10/08/2014**  
Location: **Department 32**  
Cross-Reference Case Number: **A708281**  
Supreme Court No.: **68053**

---

### PARTY INFORMATION

---

		Lead Attorneys
Defendant	Tassinari, Ronald	<b>James John Lee</b> <i>Retained</i> 702-382-4044(W)
Plaintiff	Mendenhall, Robert L	<b>Gwen Rutar Mullins</b> <i>Retained</i> 702-257-1483(W)
Plaintiff	Sunridge Corporation	<b>Gwen Rutar Mullins</b> <i>Retained</i> 702-257-1483(W)

---

### EVENTS & ORDERS OF THE COURT

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03/17/2015 **Motion to Dismiss** (9:00 AM) (Judicial Officer Bare, Rob)  
*Defendant's Motion to Dismiss*

**Minutes**

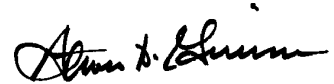
02/24/2015 9:00 AM

03/17/2015 9:00 AM

- Court presented an overview and procedural history of the case, noting the Five Star Capital case regarding claim preclusion. Colloquy regarding a previous case with like claims before Judge Israel that was dismissed. Arguments by Mr. Marquis in support of Defendant's Motion to Dismiss, stating the claims in this case could have been brought in the previous case before Judge Israel. Opposition argued by Mr. Young alleging different circumstances in this case, noting the offer of judgment timeline in the previous case. Following further arguments by counsel distinguishing the two cases, COURT ORDERED, matter taken UNDER ADVISEMENT; written Order TO ISSUE.

[Parties Present](#)  
[Return to Register of Actions](#)





CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

ROBERT L. MENDENHALL, SUNRIDGE )  
CORPORATION, )

CASE NO. A-14-708281

Plaintiffs, )

DEPT. NO. XXXII

vs. )

RONALD TASSINARI, AMERICAN )  
VANTAGE BROWNSTONE, LLC, )

**Transcript of Proceedings**

Defendants. )

BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE

**DEFENDANTS' MOTION TO DISMISS**

TUESDAY, MARCH 17, 2015

**APPEARANCES:**

For the Plaintiffs:

JAY YOUNG, ESQ.

GWEN RUTAR MULLINS, ESQ.

For the Defendants:

HARRY P. MARQUIS, ESQ.

RECORDED BY:

CARRIE HANSEN, DISTRICT COURT

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1 TUESDAY, MARCH 17, 2015 AT 9:17 A.M.

2

3 THE LAW CLERK: Case number A708281.

4 THE COURT: What about this one?

5 [Colloquy between the Law Clerk and the Court]

6 THE COURT: I apologize for this, but I'm going to  
7 call you guys next because I --

8 MR. MARQUIS: Oh, okay.

9 THE COURT: He -- my law clerk didn't know that  
10 but it's going to take -- yours is going to take a little  
11 longer.

12 MR. MARQUIS: All right. Thank you.

13 THE COURT: And so the other one is going to be a  
14 little quicker. Sorry about that. Let's go ahead and call  
15 this one.

16 [Case trailed at 9:18 a.m.]

17 [Proceeding resumed at 9:24 a.m.]

18 THE LAW CLERK: Case number A708281.

19 MR. MARQUIS: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MS. RUTAR MULLINS: Good morning, Your Honor.

22 MR. YOUNG: Good morning. Jay Young and Gwen  
23 Rutar Mullins on behalf of the plaintiff.

24 MR. MARQUIS: Harry Marquis on behalf of the  
25 defendants and I have Mr. Tassinari with me as well.

1           THE COURT: All right. Welcome, have a seat and  
2 relax everyone. Now, you heard that I typically like to go  
3 over the factual predicate and sometimes also let everybody  
4 know what I think the most relevant legal analysis might  
5 just be going into these hearings. If I were to do that in  
6 this case, to a level of specificity that you all know, it  
7 would take quite a while because there's a pretty storied  
8 procedural history here. So, rather than going through it  
9 all and just know I've read it and outlined it, I'm going  
10 to give a more summary version. You're welcome to argue or  
11 tell me things from the factual scenario that I don't  
12 mention now. But just know I have it all here, outlined,  
13 pretty much everything from the year 2006 on, having to do  
14 with the underlying factual predicate.

15           So, there's that. But in any event, the case that  
16 we have in our court in -- as a theory, involves a fraud  
17 claim. Of course, what we have is that Judge Ron Israel  
18 had a case that it's alleged, basically, would now act as a  
19 preclusive case, a claim preclusion under the *Five Star*  
20 *Capital* case where I think that's really where the Nevada  
21 Supreme Court took the opportunity to change Nevada  
22 jurisprudence from what it used to be in the past. You  
23 know, a few of us don't have hair in the room and it used  
24 to be a thing called *res judicata* when we did have hair.  
25 And the Court took an opportunity in our lifetimes to say:

1 Wait a second, there's claim preclusion, there's issue  
2 preclusion. And they laid it all out.

3           The mainline case, of course, is this *Five Star*  
4 case. It talks about whether the parties or their privies  
5 are the same. The privy issues, I think, becomes relevant  
6 in our case, whether the final judgment's valid. I don't  
7 think we have a dispute as to the Israel judgment being a  
8 valid one. And whether the subsequent actions based upon  
9 the same claims or any part of them that could have been  
10 brought in the first case and I think that's a big issue in  
11 the argument today as to whether all that -- you know, all  
12 the claims could have been brought.

13           But again, without getting into the whole storied  
14 factual predicate, it seemed like what happened was --  
15 because I've got to look at what happened in the Ron Israel  
16 case and compare it to what I now have here to the best of  
17 my ability. In other words, what I'm saying to you all,  
18 the note I made reading through all this is: Is our --  
19 maybe a better way to say it is -- and if I'm wrong about  
20 this just tell me, but this is how I conceptualize the  
21 thing so you guys can argue. Is our case, if you look at  
22 the four corners of it, is it a compulsory or permissive  
23 counterclaim that could have been brought, really, in the  
24 Israel case? Because the claim preclusion area of law does  
25 not bar a party from suing independently if it maybe were a

1 permissive counterclaim. That's from the *Executive*  
2 *Management Limited Ticor Title* case, Nevada Supreme Court  
3 from '98. Gives me some guidance on that. It -- also,  
4 Rule 13 talks about the idea that:

5         A pleading shall state as a counterclaim any claim  
6         which at the time of serving the pleading or the  
7         pleader has against any opposing party, if it arises  
8         out of the transaction or occurrence as the subject  
9         matter of the opposing party's claim.

10         Essentially, I have to look at, again, what we  
11 have here and ask: Could it or should it have been brought  
12 in the Judge Israel case or was it even fairly encompassed  
13 in the case, which is another sort of thought because if  
14 you look at the court procedure, and correct me if I'm  
15 wrong, but there was a -- essentially, a settlement. It  
16 was a settlement in the Israel case. Right?

17         MR. MARQUIS: Correct.

18         THE COURT: And then after all that --

19         MS. RUTAR MULLINS: It was an offer of judgment.

20         THE COURT: Pardon me?

21         MS. RUTAR MULLINS: Acceptance of offer of  
22 judgment, so --

23         THE COURT: Yeah. I said this was an offer of  
24 judgment.

25         MS. RUTAR MULLINS: Right.

1           THE COURT: And so the question became, it seemed  
2 like that the plaintiffs which were known in the Israel  
3 case say as the Brownstone plaintiffs, they filed Motion to  
4 Clarify Enforced Terms of Mendenhall's Offer of Judgment.  
5 And in his wisdom, Judge Israel, in August of 2014 as I  
6 understand it, heard that Motion to Amend, part of a Motion  
7 to Amend, I guess, and said that he wouldn't prohibit them  
8 from filing another lawsuit and right after that, within  
9 about 10 days, Judge Israel entered an Order of Dismissal  
10 of Action with Prejudice and, in that, indicated the  
11 standard language but specific language that:

12           The above action be and is hereby dismissed with  
13 prejudice fully discharged and released with respect to  
14 any and all claims as alleged.

15           And then it says: Or that could have been alleged,  
16 consistent with this idea of probably a compulsory  
17 counterclaim. It could have been alleged in this action by  
18 Robert Mendenhall, Sunrise Corporation, blah, blah, blah.

19           And so I know that Mr. Marquis, in part, your  
20 argument is: Well, that language from the Judge Israel  
21 Order in conjunction with the facts here should lead a  
22 Court to conclude that the instant fraud allegations could  
23 have been alleged by Mendenhall in the other action. I  
24 don't know if you're also going as far as to say: Hey  
25 look, in any event, it was encompassed in the acceptance of

1 the offer of judgment anyway.

2 And that gets us to the last part, maybe the only  
3 part of the factual predicate that seems most relevant. I  
4 know that the idea was: Well, there was this deposition  
5 that occurred and it was, at that time, plaintiffs say that  
6 Mr. Tassinari --

7 MR. MARQUIS: Tassinari, Your Honor.

8 THE COURT: Tassinari. Okay. They -- plaintiffs  
9 say that as far as Mr. Tassinari's alleged fraudulent acts,  
10 they didn't know that until his deposition. And I think  
11 that's the main part of an argument that: Well, wait a  
12 second, the current cause of action for fraud could not  
13 have been fairly encompassed or really brought up in the  
14 Israel case.

15 And, so, it might be helpful to me if you both  
16 kind of talked about the time element of when this  
17 deposition occurred as compared to everything that happened  
18 in Israel case and that sort of thing. I think that might  
19 be the -- at least something to talk about.

20 And the last part of it, I share stuff with  
21 people. Not -- doesn't mean I'm right in this stage of a  
22 hearing, but I share stuff. It just -- it did seem to me  
23 and I'm not -- I don't mean this with any disrespect to the  
24 plaintiffs' side, but I looked at the Offer of Judgment. I  
25 looked at the term sheet that I have outlined here.

1 Anyway, it's at least questionable in my mind what was  
2 going on here. In other words, again no disrespect, but an  
3 argument, sort of a thought came to mind, not even an  
4 argument, that: Okay, Mendenhall makes an Offer of  
5 Judgment. It's used in another District Court department  
6 to consummate sort of a finalization of a case and is it  
7 that Mendenhall is really just trying to get out of it is a  
8 question? I mean, is what I have to, at least in fairness,  
9 bring up.

10 So, in any event, it's a defense motion. Mr.  
11 Marquis.

12 MR. MARQUIS: Thank you, Your Honor. You're  
13 right, this case is determined by the *Five Star Capital*  
14 case and in the factual scenario that you laid out, I'd ask  
15 you to also be aware that they did file a Motion to Amend,  
16 that they did file a Motion to Amend and that I attached  
17 that motion and their Proposed Amended Complaint.

18 THE COURT: Right.

19 MR. MARQUIS: And it contained all these claims.  
20 So, when they say that that could not possibly have been  
21 brought in that case, well, not only could it have been  
22 brought in the case, but they tried to bring it in the  
23 case.

24 THE COURT: Right.

25 MR. MARQUIS: Now that motion wasn't ruled upon



1 because the case was settled before that, but let me go  
2 through the factors. Okay. Were these two parties,  
3 American Vantage Brownstone, LLC, and Ronald Tassinari,  
4 were they privies of the plaintiffs in the first case?  
5 Well I submit obviously they are, Your Honor. Both signed  
6 the term sheet. And if you look at the term sheet, the --  
7 it's Exhibit F to my -- our Reply and specifically on page  
8 -- there's Mendenhall bates number 00674.

9 THE COURT: Yeah.

10 MR. MARQUIS: You can see the signatures. You can  
11 see the two signatures. You can see the --

12 THE COURT: Yeah. I know. We do have that  
13 outlined here.

14 MR. MARQUIS: Yeah.

15 THE COURT: I mean, I usually use a green  
16 highlighter, he uses a yellow one, but we've got it.

17 MR. MARQUIS: All right. Okay. So, American  
18 Vantage Brownstone, --

19 THE COURT: Yeah.

20 MR. MARQUIS: -- they signed this contract. Mr.  
21 Tassinari signed as other investor. His name's identified,  
22 printed out on the American Vantage one, not printed out on  
23 the other one.

24 THE COURT: Yeah.

25 MR. MARQUIS: But it's the same signature. It's

1 not even close. It's a distinctive signature. It's not  
2 like it's some kind of, you know, line with an X in it or  
3 something.

4 THE COURT: So, in your view, that establishes the  
5 privy part of the analysis?

6 MR. MARQUIS: That -- certainly the fact that  
7 American Vantage is the parent corporation --

8 THE COURT: Right.

9 MR. MARQUIS: -- of the other two plaintiffs. And  
10 Mr. Tassinari is the chairman of American Vantage and he  
11 actually signed on behalf of American Vantage and he also  
12 signed himself. So, it clearly -- there's privy in this  
13 case. I don't think it's a close call. The second prong -  
14 - and in the term sheet itself it even says, it identifies  
15 the Brownstone GoldTown, LLC, is a subsidiary of American  
16 Vantage Brownstone. It's right in the terms of the  
17 agreement.

18 The second prong in the *Five Star Capital* case is:  
19 Is the Order of Dismissal with Prejudice valid? I don't  
20 think there's any question that it is.

21 THE COURT: Yeah.

22 MR. MARQUIS: It was signed by the attorneys for  
23 everybody. It was acceptance of an Offer of judgment. We  
24 argued about the terms before Judge Israel. There's no  
25 question that that's a valid, legal, and binding Order.

1           Finally: Could the claims have been brought in  
2 this case -- in the first case? Obviously, Your Honor --

3           THE COURT: They tried to.

4           MR. MARQUIS: They tried to.

5           THE COURT: Yeah.

6           MR. MARQUIS: They tried to bring them. They  
7 tried to bring them and the defendants in this -- that  
8 they're trying to sue in this case, after we litigated for  
9 years and finally settled this case, and Mr. Tassinari was  
10 deposed in that case. Mr. Tassinari signed the term sheet.

11          THE COURT: Okay.

12          MR. MARQUIS: Twice. And American Vantage signed  
13 the term sheet. For them to say that they could not have  
14 brought these claims on this term sheet in the first case  
15 is incorrect, Your Honor.

16          THE COURT: Okay. Let me ask you --

17          MR. MARQUIS: And they certainly could have  
18 brought them.

19          THE COURT: Let me ask you a couple questions.

20          MR. MARQUIS: Yeah. Certainly could have brought  
21 those in this case and there's very little question about  
22 it. Now, they've argued that well --

23          THE COURT: Okay. Let me interrupt you and ask  
24 you a question.

25          MR. MARQUIS: Sure.

1 THE COURT: You're familiar with the Judge Ron  
2 Israel events that happened?

3 MR. MARQUIS: Oh yeah. Yeah. No. I was part of  
4 the --

5 THE COURT: Yeah I know you were part of it and  
6 you were there.

7 MR. MARQUIS: Yeah. Yeah.

8 THE COURT: So, I have a couple questions having  
9 to do with that.

10 MR. MARQUIS: Sure.

11 THE COURT: As I understand it, there is this  
12 Motion to Amend --

13 MR. MARQUIS: Right.

14 THE COURT: -- that you've mentioned. It was  
15 withdrawn, as I understand it.

16 MR. MARQUIS: Just never ruled on because it was  
17 settled first.

18 THE COURT: Okay.

19 MR. MARQUIS: It was not withdrawn. There was  
20 never a hearing. There was never an Opposition filed --

21 THE COURT: Okay.

22 MR. MARQUIS: -- because, in the meantime, this  
23 Offer of Judgment had been served and accepted.

24 THE COURT: All right. That clears that up a  
25 little bit up for me.

1           Let me ask you this, and I'm just asking you what  
2 you think. I mean, --

3           MR. MARQUIS: Sure.

4           THE COURT: -- You might not know the answer to  
5 this because you're not Judge Israel, but why did he make  
6 this comment or have this allowance to bring another  
7 lawsuit? In other words, why do you think the judge, in  
8 hearing this Motion to Clarify, because that's what he's  
9 dealing with then. Right?

10          MR. MARQUIS: Right.

11          THE COURT: This Motion to Clarify and enforce  
12 what is the Offer of Judgment end result. Right? That's  
13 what he's doing.

14          MR. MARQUIS: Right.

15          THE COURT: Why did he basically say: Well, you  
16 can bring another lawsuit -- and he didn't really do  
17 anything affirmative to, as I understand it, to actually  
18 clarify or enforce anything.

19          MR. MARQUIS: Yes. He -- my understanding of what  
20 he said from the bench, because I was there, --

21          THE COURT: Yeah.

22          MR. MARQUIS: Okay. Was that no question that the  
23 Offer of Judgment was going to be accepted. No question  
24 that the terms of the Offer in Judgment were going to be  
25 incorporated into his Order.

1 THE COURT: Okay.

2 MR. MARQUIS: And they were. And they were. And  
3 they were -- and they're very specific. It's dismissed  
4 with prejudice:

5 Fully discharged and released with respect to any  
6 and all claims as alleged or that could have been  
7 alleged in this action.

8 THE COURT: Right.

9 MR. MARQUIS: And then: Including, but not  
10 limited to, those asserted in the Complaint as well as  
11 any related or potential claims that could be asserted  
12 as action against one another.

13 So, it was very broad but what he stated from the  
14 bench was that what was before him was the resolution of  
15 this case. Whether or not they would file another case,  
16 which, you know, of course they were saying then: Well, we  
17 wouldn't do that. Right? But didn't take them long to do  
18 it. So -- but they -- if that case was filed, that was  
19 going to be assigned to a different judge and that wasn't  
20 before him at this time. And that --

21 THE COURT: What type of case, though, you think  
22 it was envisioned in that? It just seemed, I'm just  
23 saying, I'm not criticizing Judge Israel. I'm not. That's  
24 not the point of this. But if a judge says: Well, you can  
25 go file some other lawsuit, what was -- what kind of

1 lawsuit was envisioned in this potential future filing?

2 MR. MARQUIS: I envisioned, Your Honor, that they  
3 would file exactly what they filed, which was their amended  
4 -- their counterclaim that they sought to assert by filing  
5 their Motion to Amend. I envisioned that they would file  
6 that exact claim against American Vantage Brownstone and  
7 Mr. Tassinari. That's exactly what we envisioned and  
8 that's what we exactly told Judge Israel we were afraid  
9 that they would do.

10 THE COURT: So, I take it maybe the judge was of a  
11 mindset: Well, let somebody else handle that. I'm done  
12 with it here. I mean that --

13 MR. MARQUIS: That's exactly what he said.

14 THE COURT: And not as an indication that it had  
15 validity but rather under --

16 MR. MARQUIS: No. And as a matter of fact, he  
17 doubted -- he said he didn't think it would survive a  
18 motion but it wasn't before him and he wasn't going to make  
19 that ruling. Somebody else was going to have to decide  
20 that.

21 THE COURT: Okay.

22 MR. MARQUIS: So, now we're before Your Honor.

23 THE COURT: I understand.

24 MR. MARQUIS: Okay.

25 THE COURT: All right.

1 MR. MARQUIS: So, and --

2 THE COURT: Because I -- the reason I mentioned  
3 that, too, is that --

4 MR. MARQUIS: Yeah.

5 THE COURT: -- I've had it happen where, you know,  
6 a settlement happens or an Offer of Judgment is accepted  
7 and people come in and they ask for some kind of  
8 clarification, or some kind of enforcement, or something  
9 from a, you know, a judge. And if it is my case I'll do  
10 it. I typically just do it.

11 MR. MARQUIS: Yeah.

12 THE COURT: But, I mean, I'm not criticizing Judge  
13 Israel but I mean I'm just trying to figure out what  
14 happened because it's -- I think it would be a little  
15 inconsistent with the way I do stuff but that's okay. He's  
16 been around longer than me and maybe his way is better. I  
17 don't know. But I'm just saying that's my thought.

18 MR. MARQUIS: I don't know. I mean, had he  
19 granted our motion at that time then we wouldn't be here  
20 today but he didn't, so they --

21 THE COURT: Got it.

22 MR. MARQUIS: -- immediately refiled the same  
23 claim --

24 THE COURT: Okay.

25 MR. MARQUIS: -- they asserted in their amended



1 pleading that they sought to assert.

2 THE COURT: All right.

3 MR. MARQUIS: And the final thing I'd like to  
4 point out to Your Honor is the fact, the undisputed fact,  
5 based on Mr. Mendenhall's affidavits filed in the other  
6 case and in this case, that Mr. Mendenhall had this page,  
7 this Exhibit F, with these signatures. He had this and  
8 admits he had that --

9 THE COURT: Okay.

10 MR. MARQUIS: -- in December of 2007. For them to  
11 say now, oh, you know, we didn't have this or we didn't see  
12 it, well, it's -- they produced it. They had it.

13 THE COURT: Right.

14 MR. MARQUIS: The one we had wasn't as good a copy  
15 and that's the next exhibit, Exhibit G. That's not a great  
16 copy. That's the one we had but they had the good copy  
17 with the clear signatures. It's not what they showed the  
18 people in the depositions but they had it. It had been  
19 produced in the case before the depositions --

20 THE COURT: Okay.

21 MR. MARQUIS: -- by them.

22 THE COURT: All right.

23 MR. MARQUIS: And then to -- for Mr. Mendenhall to  
24 say, he didn't know who signed it, I couldn't tell what  
25 those signatures were, there's no question he signed it

1 first. Nobody signed it before Mr. Mendenhall. He signed  
2 it first. He faxed it back. The signatures were -- the  
3 other signatures were made and then sent back to Mr.  
4 Mendenhall and he admits he got it the next day.

5 THE COURT: Okay.

6 MR. MARQUIS: And he had this document.

7 THE COURT: Yeah. I noted that.

8 MR. MARQUIS: So for him to say that they couldn't  
9 have brought these claims because didn't know where those -  
10 - those signatures were on there. It just does not ring  
11 true, Your Honor.

12 THE COURT: Right. I have that fact down here,  
13 since you mentioned it. December 2007, Tassinari and  
14 Mendenhall reach an agreement. That's the term sheet  
15 agreement.

16 MR. MARQUIS: Correct.

17 THE COURT: That set forth that Mendenhall would  
18 transfer property to Brownstone plaintiffs in exchange for  
19 an interest in the Brownstone plaintiffs -- they would  
20 contribute initial development costs. And it goes on from  
21 there.

22 MR. MARQUIS: That's right, Your Honor.

23 THE COURT: Right.

24 MR. MARQUIS: And that's what the other case was  
25 about. The other case was that Mr. Mendenhall never

1 transferred the property.

2 THE COURT: Right.

3 MR. MARQUIS: So, the casino was never built.

4 THE COURT: Right. Got it. Okay. Understand.

5 MR. MARQUIS: Thank you, Your Honor.

6 MR. YOUNG: Thank you, Your Honor. As the Court  
7 is well aware, res judicata and its modern branches are  
8 equitable doctrines designed to prevent -- prevent a  
9 plaintiff from suing a defendant over, and over, and over.  
10 That's certainly not the case here. That's what was  
11 envisioned and talked about in the *Five Star* case. What we  
12 have here are defendants who are admitted fraud feasers and  
13 they are now coming to this Court seeking equity. Equity  
14 does not allow a fraud feator to use this Court as an arrow  
15 in its quiver to avoid a \$7,000,000 fraud compounded with  
16 an additional \$1.2 million fraud on the case and we believe  
17 that's why Judge Israel indicated that he would be fine  
18 with another case being brought, another lawsuit.

19 The facts that you haven't mentioned here today  
20 that are salient, that must be accepted to be true  
21 regarding the development of this casino, was that Sunridge  
22 had the property. Brownstone was going to develop the  
23 property and Sunridge was going to exchange the property  
24 for an interest and Brownstone was going to bring in this  
25 investor group out of Canada. And that investor group was

1 going to infuse \$7,000,000 in cash.

2           Now, what you have when you look at the term sheet  
3 are the signatures of Mr. Tassinari on behalf of AVB. Then  
4 you -- we have testimony in the underlying in the first  
5 action from Anna Morrison and Robert Gross, who were a part  
6 of Brownstone, and they, looking at the signature of who  
7 they want you to believe is their boss, could not tell that  
8 it was his signature, that it was the same signature as he  
9 signed under AVB. In fact, both of them testified that  
10 they believed that that was some Canadian fellow who was  
11 signing on behalf of a Canadian consortium that was going  
12 to infuse \$7,000,000 into this project.

13           It wasn't until Mr. Tavinari's [sic] deposition  
14 that we learned that that wasn't the case. Nobody was in  
15 the room with Mr. Tassinari when he signed that. Mr.  
16 Mendenhall was not in the same room there. As you heard,  
17 there was a faxing that went back and forth. Mr.  
18 Mendenhall affixes his signature, then as signatures were  
19 affixed by the other parties, and then faxed back.

20           What Mr. Tassinari admitted to in his deposition  
21 was that he signed on behalf of the other investors and  
22 then he admitted to a stunning fraud, that when he signed  
23 that document he had no intention, on behalf of himself or  
24 any consortium or any other fictional group that he was  
25 representing when he affixed his signature there, of

1 infusing \$7,000,000 in cash. But yet, at the same time, he  
2 still wanted to hold Mr. Mendenhall liable for deposit on  
3 the property.

4 Now, as the Court has mentioned, timing on this is  
5 very important, that the Court understands that timing.  
6 The parties were up against a discovery deadline. It was a  
7 hard deadline. They had taken the depositions of Gross and  
8 Morrison. Both Gross and Morrison, who were testifying on  
9 behalf of the Brownstone entities, said that this signature  
10 for the other investors, some signature they didn't  
11 recognize. They assumed it was the Canadian fellow.  
12 Shortly thereafter, on July 10<sup>th</sup>, 2014, Mr. Mendenhall and  
13 Sunridge served a \$1.2 million Offer of Judgment.

14 Now, the 10 days after that, the 10 judicial days  
15 after that come into very important play here, Your Honor,  
16 because as this Court is aware, an Offer of Judgment, once  
17 made, cannot be withdrawn under any circumstances, even the  
18 recognition of fraud on the other side, within that first  
19 10 days. And that's the rule that caught everybody here.

20 Four days after the Offer of Judgment was served,  
21 Mr. Tassinari's deposition was taken. Not before, as was  
22 insinuated a moment ago. Four days after the Offer of  
23 Judgment was served, his deposition was taken. And it was  
24 then and only then that the plaintiffs -- or the defendants  
25 in the action learned of Mr. Tassinari's stunning fraud.

1           On the 21<sup>st</sup>, a week later, the defendants filed  
2 their Motion for Leave to Amend. That was never heard. It  
3 was never heard for a good reason, because before the 10  
4 days was up, the Offer of Judgment was accepted. Remember,  
5 we had no ability to withdraw that offer of judgment. We  
6 had to play that out. It was accepted. The case was dead.  
7 The judge did not hear the motion. Leave was not granted  
8 to file the new claim. No claim was served. There was no  
9 jeopardy attached, if you want to borrow a claim from  
10 criminal law. That -- those claims simply were not part of  
11 that case. The only claims that were part of that case  
12 that were served and for which due process started were the  
13 claims that were filed by the plaintiffs in that case  
14 against the defendants, my clients.

15           Now, addressing the *Five Star* elements. First,  
16 the *Five Star* case, and most of the cases looking at the  
17 *Five Star* case, deal with plaintiffs who are filing serial  
18 lawsuits. That's not the circumstance here. We were the  
19 defendants in the last action. We're now the plaintiffs in  
20 this action so it's not the case where the Court is trying  
21 to keep a plaintiff from continually filing suit, after  
22 suit, after suit until it gets what they want from a Court.  
23 That's not the case here.

24           The initial action was a fraud action. This is --  
25 excuse me, a breach of contract action. This one,

1 obviously, is a fraud action. The question of privity, if  
2 we were talking about if we had brought an action for  
3 breach of contract or breach of the covenant of good faith  
4 and fair dealing sounding either in tort or in contract  
5 action and we were standing here in front of you on that, I  
6 would agree with Mr. Marquis that there would be an  
7 argument for privity there. We're not standing before you  
8 on those causes of action. We're not standing before you  
9 on a breach action. We're standing before you on a fraud  
10 action that wasn't discovered until after the Offer of  
11 Judgment was made in the action and it was too late for us  
12 to withdraw that.

13 Corporate agents and their -- and individuals are  
14 separately liable for their fraudulent actions and, in this  
15 case, Mr. Tassinari not only duped Mr. Mendenhall but he  
16 duped his own employees in the subsidiary companies,  
17 Morrison and Gross. Both of those subsidiaries thought  
18 that that signature belonged to the Canadian fellow as  
19 well. That's how they testified at their deposition.

20 THE COURT: What was the sum and substance of the  
21 Motion to Clarify and Enforce that Judge Israel basically  
22 didn't rule on with specificity?

23 MR. YOUNG: Your Honor, that was to do with the  
24 nature of the Order itself. And if we look at the Order  
25 itself, Your Honor, it does bear some --

1 THE COURT: In other words, you're telling me it  
2 didn't have anything to do with this fraud thought?

3 MR. YOUNG: Come again?

4 THE COURT: It didn't have anything to do with a  
5 fraud that you're now alleging?

6 MR. YOUNG: No, Your Honor, because that didn't  
7 appear until after the Offer of Judgment. He was looking  
8 at the language of the Offer of Judgment and how that  
9 language was going to affect the dismissal language.

10 THE COURT: Why wouldn't you say to Judge Israel  
11 though, something along the lines of what you're saying to  
12 me, having to do with the factual chronology? In other  
13 words, the idea that on July 10<sup>th</sup> the Offer of Judgment is  
14 served and on July 14<sup>th</sup> Tassinari's deposition is taken.  
15 You now think there's fraud or you've discovered fraud  
16 based upon, as you say, some -- I forget how you said it  
17 but some surprisingly --

18 MR. YOUNG: Stunning fraud.

19 THE COURT: Stunning fraud. Right. Whatever. He  
20 makes an admission that he never intended to pay the  
21 7,000,000 bucks or whatever. Right?

22 MR. YOUNG: Right.

23 THE COURT: It's a stunning admission.

24 MR. YOUNG: It is.

25 THE COURT: Okay. That's what you said. But in



1 any event, why wouldn't you do that with Judge Israel while  
2 he has the case if that's really what you're --

3 MR. YOUNG: That was done, Your Honor. And what  
4 Judge Israel said was: You're stuck with it. The 10 days  
5 are the 10 days. You don't get to -- you don't get to lift  
6 that for any reason whatsoever. You're stuck with it. I'm  
7 stuck with it. I don't like it. Go file your suit  
8 somewhere else. So, we're stuck with this result just  
9 because of language in the Offer of Judgment statute.

10 THE COURT: Because it's interesting. I mean,  
11 it's six in one, half a dozen in the other, I guess. But  
12 if you did perfect with Judge Israel a legal attempt to  
13 have the Judge Israel case address this alleged fraud and  
14 he denied that, wouldn't that -- wouldn't the procedural  
15 avenue be something -- some kind of an activity with the  
16 Nevada Supreme Court on that issue?

17 MR. YOUNG: He didn't deny it. Our attempt to get  
18 in front of him was the Motion for Leave, which is proper.  
19 That was never heard because the case died as soon as the  
20 Offer of Judgment was accepted. And so the judge never  
21 heard the Motion for Leave.

22 THE COURT: So, I'm -- what I'm trying to figure  
23 out, Mr. Young, is this: In your view, did you or did you  
24 not perfect, in the record of the Israel case, your attempt  
25 to bring the fraud claim that you now have in our court in

1 the Israel case? Is it perfected in that record or not?

2 MR. YOUNG: I don't think it's perfected because  
3 we never had an opportunity to be heard on the Motion for  
4 Leave to Amend.

5 THE COURT: Okay.

6 MR. YOUNG: Judge certainly knew it was out there  
7 and told us we were stuck with it and to file our action in  
8 another court. So, here we are.

9 THE COURT: Okay.

10 MR. YOUNG: And I think the Court really hit the  
11 nail on the head when talking about whether this was a  
12 compulsory or permissive counterclaim in the first case  
13 because a decision could swing on that fact here as well.  
14 If we go to the second element --

15 THE COURT: That's a good point, Mr. Young,  
16 because what I'm getting at -- that's really where I'm  
17 going in my mind having to do with this little discussion  
18 about did you perfect with Judge Israel --

19 MR. YOUNG: Right.

20 THE COURT: -- the idea of: Hey, we want to bring  
21 a fraud claim here because we had a deposition four days  
22 after the Offer of Judgment and that changed things.  
23 Because if you did sort of have that in there, that's more  
24 along the lines of, I think, a compulsory counterclaim sort  
25 of a theory. I mean, the whole philosophy would be that

1 it's more appropriate to bring right then and there in the  
2 Israel case.

3 MR. YOUNG: Right. And nobody here has argued, to  
4 my knowledge, that it was a compulsory counterclaim. First  
5 of all, it wasn't a counterclaim, it was a third party  
6 claim.

7 THE COURT: Right.

8 MR. YOUNG: Right.

9 THE COURT: I know. It's the same philosophy is  
10 what I'm saying.

11 MR. YOUNG: Exactly.

12 THE COURT: Right.

13 MR. YOUNG: Exactly.

14 And I want to touch very briefly on the second  
15 element of the *Five Star* case, whether the facts that were  
16 essential are the same. The facts that were essential to  
17 the breach of contract were whether Mr. Mendenhall  
18 submitted the property to the venture as he was required to  
19 under the term sheet. That has nothing to do with whether  
20 Mr. Tassinari signed a document pledging \$7,000,000 knowing  
21 full well that he had no intention of actually giving the  
22 \$7,000,000.

23 THE COURT: Okay. Fair enough. Let me ask you  
24 this question and I hope you think it's a fair one. When  
25 Mendenhall serves the Offer of Judgment and -- on July 10<sup>th</sup>.

1 Right?

2 MR. YOUNG: Yes.

3 THE COURT: What am I supposed to do about that  
4 with this thought process? I mean, you control whether you  
5 sign off on an Offer of Judgment. There's a whole bunch of  
6 statutes that are real clear that there's penalties and  
7 exposure, there's legal exposure, a lot of it. You know,  
8 when the Legislature came out with that whole Offer of  
9 Judgment statutory scheme and then a bunch of case law that  
10 comes after that, I think it would be pretty clear to  
11 anybody involved with an Offer of Judgment decision that if  
12 we do this, I mean, it's serious. There's serious  
13 consequences, legally. I mean, if you go to trial and, you  
14 know, you beat an Offer of Judgment then you get a lot of  
15 stuff for that.

16 MR. YOUNG: Right.

17 THE COURT: You get attorney's fees, costs, and  
18 you get a lot for that. So, there's a lot of significance  
19 to these Offers of Judgment. And, so, what I'm really  
20 getting to is, on July 10<sup>th</sup> when a \$1.2 million Offer of  
21 Judgment is sent out, is it that you sort of -- I'm not  
22 saying it's a complete waiver, but it seems to me that at  
23 least an argument can be made that if you're going to do  
24 that with a deposition that you know you're going to be  
25 involved with in four days, it's almost as though you're

1 saying: You know what? We don't really care about the  
2 deposition as much as -- to Affect the timing of our Offer  
3 of Judgment. I mean, why did you do the Offer of Judgment  
4 after the deposition four days later?

5 MR. YOUNG: Well, Your Honor, I suppose that would  
6 be the case if we were standing here suing Brownstone  
7 again. That's not this case. Yeah, there is some risk to  
8 filing an Offer of Judgment and it's a risk that everybody  
9 assumes. I mean, this property was worth, at the time,  
10 about \$15,000,000. So, you know, knowing that they  
11 uncovered their own fraud, they accept the Offer of  
12 Judgment so that -- instead of the 15,000,000 that they  
13 were hoping for. That, you know, but again, we were stuck  
14 with that result not knowing --

15 THE COURT: But you had the term sheet since  
16 December of 2007.

17 MR. YOUNG: And yet their own people said that  
18 that wasn't Mr. Tavinari's [sic] signature. I don't think  
19 that fact can be stressed enough. They know him. Mr.  
20 Mendenhall doesn't know his signature. It's enough  
21 dissimilar that they thought it was this Canadian  
22 consortium. You have that testimony in front of you, Your  
23 Honor.

24 THE COURT: But fair to say, on July 10<sup>th</sup>, 2014,  
25 when Mendenhall puts the \$1.2 million Offer of Judgment

1 down, the term sheet has been available and known for five  
2 years?

3 MR. YOUNG: It has. But let's look at the  
4 language of that Offer of Judgment. That Offer of Judgment  
5 only covers, what Mr. Marquis conveniently left off at the  
6 end of his quotation there, in this action against one  
7 another. Those six words have not been spoken by Mr.  
8 Marquis for a reason because we're not here suing the same  
9 people that we were suing before. The Offer of Judgment  
10 was to those people, on those claims. The only claims that  
11 were alive were the claims that were made by the plaintiffs  
12 in that action, not these new claims. They were not ever  
13 allowed to be alive. Leave was not even considered, much  
14 less granted.

15 THE COURT: Okay.

16 MR. YOUNG: And that's the language that's then  
17 after reflected in the order of dismissal. If we look at  
18 that, the order of dismissal:

19 All claims as alleged -- and then going down to  
20 the end of that paragraph:

21 In this action against one another.

22 Now, Mr. Marquis wants to stand up and say:  
23 That's everything. Anything that could have been alleged  
24 in that action. But it's not against one another.

25 Now, let's not forget that these are third party

1 actions and the case law suggests that we have to look at  
2 Rule 13(g) in conjunction with the preclusion rules.  
3 That's the *Executive Management* case that you referred to  
4 before. When dealing with subsequent litigation between  
5 former codefendants, which again is not a perfect analogy  
6 here but closer than what we have argued by Mr. Marquis,  
7 you must consider the rules regarding cross claims in  
8 conjunction with the rules of preclusion. Rule 13(g)  
9 provides a permissive may:

10           A party may file actions against a co-party.

11           So, we could have, instead of filing that Motion  
12 for Leave to Amend, walked down to the courthouse and filed  
13 in another action and there's nothing that they could have  
14 done about it at that time.

15           THE COURT: Yeah, but 13(a) talks about compulsory  
16 counterclaims and the idea that if it arises out of the  
17 same transaction of occurrence --

18           MR. YOUNG: Right. But these facts, the facts  
19 that we rely on here today, have nothing to do with the  
20 facts that they relied on in that action. There is -- the  
21 circumstances are that they happened at the same time when  
22 both parties are signing the term sheet.

23           THE COURT: Yeah.

24           MR. YOUNG: But one is whether Mr. Mendenhall  
25 refused to submit the property. The other one is whether

1 someone committed a fraud at that time and then later  
2 developed that fraud during the deposition. So, yeah there  
3 is an interplay between 13(a) and 13(g), but 13(a) is only  
4 if we're talking about the same parties on the same sets of  
5 facts. That's not the case here. We have --

6 THE COURT: All right. Mr. Young, what do you  
7 make of Mr. Marquis' argument that there's evidence in the  
8 record? I mean, because the analysis for me, and it's  
9 never any fun to have to figure out what some other judge  
10 did and why.

11 MR. YOUNG: Right.

12 THE COURT: But, I mean, that's clearly part of  
13 the analysis here is what happened in the Israel case and  
14 is it distinguishable somehow meaningfully in this whole  
15 claim preclusion area, as compared to our case. Of course.  
16 That's the whole -- that's the analysis. But how do you  
17 then reconcile, again, Mr. Marquis' argument that: Well,  
18 we have evidence. It's a piece of paper. Probably more  
19 than one sheet. Your Motion to Amend that was brought, how  
20 do you reconcile that because that -- it's a good argument,  
21 I think, that Mr. Marquis makes. In other words, he says:  
22 Look, Judge, to me, he says there's evidence. You know,  
23 it's sort of the smoking gun evidence that -- of a sort of  
24 a compulsory claim or counterclaim, or at least philosophy,  
25 and it's evidenced by your own Motion to Amend which is



1 mirroring the claim you have here now. How do you  
2 reconcile that?

3 MR. YOUNG: Well, that might be a smoking gun if  
4 his own clients hadn't testified at their depositions that  
5 they didn't recognize that signature as being Mr.  
6 Tavinari's [sic]. How is that a smoking gun if his own  
7 people don't recognize it for what he claims it to be and  
8 what he ultimately told us it was during his deposition?

9 THE COURT: Well, I think the answer to that, and  
10 Mr. Marquis could argue it, but, I mean, what he might say  
11 to me is that Motion to Amend is evidence that you knew  
12 everything that you needed to know in order to bring it in  
13 the Israel case.

14 MR. YOUNG: Well, he did know, as of the 14<sup>th</sup>. And  
15 if we look at Rule 13(e), Your Honor, 13(e) allows for the  
16 filing, even -- even considering 13(a), 13(e) is a trump of  
17 13(a) and it says if you have something that matures after  
18 the action files, then you can file even in a non-  
19 permissive fashion under 13(a). You could under 13(e).

20 THE COURT: Okay.

21 MR. YOUNG: So, I don't think you're completely  
22 lost. Again, what we're talking about here is fundamental  
23 fairness. Right? That's what these rules are trying to  
24 get toward and that's what rule preclusion, claim  
25 preclusion, issue preclusion is trying to get at.

1 THE COURT: Yeah.

2 MR. YOUNG: And here is a party that has admitted  
3 to be a fraud feisor. And he's seeking equity in front of  
4 you. How can the Court do anything other than deny that?

5 THE COURT: But you, I mean -- this is a bit of a  
6 devil's advocate sort of statement and I'll try to make it  
7 into a question, but I mean, I'll just tell you what's  
8 running through my mind in part, in part. I mean, clear to  
9 say, and correct me if I'm wrong, that as of July 14<sup>th</sup>, it's  
10 clear from your perspective, in any event, in the light  
11 most favorable to you, that Mr. Tassinari here committed  
12 fraud. Right?

13 MR. YOUNG: Yes.

14 THE COURT: You still have at least a month before  
15 Judge Israel is doing something to dispose of the case.

16 MR. YOUNG: That's not true.

17 THE COURT: Go ahead.

18 MR. YOUNG: What we have is 10 days from the 10<sup>th</sup>  
19 until it's disposed of because it's disposed of once the  
20 offer is accepted. And before the offer is accepted --

21 THE COURT: But as far as the District Court  
22 itself, the Judge Israel department, I don't know what  
23 number it is. I've never been good with that. But as far  
24 as him actually doing something to close the case, that  
25 doesn't happen for another month or so after the 14<sup>th</sup>. Fair

1 enough?

2 MR. YOUNG: Fair enough. And --

3 THE COURT: So, why not, again, do something with  
4 that judge to get him to do what you're asking me to do now  
5 in this lawsuit? Safe to say --

6 MR. YOUNG: We attempted. We asked for the Motion  
7 for Leave to be heard on an order shortening time.

8 THE COURT: But you withdrew -- you withdrew it.

9 MR. YOUNG: What's wrong?

10 MS. RUTAR MULLINS: No. It was just removed. It  
11 was just removed once the settlement was done.

12 MR. YOUNG: I believe so.

13 THE COURT: What happened to not have it heard?

14 MR. YOUNG: The case was dead once the offer was  
15 accepted.

16 MS. RUTAR MULLINS: They accepted the Offer of  
17 Judgment.

18 THE COURT: Okay. But it wasn't heard, in other  
19 words?

20 MS. RUTAR MULLINS: Right. It was never heard.

21 MR. YOUNG: Right. Never heard.

22 MS. RUTAR MULLINS: There was no Opposition. The  
23 time to file an Opposition hasn't even run by the time they  
24 accepted the offer.

25 MR. YOUNG: It was --

1 THE COURT: Okay.

2 MR. YOUNG: They accepted the offer three days  
3 after the motion was filed.

4 THE COURT: Yeah.

5 MR. YOUNG: So, everything stopped.

6 THE COURT: So, isn't it true that as a law of the  
7 case that this idea of amending to include fraud is  
8 encompassed then in everything that happened with Israel?

9 MR. YOUNG: No.

10 THE COURT: Seems like it is to me.

11 MR. YOUNG: How could you say that, Your Honor,  
12 when leave wasn't even considered, much less granted?

13 THE COURT: It was a pleading in the case. I  
14 mean, you could -- I'm just saying, I told you this was  
15 going to be a bit of a devil's advocate position. But if  
16 you believe in the fraud so much that you're filing a  
17 Motion to Amend and if you see a judge take any action to  
18 finalize and dismiss the case, why wouldn't you say:  
19 Judge, before you do that, you know, this is what we need  
20 to tell you. We know about this fraud from July 14<sup>th</sup>. We  
21 have a Motion to Amend. Here it is. Give us our day on  
22 this.

23 MR. YOUNG: And that's what Judge Israel was  
24 addressing when he was talking about what language was  
25 going to go in the Order, was -- the language in the Order

1 says: Between these parties. As to this other thing that  
2 you want to do, go ahead and file that elsewhere.

3 THE COURT: Yeah.

4 MR. YOUNG: And I would suggest, Your Honor, if  
5 what you're suggesting is true, then the Court is a party  
6 to Mr. Tassinari's fraud. And that's not a result that any  
7 Court should want. I'll --

8 THE COURT: Which Court? Israel?

9 MR. YOUNG: This courthouse. I mean, if you're  
10 saying that we're now foreclosed from bringing this action  
11 because we were not allowed to seek leave in the prior  
12 action because of the timing of the Offer of Judgment and  
13 now we come here and we can't -- couldn't hear it here, the  
14 court system itself would be a party to Mr. Tassinari's  
15 fraud, in my view.

16 THE COURT: Well, that's not a good argument.

17 MR. YOUNG: Well, it --

18 THE COURT: I mean, that's not a good argument.

19 MR. YOUNG: We're here seeking equity, Your Honor.  
20 They're seeking equity.

21 THE COURT: Yeah. But that's not a good argument.  
22 The Court has to handle the legal aspect of what's been  
23 brought. That doesn't mean the Court then gets complicit  
24 in a fraud.

25 MR. YOUNG: No. The point is probably overblown,

1 Your Honor, but the point is that we have to seek equity at  
2 every turn.

3 THE COURT: I understand.

4 MR. YOUNG: And there's no equity --

5 THE COURT: Understood. But the Court doesn't  
6 become a party in a fraud by doing its best to handle the  
7 legal aspects of claim preclusion or, you know, what -- and  
8 that's my perspective on it from what I'm doing here. I  
9 mean, just to let you know.

10 MR. YOUNG: No. I understand that.

11 THE COURT: Okay. All right. Anything else you  
12 want to add?

13 MR. YOUNG: No, Your Honor.

14 THE COURT: It's your motion. You get the last  
15 word.

16 MR. MARQUIS: Thank you, Your Honor. A couple of  
17 things, Your Honor. First, they argue under Rule 13 that  
18 this isn't arising out of the same transaction. I don't  
19 think there's any question it is. It's the same contract.  
20 It's parties to the same contract.

21 THE COURT: Yeah.

22 MR. MARQUIS: Everybody that they've sued in this  
23 case also signed, was a party to that same contract. For  
24 them to say it's not the same transaction in occurrence,  
25 it's -- it just doesn't hold water, Your Honor. Absolutely

1 it was. Okay.

2 For them to say: Oh, it's a different claim  
3 because this is a fraud claim. That was a breach of  
4 contract claim. Maybe if we sued them for breach of  
5 contract maybe they'd be right. Well, that doesn't work  
6 either. In the *Five Star* case itself, they argue that:

7 Claim preclusion shouldn't apply because a second  
8 suit included an additional claim for breach of  
9 contract.

10 And this *Five Star* Court ruled that claim was  
11 erroneous. It's:

12 A claim preclude applies to prevent a second suit  
13 based on all grounds of recovery that were or could  
14 have been brought in the first suit.

15 They could have sued our clients back, the  
16 Brownstone plaintiffs in the first case, they could have  
17 sued them for breach of contract. They could have sued  
18 them for fraud. They could have sued American Vantage, who  
19 signed the contract, for breach of contract or fraud. They  
20 could have signed Mr. Tassinari who signed the contract for  
21 breach of contract or fraud. They could have sued all  
22 those. It's absolutely the same transaction in occurrence.

23 THE COURT: That --

24 MR. MARQUIS: The fact that it's another theory,  
25 that doesn't matter for --

1 THE COURT: Okay. Conceivably, I get that.

2 MR. MARQUIS: Yeah.

3 THE COURT: Let me ask you a question though.

4 MR. MARQUIS: Sure.

5 THE COURT: Do you agree with Mr. Young's comments  
6 about the full force and effect of the deposition of your  
7 client on July 14<sup>th</sup>?

8 MR. MARQUIS: No. No. That's -- that was, you  
9 know, he's taking bits and pieces out of the deposition.  
10 He wasn't there. It's just bits of the transcript. The  
11 fact was -- and what he's not telling, Your Honor, is there  
12 was never a question that there was a Canadian investor.  
13 The Canadian investor had already invested substantial  
14 amounts of money, millions of dollars in the form of loans,  
15 into this transaction and that was all -- all those  
16 documents were produced in that case. It wasn't like some  
17 mystery. He had already put in millions of dollars in the  
18 form of loans and was prepared to put in additional funds  
19 and we never got to the point of taking his deposition but  
20 he was absolutely ready to go.

21 The only reason he didn't put any more money in  
22 was because what did he need for the thing to go forward?  
23 He needed the dirt. He wanted to see Mr. Mendenhall and  
24 Sunridge put in the land and then he put in some more  
25 money.



1           So, yeah. Their whole spin that this is some  
2 stunning fraud, I mean, you know, I understand. You've got  
3 to argue and you're doing what you're going to do, but no.  
4 We don't accept or agree with that at all.

5           And the whole -- their entire case, their entire  
6 theory that this was some fraud and some trick all boils  
7 down to these contracts, Your Honor. And when they argue  
8 that at the depositions of Mr. Gross and Ms. Morrison, they  
9 couldn't identify the signatures, remember the signatures  
10 that they presented in front of them were the signatures on  
11 Brownstone 00271 which are very unclear copies. Yeah. If  
12 you look at those, I don't know if anybody can identify  
13 those signatures. Maybe Mr. Tassinari can because they're  
14 his, but they are very fuzzy signatures. These are the  
15 ones they elected to stick in front of those witnesses at  
16 the deposition, but they had the clean signatures the whole  
17 time. Since December 2007, Mr. Mendenhall had this and for  
18 them to say that this was a fraud because I didn't -- I  
19 looked at their bad copy of it instead of the one that I  
20 admit that I had that clearly shows his signature because  
21 their whole fraud claim boils down to: We didn't -- not  
22 recognize those two signatures. But they had the document  
23 since 2007, Your Honor.

24           THE COURT: Okay. All right. Let me tell you all  
25 that typically, I mean statistically really, probably 95

1 percent of the time I like to tell people what the decision  
2 is when they come to court. However, in this situation I  
3 do want to look a little bit more at what Judge Israel did  
4 and so I'm going to do that. That means I'm going to give  
5 you a written opinion.

6 MR. MARQUIS: Very good. Thank you, Your Honor.

7 MS. RUTAR MULLINS: Thank you.

8

9 PROCEEDING CONCLUDED AT 10:14 A.M.

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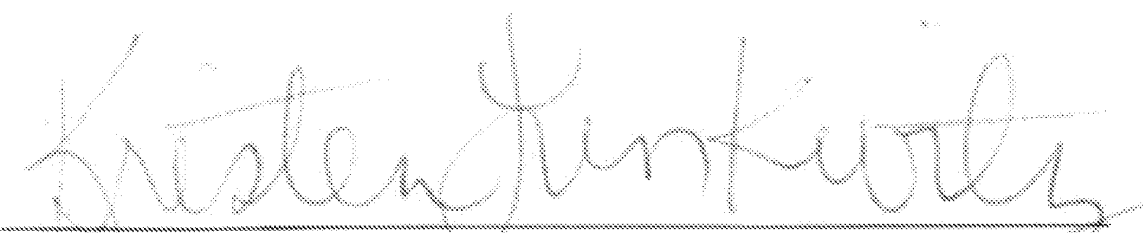
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**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

A handwritten signature in cursive script, reading "Kristen Lunkwitz", written over a horizontal line.

KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER

## REGISTER OF ACTIONS

CASE NO. A-14-708281-C

Robert Mendenhall, Plaintiff(s) vs. Ronald Tassinari, Defendant  
(s)

§  
§  
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§

Case Type: **Other Tort**  
Date Filed: **10/08/2014**  
Location: **Department 32**  
Cross-Reference Case Number: **A708281**  
Supreme Court No.: **68053**

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### PARTY INFORMATION

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#### Lead Attorneys

Defendant Tassinari, Ronald

**James John Lee**  
*Retained*  
702-382-4044(W)

Plaintiff Mendenhall, Robert L

**Gwen Rutar Mullins**  
*Retained*  
702-257-1483(W)

Plaintiff Sunridge Corporation

**Gwen Rutar Mullins**  
*Retained*  
702-257-1483(W)

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### EVENTS & ORDERS OF THE COURT

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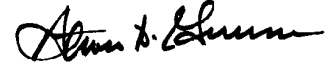
03/30/2015 **Minute Order** (3:00 AM) (Judicial Officer Bare, Rob)

#### Minutes

03/30/2015 3:00 AM

- DECISION: Motion to Dismiss This matter came before the Court on March 17, 2015 for hearing on Defendants Motion to Dismiss Re: Doctrine of Claim Preclusion. Counsel presented their case and Court took matter under advisement. After carefully considering the papers submitted and hearing arguments, Court issued its Decision this 30th day of March, 2015. COURT ORDERED, Motion to Dismiss GRANTED. Counsel for Tassinari and American Vantage Brownstone, LLC is directed to submit a proposed Order consistent with the foregoing which sets forth the underpinnings of the same in accordance herewith and with counsel s briefing and argument and submit to opposing counsel for review and signification of approval/disapproval. CLERK'S NOTE: A copy of this Minute Order to be placed in the attorney folder(s) of: Harry P. Marquis, Esq., and Gwen P. Mullins (Howard & Howard).

[Return to Register of Actions](#)



CLERK OF THE COURT

NEO

**JAMES J. LEE, ESQ.**

Nevada Bar No. 01909

Legal Offices of James J Lee

2620 Regatta Drive, Suite 102

Las Vegas, Nevada 89128

Telephone (702) 664-6545

Email: [james@leelawonline.com](mailto:james@leelawonline.com)

**HARRY PAUL MARQUIS, ESQ.**

Nevada Bar No. 001252

HARRY PAUL MARQUIS, CHTD.

400 South Fourth Street, Third Floor

Las Vegas, Nevada, 89101

Telephone (702) 382-6700

Email: [harry@marquislaw.net](mailto:harry@marquislaw.net)

*Attorneys for Defendants Ronald Tassinari*

*And American Vantage Brownstone, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ROBERT L. MENDENHALL, an individual, )  
SUNRIDGE CORPORATION, a Nevada )  
Corporation, )

Plaintiffs, )

v. )

RONALD TASSINARI, an individual, )  
AMERICAN VANTAGE BROWNSTONE, )  
LLC, a Nevada limited liability company, )  
DOES 1 through 5, inclusive and ROE )  
CORPORATIONS 1 through 5, inclusive, )

Defendants. )

Case no.: A-14-708281-C

Dept. no.: XXXII

**NOTICE OF ENTRY OF  
FINDINGS OF FACT,  
CONCLUSIONS OF  
LAW, AND ORDER GRANTING  
DEFENDANTS' MOTION  
TO DISMISS**

TO: GWEN RUTAR MULLINS, ESQ., HOWARD & HOWARD, PLLC, attorney for  
Plaintiffs.

YOU WILL PLEASE TAKE NOTICE that on the 7<sup>TH</sup> day of May, 2015, the above-entitled Court entered a Findings of Fact, Conclusions of Law, and Order Granting Defendants' Motion to Dismiss in the above-entitled action. A true copy of the Findings of Fact, Conclusions of Law, and Order Granting Defendants' Motion to Dismiss is attached hereto as Exhibit "1" and incorporated herein by this reference.

DATED this 8<sup>th</sup> day of May, 2015.

Respectfully submitted,

**HARRY PAUL MARQUIS, CHTD.**

HARRY PAUL MARQUIS, ESQ.  
Nevada Bar No. 1252  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone (702) 382-6700  
*Attorneys for Defendants Ronald Tassinari  
And American Vantage Brownstone, LLC*

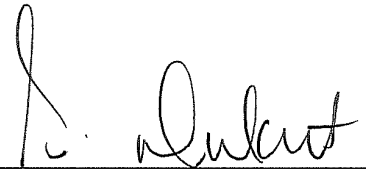
In Association with:

**JAMES J. LEE, ESQ.**  
Nevada Bar No. 01909  
Legal Offices of James J Lee  
2620 Regatta Drive, Suite 102  
Las Vegas, Nevada 89128  
Telephone (702) 664-6545  
Email: [james@leelawonline.com](mailto:james@leelawonline.com)  
*Attorney for Defendants*

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 8<sup>th</sup> day of May, 2015, I served a true copy of the above and  
3 foregoing *Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting*  
4 *Defendant's Motion to Dismiss* herein electronically via the Court's ECF system upon all parties  
5 listed on the electronic service list, as follows:

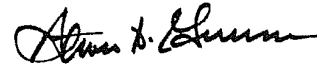
6 Gwen Rutar Mullins, Esq.  
7 Wade B. Gochnour, Esq.  
8 **HOWARD & HOWARD ATTORNEYS PLLC**  
9 3800 Howard Hughes Parkway, Suite 1000  
10 Las Vegas, Nevada 89169  
11 Telephone: (702) 257-1483  
12 Facsimile: (702) 567-1568  
13 Email: [grm@h2law.com](mailto:grm@h2law.com)  
14 Email: [wbg@h2law.com](mailto:wbg@h2law.com)  
15 *Attorneys for Plaintiffs*



An employee of  
**HARRY PAUL MARQUIS, CHTD.**

## **Exhibit “1”**





CLERK OF THE COURT

1 **ORDER**

2 **JAMES J. LEE, ESQ.**

3 Nevada Bar No. 01909

4 Legal Offices of James J Lee

5 2620 Regatta Drive, Suite 102

6 Las Vegas, Nevada 89128

7 Telephone (702) 664-6545

8 Email: [james@leelawonline.com](mailto:james@leelawonline.com)

9 **HARRY PAUL MARQUIS, ESQ.**

10 Nevada Bar No. 001252

11 **HARRY PAUL MARQUIS, CHTD.**

12 400 South Fourth Street, Third Floor

13 Las Vegas, Nevada, 89101

14 Telephone (702) 382-6700

15 Email: [harry@marquislaw.net](mailto:harry@marquislaw.net)

16 *Attorneys for Defendants Ronald Tassinari*

17 *And American Vantage Brownstone, LLC*

18 **DISTRICT COURT**  
19 **CLARK COUNTY, NEVADA**

20 ROBERT L. MENDENHALL, an individual, )  
21 SUNRIDGE CORPORATION, a Nevada )  
22 Corporation, )

23 Plaintiffs, )

24 v. )

25 RONALD TASSINARI, an individual, )  
26 AMERICAN VANTAGE BROWNSTONE, )  
27 LLC, a Nevada limited liability company, )  
28 DOES 1 through 5, inclusive and ROE )  
CORPORATIONS 1 through 5, inclusive, )

Defendants. )

Case no.: A-14-708281-C

Dept. no.: XXXII

**FINDINGS OF FACT,  
CONCLUSIONS OF  
LAW, AND ORDER GRANTING  
DEFENDANTS' MOTION  
TO DISMISS**

25 The Motion to Dismiss filed on behalf of Defendants Ronald Tassinari and American  
26 Vantage Brownstone, LLC, having come on for hearing on March 17, 2015; with Harry Paul  
27 Marquis, Esq., of Harry Paul Marquis, Chartered, appearing on behalf of Defendants Ronald  
28 ORDER GRANTING MOTION TO DISMISS - 1

1 Tassinari and American Vantage Brownstone, LLC; with Gwen Rutar Mullins, Esq. and Jay  
2 Young, Esq., of Howard & Howard Attorneys, PLLC, appearing on behalf of Plaintiffs, Robert  
3 L. Mendenhall ("Mendenhall") and Sunridge Corporation ("Sunridge"); the Court, having  
4 considered the Motion, the Opposition and Reply thereto, and oral arguments by counsel, and  
5 good cause appearing therefor, the Court rules as follows:  
6

7 1. THE COURT HEREBY FINDS AND CONCLUDES that Defendants have  
8 satisfied the three-part test for determining whether claim preclusion applies which the Nevada  
9 Supreme Court established in *Five Star Capital Corp v Ruby*, 124 Nev. 1048, 194 P3d 709, 713  
10 (2008);  
11

12 2. THE COURT HEREBY FINDS AND CONCLUDES that Defendant American  
13 Vantage Brownstone LLC is the owner of both Brownstone Gold Town, LLC, and Brownstone  
14 Gold Town CV, LLC, (collectively the "First Case Plaintiffs") the Plaintiffs in *Brownstone Gold*  
15 *Town LLC v. Robert Mendenhall et al*, A-11-653822-C (the "First Case") and that Defendant  
16 American Vantage Brownstone LLC signed the Term Sheet which was attached as Exhibit 1 to  
17 the Complaint herein (the "Term Sheet");  
18

19 3. THE COURT HEREBY FINDS AND CONCLUDES that Defendant Ronald  
20 Tassinari signed the Term Sheet in his capacity as chairman of Defendant American Vantage  
21 Brownstone LLC;  
22

23 4. THE COURT HEREBY FURTHER FINDS AND CONCLUDES that Defendant  
24 Ronald Tassinari managed, led, and acted on behalf of the Brownstone Plaintiffs and the interests  
25 and motivations of Defendant Ronald Tassinari and the Brownstone Plaintiffs have sufficient  
26 commonality and alignment that privity exists;  
27  
28

ORDER GRANTING MOTION TO DISMISS - 2

1           5.     THE COURT HEREBY FURTHER FINDS AND CONCLUDES that  
2 Defendant American Vantage Brownstone LLC managed, led, owned, and acted on behalf of the  
3 Brownstone Plaintiffs and the interests and motivations of Defendant American Vantage  
4 Brownstone LLC and the Brownstone Plaintiffs have sufficient commonality and alignment that  
5 privity exists;  
6

7           6.     THE COURT HEREBY FURTHER FINDS AND CONCLUDES that  
8 Defendants Ronald Tassinari and American Vantage Brownstone, LLC are both privies with  
9 Brownstone Gold Town, LLC and Brownstone Gold Town CV, LLC, the Plaintiffs in the First  
10 Case;  
11

12           7.     THE COURT HEREBY FURTHER FINDS AND CONCLUDES that the first  
13 part of the *Five Star Capital Corp v Ruby, Supra*, test that the parties or their privies are the  
14 same has been satisfied;  
15

16           8.     THE COURT HEREBY FURTHER FINDS AND CONCLUDES that the Order  
17 of Dismissal of Action with Prejudice (the "Order of Dismissal") filed in the First Case on  
18 August 29, 2014 is a final valid judgment;  
19

20           9.     THE COURT HEREBY FURTHER FINDS AND CONCLUDES that the  
21 second part of the *Five Star Capital Corp v Ruby, Supra*, test that the final judgment is valid has  
22 been satisfied;  
23

24           10.    THE COURT HEREBY FURTHER FINDS AND CONCLUDES that on July  
25 21, 2014, the Plaintiffs herein, Mendenhall and Sunridge, filed a Motion for Leave to Amend in  
26 the First Case seeking to assert a counterclaim and a third-party complaint against Defendants  
27 Ronald Tassinari and American Vantage Brownstone, LLC containing virtually the same  
28 allegations as those set forth in the current Complaint filed herein on October 8, 2014;

ORDER GRANTING MOTION TO DISMISS - 3

1 11. THE COURT HEREBY FURTHER FINDS AND CONCLUDES that claims  
2 asserted in this action through the Complaint filed herein on October 8, 2014 are based on the  
3 same claims or any part of them that were or could have been brought in the First Case;

4  
5 12. THE COURT HEREBY FURTHER FINDS AND CONCLUDES that the third  
6 and final part of the *Five Star Capital Corp v Ruby, Supra*, test that the subsequent action is  
7 based on the same claims or any part of them that were or could have been brought in the first  
8 case has been satisfied;

9 13. THE COURT HEREBY FURTHER FINDS AND CONCLUDES that Plaintiffs  
10 claims herein are barred by the doctrine of claim preclusion;

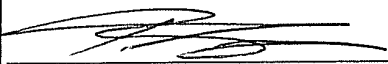
11  
12 14. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's  
13 Motion to Dismiss is hereby GRANTED in its entirety;

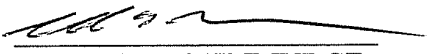
14 15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this action is  
15 hereby dismissed, with prejudice as to all parties and all claims.

16 DATED this 28 day of April, 2015.


17  
18  
19 Respectfully Submitted By:

20  
21 **HARRY PAUL MARQUIS, CHARTERED**

22  
23   
24 HARRY PAUL MARQUIS, ESQ.  
25 Nevada Bar No. 1252  
26 400 South Fourth Street, Third Floor  
27 Las Vegas, Nevada 89101  
28 Tel. No.: (702) 382-6700  
Fax No.: (702) 384-0715  
Email: [harry@marquislaw.net](mailto:harry@marquislaw.net)  
*Attorney for Defendants*

  
DISTRICT COURT JUDGE  
ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32  
Approved as to Form Only:

**HOWARD & HOWARD ATTORNEYS**

23   
24 GWEN RUTAR MULLINS, ESQ.  
25 Nevada Bar No. 003146  
26 Jay A. Young, Esq.  
27 Nevada Bar No. 005562  
28 3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, Nevada 89169  
Tel. No.: (702) 257-1483  
*Attorney for Plaintiffs*

1 In Association with:

2 **JAMES J. LEE, ESQ.**

3 Nevada Bar No. 01909

4 Legal Offices of James J Lee

5 2620 Regatta Drive, Suite 102

6 Las Vegas, Nevada 89128

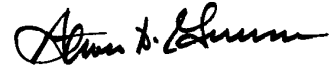
7 Telephone (702) 664-6545

8 Email: [james@leelawonline.com](mailto:james@leelawonline.com)

9 *Attorney for Defendants*

10  
11 4846-9299-6643, v. 4

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28 ORDER GRANTING MOTION TO DISMISS - 5



CLERK OF THE COURT

1 **NOAS**

2 Gwen Rutar Mullins, Esq.

3 Nevada Bar No. 3146

4 Wade B. Gochmour, Esq.

5 Nevada Bar No. 6314

6 **HOWARD & HOWARD ATTORNEYS PLLC**

7 3800 Howard Hughes Parkway, Suite 1000

8 Las Vegas, Nevada 89169

9 Phone: 702.257.1483

10 Fax: 702.567.1568

11 E-Mail: grm@h2law.com, wbg@h2law.com

12 Attorneys for Plaintiffs Robert L. Mendenhall

13 and Sunridge Corporation

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 ROBERT L. MENDENHALL, an individual,  
17 SUNRIDGE CORPORATION, a Nevada  
18 corporation,

19 Plaintiffs,

20 v.

21 RONALD TASSINARI, an individual,  
22 AMERICAN VANTAGE BROWNSTONE,  
23 LLC, a Nevada limited liability company,  
24 DOES 1 through 5, inclusive and ROE  
25 CORPORATIONS 1 through 5, inclusive,

26 Defendants.

Case No. A-14-708281-C

Dept. No. XXXII

**PLAINTIFFS' NOTICE OF APPEAL**

27 Notice is hereby given that Plaintiffs, ROBERT L. MENDENHALL and SUNRIDGE  
28 CORPORATION, by and through their counsel of record, the law firm of Howard & Howard  
Attorneys PLLC, hereby appeal to the Supreme Court of Nevada from the Findings of Fact,  
Conclusions of Law, and Order Granting Defendants' Motion to Dismiss filed and entered on  
May 7, 2015.

///

///

///

///

This Appeal is taken on all matters of law and fact relating to the aforementioned Findings of Fact, Conclusions of Law and Order Granting Defendants' Motion to Dismiss.

DATED this 19<sup>th</sup> day of May 2015.

HOWARD & HOWARD ATTORNEYS PLLC

/s/ Gwen Rutar Mullins

GWEN RUTAR MULLINS, ESQ.

Nevada Bar No. 3146

WADE B. GOCHNOUR, ESQ.

Nevada Bar No. 6314

3800 Howard Hughes Parkway, Ste. 1000

Las Vegas, Nevada 89169

Attorneys for Plaintiffs Robert L. Mendenhall  
and Sunridge Corporation

**CERTIFICATE OF E-SERVICE**

I do hereby certify that on the 19<sup>th</sup> day of May 2015, I served a copy of the **PLAINTIFFS' NOTICE OF APPEAL** on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter on the following:

James J. Lee, Esq. – james@leelawonline.com

Harry Marquis, Esq. - harry@marquislaw.net

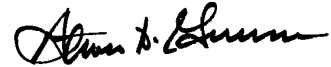
and by depositing a true and correct copy of the same for mailing at Las Vegas, Nevada, first-class postage fully prepaid, addressed to:

Harry Paul Marquis, Esq.  
HARRY PAUL MARQUIS CHARTERED  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Attorneys for Defendants Ronald Tassinari  
and American Vantage Brownstone, LLC

James J. Lee, Esq.  
LAW OFFICE OF JAMES J. LEE  
2620 Regatta Drive, Ste. 102  
Las Vegas, Nevada 89128  
Attorneys for Defendants Ronald Tassinari  
and American Vantage Brownstone, LLC

/s/ Kellie Piet

An employee of Howard & Howard Attorneys PLLC



CLERK OF THE COURT

1 **ASTA**

2 Gwen Rutar Mullins, Esq.

3 Nevada Bar No. 3146

4 Wade B. Gochmour, Esq.

5 Nevada Bar No. 6314

6 **HOWARD & HOWARD ATTORNEYS PLLC**

7 3800 Howard Hughes Parkway, Suite 1000

8 Las Vegas, Nevada 89169

9 Phone: 702.257.1483

10 Fax: 702.567.1568

11 E-Mail: grm@h2law.com, wbg@h2law.com

12 Attorneys for Plaintiffs Robert L. Mendenhall

13 and Sunridge Corporation

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 ROBERT L. MENDENHALL, an individual,  
17 SUNRIDGE CORPORATION, a Nevada  
18 corporation,

19 Plaintiffs,

20 v.

21 RONALD TASSINARI, an individual,  
22 AMERICAN VANTAGE BROWNSTONE,  
23 LLC, a Nevada limited liability company,  
24 DOES 1 through 5, inclusive and ROE  
25 CORPORATIONS 1 through 5, inclusive,

26 Defendants.

Case No. A-14-708281-C

Dept. No. XXXII

**PLAINTIFFS' CASE APPEAL  
STATEMENT**

- 27 1. Name of appellants filing this case appeal statement:  
Robert L. Mendenhall, Sunridge Corporation
- 28 2. Identify the judge issuing the decision, judgment or order appeal from:  
Eighth Judicial District Court Judge Rob Bare.
- 29 3. Identify each appellant and the name and address of counsel for each appellant:  
Appellants: Robert L. Mendenhall, Sunridge Corporation

30 ///

31 ///

32 ///

33 ///



Counsel for Appellants:

Gwen Rutar Mullins, Esq.  
Wade B. Gochmour, Esq.  
Howard & Howard Attorneys PLLC  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, Nevada 89169  
702-257-1483

4. Identify each respondent and the name and address of appeal counsel, if known, for each respondent:

Respondents: Ronald Tassinari, American Vantage Brownstone, LLC

Counsel for Respondent:

Harry Paul Marquis, Esq.  
Harry Paul Marquis Chartered  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101

James J. Lee, Esq.  
LAW OFFICE OF JAMES J. LEE  
2620 Regatta Drive, Ste. 102  
Las Vegas, Nevada 89128

5. All counsel identified are licensed to practice law in the State of Nevada.
6. Appellants were represented by retained counsel in the District Court.
7. Appellants will be represented by retained counsel in this Appeal.
8. Appellants have not been granted leave to proceed in forma pauperis.
9. Date this matter commenced in the District Court: October 8, 2014.
10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This appeal results from the District Court's grant of Respondents' Motion to Dismiss Appellants' Complaint for fraud in the inducement; fraud; negligent misrepresentation; and fraudulent omission. Respondents, who were not parties to a prior suit, claimed, and the district court agreed by the granting of the Motion to Dismiss, that the tort claims asserted in this action were barred under the doctrine of claim preclusion.

11. This appeal has not previously been the subject of an appeal to original writ proceeding in the Supreme Court.
12. This appeal does not involve child custody or visitation.
13. Appellant is unsure at this time whether this appeal involves the possibility of settlement.

DATED this 19<sup>th</sup> day of May 2015.

**HOWARD & HOWARD ATTORNEYS PLLC**

/s/ Gwen Rutar Mullins

GWEN RUTAR MULLINS, ESQ.

Nevada Bar No. 3146

WADE B. GOCHNOUR, ESQ.

Nevada Bar No. 6314

3800 Howard Hughes Parkway, Ste. 1000

Las Vegas, Nevada 89169

Attorneys for Plaintiffs

**CERTIFICATE OF E-SERVICE**

I do hereby certify that on the 19<sup>th</sup> day of May 2015, I served a copy of the **PLAINTIFFS' CASE APPEAL STATEMENT** on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter on the following:

James J. Lee, Esq. – james@leelawonline.com

Harry Marquis, Esq. - harry@marquislaw.net

and by depositing a true and correct copy of the same for mailing at Las Vegas, Nevada, first-class postage fully prepaid, addressed to:

Harry Paul Marquis, Esq.  
HARRY PAUL MARQUIS CHARTERED  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Attorneys for Defendants Ronald Tassinari  
and American Vantage Brownstone, LLC

James J. Lee, Esq.  
LAW OFFICE OF JAMES J. LEE  
2620 Regatta Drive, Ste. 102  
Las Vegas, Nevada 89128  
Attorneys for Defendants Ronald Tassinari  
and American Vantage Brownstone, LLC

/s/ Kellie Piet

An employee of Howard & Howard Attorneys PLLC

## REGISTER OF ACTIONS

CASE No. A-14-708281-C

Robert Mendenhall, Plaintiff(s) vs. Ronald Tassinari, Defendant(s)

§  
§  
§  
§  
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§  
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§  
§

Case Type: **Other Tort**  
Date Filed: **10/08/2014**  
Location: **Department 32**  
Cross-Reference Case Number: **A708281**  
Supreme Court No.: **68053**

### PARTY INFORMATION

		Lead Attorneys
Defendant	Tassinari, Ronald	James John Lee <i>Retained</i> 702-382-4044(W)
Plaintiff	Mendenhall, Robert L	Gwen Rutar Mullins <i>Retained</i> 702-257-1483(W)
Plaintiff	Sunridge Corporation	Gwen Rutar Mullins <i>Retained</i> 702-257-1483(W)

### EVENTS & ORDERS OF THE COURT

<b>DISPOSITIONS</b>	
05/07/2015	<b>Order of Dismissal With Prejudice</b> (Judicial Officer: Bare, Rob) Debtors: Robert L Mendenhall (Plaintiff), Sunridge Corporation (Plaintiff) Creditors: Ronald Tassinari (Defendant), American Vantage Brownstone LLC (Defendant) Judgment: 05/07/2015, Docketed: 05/14/2015
<b>OTHER EVENTS AND HEARINGS</b>	
10/08/2014	<b>Case Opened</b>
10/08/2014	<b>Complaint</b> <i>Complaint</i>
12/02/2014	<b>Affidavit of Due Diligence</b> <i>Affidavit of Due Diligence re: American Vantage Brownstone, LLC, a Nevada Limited Liability Company</i>
12/02/2014	<b>Affidavit of Due Diligence</b> <i>Affidavit of Due Diligence re: Ronald Tassinari</i>
12/03/2014	<b>Ex Parte Application</b> <i>Ex Parte Application for an Order to Allow Service by Publication of Summons as to Defendant Ronald Tassinari</i>
12/10/2014	<b>Affidavit of Service</b> <i>Affidavit of Service</i>
12/10/2014	<b>Order for Publication</b> <i>Order for Publication of Summons as to Defendant Ronald Tassinari</i>
12/11/2014	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order for Publication of Summons as to Defendant Ronald Tassinari</i>
01/13/2015	<b>Affidavit of Publication</b> <i>Affidavit of Publication</i>
01/23/2015	<b>Motion to Dismiss</b> <i>Defendant's Motion to Dismiss</i>
01/23/2015	<b>Initial Appearance Fee Disclosure</b> <i>Initial Appearance Fee Disclosure</i>
02/10/2015	<b>Stipulation and Order</b> <i>Stipulation and Order To Continue Hearing on Motion to Dismiss</i>
02/12/2015	<b>Notice of Entry of Stipulation and Order</b> <i>Notice of Entry of Stipulation and Order to Continue Hearing on Motion to Dismiss</i>
02/24/2015	<b>Opposition to Motion to Dismiss</b> <i>Plaintiffs' Opposition to Defendants' Motion to Dismiss</i>
03/10/2015	<b>Reply in Support</b> <i>Reply in Support of Defendant's Motion to Dismiss</i>
03/17/2015	<b>Motion to Dismiss</b> (9:00 AM) (Judicial Officer Bare, Rob) <i>Defendant's Motion to Dismiss</i> <a href="#">Parties Present</a> <a href="#">Minutes</a> <i>02/24/2015 Reset by Court to 03/17/2015</i> Result: Granted
03/30/2015	<b>Minute Order</b> (3:00 AM) (Judicial Officer Bare, Rob) <a href="#">Minutes</a>

	Result: Minute Order - No Hearing Held	
05/07/2015	<b>Order</b> <i>Finding of Fact, Conclusions of Law, and Order Granting Defendant's Motion to Dismiss</i>	
05/08/2015	<b>Notice of Entry</b> <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting Defendants' Motion to Dismiss</i>	
05/19/2015	<b>Case Appeal Statement</b> <i>Plaintiffs' Case Appeal Statement</i>	
05/19/2015	<b>Notice of Appeal</b> <i>Plaintiffs' Notice of Appeal</i>	
05/19/2015	<b>Notice of Posting of Cost Bond</b> <i>Plaintiffs' Notice of Posting Bond for Costs on Appeal</i>	
02/11/2016	<b>Notice of Appearance</b> <i>Notice of Appearance</i>	
02/11/2016	<b>Request</b> <i>Request for Transcript of Proceedings</i>	
03/08/2016	<b>Recorders Transcript of Hearing</b> <i>Transcript of Proceedings: Defendants' Motion to Dismiss -- 3-17-15</i>	

---

**FINANCIAL INFORMATION**

---

	<b>Defendant</b> American Vantage Brownstone LLC		
	Total Financial Assessment		30.00
	Total Payments and Credits		30.00
	<b>Balance Due as of 03/15/2016</b>		<b>0.00</b>
01/23/2015	Transaction Assessment		30.00
01/23/2015	Wiznet	Receipt # 2015-07700-CCCLK	American Vantage Brownstone LL (30.00)
	<b>Defendant</b> Tassinari, Ronald		
	Total Financial Assessment		223.00
	Total Payments and Credits		223.00
	<b>Balance Due as of 03/15/2016</b>		<b>0.00</b>
01/23/2015	Transaction Assessment		223.00
01/23/2015	Wiznet	Receipt # 2015-07699-CCCLK	Tassinari, Ronald (223.00)
	<b>Plaintiff</b> Mendenhall, Robert L		
	Total Financial Assessment		301.00
	Total Payments and Credits		301.00
	<b>Balance Due as of 03/15/2016</b>		<b>0.00</b>
10/08/2014	Transaction Assessment		270.00
10/08/2014	Wiznet	Receipt # 2014-115159-CCCLK	Mendenhall, Robert L (270.00)
05/20/2015	Transaction Assessment		24.00
05/20/2015	Wiznet	Receipt # 2015-52872-CCCLK	Mendenhall, Robert L (24.00)
02/11/2016	Transaction Assessment		3.50
02/11/2016	Wiznet	Receipt # 2016-14350-CCCLK	Mendenhall, Robert L (3.50)
02/11/2016	Transaction Assessment		3.50
02/11/2016	Wiznet	Receipt # 2016-14492-CCCLK	Mendenhall, Robert L (3.50)
	<b>Plaintiff</b> Sunridge Corporation		
	Total Financial Assessment		30.00
	Total Payments and Credits		30.00
	<b>Balance Due as of 03/15/2016</b>		<b>0.00</b>
10/08/2014	Transaction Assessment		30.00
10/08/2014	Wiznet	Receipt # 2014-115160-CCCLK	Sunridge Corporation (30.00)

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ROBERT L. MENDENHALL, AN  
INDIVIDUAL; AND SUNRIDGE  
CORPORATION, A NEVADA  
CORPORATION,

Appellants,

vs.

RONALD TASSINARI, AN  
INDIVIDUAL; AND AMERICAN  
VANTAGE BROWNSTONE, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,

Respondents.

Case No.: 68053  
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Tracie K. Lindeman  
Clerk of Supreme Court

Appeal from the Eighth Judicial  
District Court, the Honorable Rob  
Bare Presiding

**JOINT APPENDIX**  
**(Volume 2, Bates Nos. 111–254)**

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**INDEX TO JOINT APPENDIX  
(Alphabetical)**

<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
Complaint (filed 10/08/14)		Volume 1, Bates Nos. 1–10
<b>Exhibits to Complaint</b>		
<b>Exhibit No.</b>	<b>Document Description</b>	
1	Carson Valley Casino Term Sheet	Volume 1, Bates Nos. 11–16
	Initial Appearance Fee Disclosure	Volume 1, Bates Nos. 17–18
Defendants’ Motion to Dismiss (filed 01/23/15)		Volume 1, Bates Nos. 19–29
<b>Exhibits to Defendants’ Motion to Dismiss</b>		
<b>Exhibit No.</b>	<b>Document Description</b>	
A	Complaint in Case No. A653822 (filed 12/27/11)	Volume 1, Bates Nos. 30–36
B	Defendants’ Offer of Judgment in Case No. A653822 (dated 07/10/14)	Volume 1, Bates Nos. 37–40
C	Defendants’ Motion for Leave to Amend [Answer, Counterclaim and Third-Party Complaint] with Exhibits in Case No. A653822 (filed 07/22/14)	Volume 1, Bates Nos. 41–96
D	Notice of Plaintiffs’ Acceptance of Offer of Judgment in Case No. A653822 (dated 07/24/14)	Volume 1, Bates Nos. 97–104
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Minute Order Granting Motion to Dismiss (filed 03/30/15)		Volume 2, Bates No. 238
Minutes of March 17, 2015 Hearing on Motion to Dismiss		Volume 2, Bates No. 194

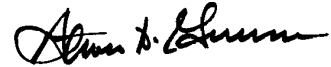
<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting Defendants' Motion to Dismiss with Findings of Fact, Conclusions of Law and Order Granting Defendants' Motion to Dismiss (filed 05/08/15)		Volume 2, Bates Nos. 239–247
Plaintiffs' Case Appeal Statement (filed 05/19/15)		Volume 2, Bates Nos. 250–252
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F	Mendenhall Affidavit (dated 02/24/15)	Volume 2, Bates Nos. 127–130
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Reply in Support of Defendants' Motion to Dismiss (filed 03/10/15)		Volume 2, Bates Nos. 168–180
<b>Exhibits to Reply in Support of Defendants' Motion to Dismiss</b>		
<b>Exhibit No.</b>	<b>Document Description</b>	
H	"Undisputed" Carson Valley Casino Project Term Sheet	Volume 2, Bates Nos. 181–186
I	"Deposition" Carson Valley Casino Project Term Sheet	Volume 2, Bates Nos. 187–193
Transcript of March 17, 2015 Hearing on Motion to Dismiss (filed 03/08/16)		Volume 2, Bates Nos. 195–237

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<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
<b>Exhibits to Plaintiffs' Opposition to Defendants' Motion to Dismiss (cont.)</b>		
<b>Exhibit No.</b>	<b>Document Description</b>	
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CLERK OF THE COURT

**OPP**

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ROBERT L. MENDENHALL, an individual,  
SUNRIDGE CORPORATION, a Nevada  
corporation,

Plaintiffs,

v.

RONALD TASSINARI, an individual,  
AMERICAN VANTAGE BROWNSTONE,  
LLC, a Nevada limited liability company,  
DOES 1 through 5, inclusive and ROE  
CORPORATIONS 1 through 5, inclusive,

Defendants.

Case No. A-14-708281-C

Dept. No. XXXII

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS**

**Hearing Date: March 17, 2015**

**Hearing Time: 9:00 a.m.**

Plaintiffs, ROBERT L. MENDENHALL and SUNRIDGE CORPORATION  
(collectively, the "Sunridge Parties"), by and through their counsel of record, the law firm of  
Howard & Howard Attorneys PLLC, hereby file their Opposition to Defendants, Ronald  
Tassinari's ("Tassinari") and American Vantage Brownstone, LLC's ("AVB") (collectively, the  
"Defendants") Motion to Dismiss.

This Opposition is based upon the papers and pleadings on file herein, the following  
Memorandum of Points and Authorities, the Affidavits of Robert L. Mendenhall ("Mendenhall

///

///

Affidavit”) and Wade B. Gochnour (“Gochnour Affidavit”) submitted in support hereof, and any argument the Court may hear.

DATED this 24<sup>th</sup> day of February, 2015.

HOWARD & HOWARD ATTORNEYS PLLC

/s/ Gwen Rutar Mullins

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Defendants seek dismissal of the Sunridge Parties’ Complaint based upon the doctrine of claim preclusion. Defendants claim that the Sunridge Parties’ claims against the Defendants in this matter could have been, and should have been, asserted in a prior lawsuit in which the Sunridge Parties were sued by Brownstone Gold Town, LLC and Brownstone Gold Town, CV, LLC (collectively, “Brownstone Plaintiffs”) for breach of an alleged contract. Defendants, who were not parties in the prior suit, now claim that because the current tort claims were not raised in the prior breach of contract suit, they are now barred.

The claims at issue in the instant action were never part of the prior action, and could not have been asserted in the prior action. In fact, the Sunridge Parties were not aware of the Defendants’ fraudulent acts until Tassinari’s deposition, which occurred long after the Sunridge Parties served their Answer in the First Action, and while the Sunridge Parties’ Offer of Judgment to the Brownstone Plaintiffs was already pending, and could not be withdrawn. The Offer of Judgment was made to resolve the claims asserted or could have been asserted by the

1 Brownstone Plaintiffs and the Sunridge Parties, against one another. The Brownstone Plaintiffs  
2 accepted the Sunridge Parties' Offer of Judgment, resolving the claims between the Sunridge  
3 Parties and the Brownstone Plaintiffs, and thereby preventing the Sunridge Parties from  
4 asserting their fraud claims against Defendants in the First Action.

5 It is undisputed that the Sunridge Parties could not have asserted the claims made in this  
6 action in the First Action as the case concluded before the Sunridge Parties were legally and  
7 procedurally able to bring the claims. Because the Sunridge Parties' claims were not, and could  
8 not have been litigated in the First Action, they are not barred by the doctrine of claim  
9 preclusion, and Defendants' Motion should be denied.

10 **II.**  
11 **STATEMENT OF FACTS**

12 On or about December 27, 2011, the Brownstone Plaintiffs filed a lawsuit against the  
13 Sunridge Parties in the District Court, Clark County, Nevada, Case No. A-11-653822-C (the  
14 "First Action"). The Brownstone Plaintiffs alleged causes of action against the Sunridge Parties  
15 for: (1) Breach of Contract; (2) Breach of Implied Covenant of Good Faith and Fair Dealing;  
16 (3); Unjust Enrichment and (4) Declaratory Relief, arising out of the Brownstone Plaintiffs'  
17 attempt to treat the December 4, 2007 Carson Valley Casino Project Term Sheet (the "Term  
18 Sheet") as a binding contract rather than an outline of the terms to be put into a later binding  
19 agreement. See Exhibit A attached to Defendants' Motion. The Sunridge Parties filed an  
20 Answer to the Complaint. At the time of the filing of their Answer, the Sunridge Parties were  
21 not aware of the fraudulent actions of Defendants that are the subject to this action. Defendants  
22 were not parties in the First Action.

23 On July 10, 2014, in an effort to resolve the First Action, the Sunridge Parties served an  
24 Offer of Judgment on the Brownstone Plaintiffs. See Exhibit B attached to Defendants' Motion.  
25 Specifically, the Offer of Judgment provided:

26 Defendants ROBERT L. MENDENHALL and SUNRIDGE  
27 CORPORATION hereby offer to allow judgment to be entered in  
28 favor of Plaintiffs BROWNSTONE GOLD TOWN, LLC and  
BROWNSTONE GOLD TOWN CV, LLC and against

1 Defendants ROBERT L. MENDENHALL and SUNRIDGE  
2 CORPORATION in the lump sum of ONE MILLION TWO  
3 HUNDRED DOLLARS (\$1,200,000.00) in settlement of all  
4 claims between and among ROBERT L. MENDENHALL,  
5 SUNRIDGE CORPORATION, BROWNSTONE GOLD TOWN,  
6 LLC and BROWNSTONE GOLD TOWN CV, LLC or those  
7 asserted or that could have been asserted on behalf of each of  
8 them against one another, inclusive of all accrued costs and legal  
9 fees.

10 . . .  
11 Acceptance of this Offer of Judgment would fully discharge and  
12 release any and all claims as alleged, or that could have been  
13 alleged, in this action by ROBERT L. MENDENHALL,  
14 SUNRIDGE CORPORATION, BROWNSTONE GOLD TOWN,  
15 LLC, and BROWNSTONE GOLD TOWN CV, LLC, including,  
16 but not limited to, those asserted in the Complaint as well as any  
17 related to potential claims that could be asserted in this action  
18 against one another. This offer will expire 10 days after the date  
19 of its service.

20 *Id.*

21 On July 14, 2014, the Sunridge Parties deposed Tassinari in the First Action. *See*  
22 Gochnour Affidavit. During Tassinari's deposition, Tassinari testified: (1) that he had signed  
23 the Term Sheet that was the basis for the contract claims in the First Action, signing on behalf  
24 of the "Other Investor(s)" and on behalf of AVB; and (2) that he had no expectation to invest  
25 \$7,000,000 as set out in the Term Sheet. *Id.*; *see also* the excerpts from the Deposition  
26 Transcript of Ronald Tassinari at 37:17-38:17, attached to the Gochnour Affidavit as **Exhibit 1**.

27 Prior to Tassinari's deposition, the Sunridge Parties were unaware that Tassinari had  
28 signed the Term Sheet as the "Other Investor(s)." *See* Mendenhall Affidavit. In fact, during the  
depositions of Anna M. Morrison on July 6, 2014 and the deposition of Robert F. Gross on July  
11, 2014, both representatives of the Brownstone Plaintiffs, both witnesses testified that they  
believed that the signature for "Other Investor(s)" was that of a Canadian investor who was also  
looking to invest in Brownstone Gold Town CV, LLC. *See* excerpts of the deposition of Anna  
M. Morrison, attached to the Gochnour Affidavit as **Exhibit 2**. *See also* excerpts of the  
deposition of Robert F. Gross, attached to the Gochnour Affidavit as **Exhibit 3**. So, prior to

1 Tassinari's deposition on July 14, 2014, both the Sunridge Parties and the other representatives  
2 of the Brownstone Plaintiffs believed the Term Sheet had been signed by an investment group  
3 from Canada. Only Tassinari knew the truth, which was not discovered until the July 14, 2014  
4 deposition.

5 The Sunridge Parties relied on the fact that another investor, *i.e.* a Canadian investor,  
6 was committing to invest \$7,000,000 before agreeing to sign the Term Sheet. Prior to  
7 Tassinari's deposition, the Sunridge Parties were not aware of the fraudulent actions and  
8 omissions that were perpetrated against them as alleged in the Complaint in this action. The  
9 deception was not discovered until July 14, 2014, which was only 4 days prior to the July 18,  
10 2014 discovery cut-off in the First Action, and only 56 days before the matter was set for trial.

11 On July 22, 2014, after learning of Defendants' and the Brownstone Plaintiffs'  
12 fraudulent conduct, the Sunridge Parties filed a Motion to Amend Answer to add the  
13 Defendants as parties to the First Action, and to assert claims against the Brownstone Plaintiffs  
14 and the Defendants for: (1) fraud in the inducement; (2) fraud; (3) negligent misrepresentation;  
15 and (4) fraudulent omission. *See* Exhibit C attached to Defendants' Motion. The Motion was  
16 scheduled to be heard on August 7, 2014. *Id.* Moreover, the Sunridge Parties attempted to  
17 withdraw the Offer of Judgment made to the Brownstone Plaintiffs but were unable to do so as  
18 pursuant to NRCP 68, the Offer of Judgment may not be withdrawn within the initial ten days  
19 of its service.

20 On July 24, 2014, before any opposition to the Sunridge Parties' Motion to Amend was  
21 due from the Brownstone Plaintiffs, and before Sunridge Parties' Motion to Amend was heard  
22 by the Court, the Brownstone Plaintiffs accepted the Offer of Judgment. *See* Exhibit D attached  
23 to Defendants' Motion.

24 On September 3, 2014, a Notice of Entry of Order of Dismissal of Action with Prejudice  
25 was filed in the First Action. *See* Exhibit E attached to Defendants' Motion.

26 On October 8, 2014, the Sunridge Parties filed their Complaint in the instant matter  
27 against Defendants, alleging causes of action for: (1) fraud in the inducement; (2) fraud; (3)  
28 negligent misrepresentation; and (4) fraudulent omission (the "Second Action"). Understanding

1 the intent and scope of the Offer of Judgment in the First Action, the Sunridge Parties did not  
2 include The Brownstone Plaintiffs as a party to the Second Action. Because the Sunridge  
3 Parties never had an opportunity to pursue, and could not have pursued, their claims against the  
4 Defendants in the First Action, the claims are not barred by the doctrine of claim preclusion.

5  
6 **III.**  
**ARGUMENT**

7 **A. The Sunridge Parties' Claims Are Not Barred By The Doctrine Of**  
8 **Claim Preclusion.**

9 The doctrine of claim preclusion, only bars a subsequent action if the following elements  
10 are satisfied: (1) the parties or their privies are the same; (2) the final judgment is valid; and (3)  
11 the subsequent action is based on the same claims or any part of them that were or could have  
12 been brought in the first case. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d  
13 709, 713 (2008). In order for claim preclusion to apply under Nevada law, the two claims must  
14 be based on the same "cause of action." *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 114 Nev.  
15 823, 963 P.2d 465, 473 (1998) (*per curiam*) (*internal quotation marks and citation omitted.*)  
16 Here, the claims asserted by the Sunridge Parties in the Second Action are not based on the  
17 same claims alleged by the Brownstone Plaintiffs in the First Action. Additionally, the  
18 Sunridge Parties' claims against Defendants could not have been brought in the First Action.  
19 Accordingly, the Sunridge Parties' claims are not barred by the doctrine of claim preclusion.

20 **1. The Defendants Are Not Privies As It Relates To Their Own**  
21 **Fraudulent Actions.**

22 In order to meet the first element of the claim preclusion test, Defendants must establish  
23 that "the parties or their privies are the same." *Five Star Capital Corp, supra*, 124 Nev. at 1054,  
24 194 P.3d at 713 (2008). While the Brownstone Plaintiffs and the Defendants may have been  
25 privies with regard to a breach of contract action, they are not with regard to the fraud actions  
26 asserted in this action. Corporate agents and individuals are separately liable for their own  
27 fraudulent actions. *See e.g. Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1098, 901  
28 P.2d 684, 689 (1995) ("An officer of a corporation may be individually liable for any tort which

1 he commits, and, if the tort is committed within the scope of employment, the corporation may  
2 be vicariously or secondarily liable under the doctrine of respondeat superior.”); *see also Nev-*  
3 *Tex Oil and Gas v. Precision Rolled Products*, 105 Nev. 685 (1989) (“An agent who  
4 fraudulently makes representations is liable in tort to the injured person although the fraud  
5 occurs in a transaction on behalf of the principal.”).

6 The claims against the Defendants are based upon each Defendant’s separate and  
7 individual liability for the fraudulent acts as set forth in the Complaint. Further, the individual  
8 liability under the tort theories has no connection with the Brownstone Plaintiffs’ claims that  
9 there was a contract between them and the Sunridge Parties.

10 **2. The Facts Essential To Maintain The First Action Are**  
11 **Significantly Different From The Facts Essential To**  
12 **Maintain The Second Action.**

13 “[I]n order for a subsequent suit to be barred under claim preclusion, the subsequent suit  
14 and the first suit must arise from the same cause of action. The Nevada test for identical causes  
15 of action is whether the sets of facts essential to maintain the two suits are the same.” *Taylor v.*  
16 *Merscorp, Inc.*, 2012 WL 4361026, \*5 (D. Nev. Sept. 21, 2012) (citing *Clements v. Airport*  
17 *Auth. of Washoe County*, 69 F.3d 321, 328 (9th Cir. 1995) (citation omitted)); *see also Matter of*  
18 *Firsching’s Estate*, 94 Nev. 252, 254, 578 P.2d 321, 322 (1978) (citation omitted).

19 More specifically, the Nevada Supreme Court has explained the “same cause of action”  
20 test:

21 “The true test of identity of ‘causes of action,’ as that term is used  
22 in connection with the plea of former adjudication, is the identity  
23 of the facts essential to their maintenance. . . . The authorities agree  
24 that when the same evidence supports both the present and the  
25 former cause of action, the two causes of action are identical. . . .”  
26 *Silverman v. Silverman*, 52 Nev. 152, 169-70, 283 P. 593, 598  
27 (1930) (Coleman, J., concurring). Thus, if appellant’s claim is  
28 based upon evidence of new and independent delinquencies, there  
can be no such identity. Where claims arise at different times out  
of the same transaction, a judgment as to one or more of such  
claims is no bar to a subsequent action on the claims arising  
thereafter. *Albuquerque Broadcasting Co. v. Bureau of Revenue*,  
54 N.M. 165, 216 P.2d 698 (1950).



1 *Round Hill Gen. Improvement Dist. v. B-Neva, Inc.*, 96 Nev. 181, 606 P.2d 176, 178 (1980).  
2 Identity of claims under Nevada law has also been described as “one right” and “one wrong”:  
3 “The test of a cause of action for res judicata purposes is the identity of facts essential to  
4 maintain the two suits; if the facts show only one right of the plaintiff and one wrong by the  
5 defendant involving that right there is only one cause of action.” *In re Estate of Firsching*, 94  
6 Nev. 252, 578 P.2d 321, 322 (1978) (*quoting Bissell v. Coll. Dev. Co.*, 89 Nev. 558, 517 P.2d  
7 185, 187 (1973)).

8 Here, the facts essential to maintain and support the claims asserted by the Sunridge  
9 Parties in the Second Action against Defendants are significantly different than the facts that the  
10 Brownstone Plaintiffs relied upon for the claims that the Brownstone Plaintiffs asserted against  
11 the Sunridge Parties in the First Action. The First Action was a breach of contract lawsuit filed  
12 by the Brownstone Plaintiffs against the Sunridge Parties. To maintain a cause of action for  
13 breach of contract, a party must establish: (1) the existence of a valid contract; (2) a breach by  
14 the defendant; and (3) damage as a result of the breach. *Brown v. Kinross Gold U.S.A., Inc.*,  
15 531 F.Supp.2d 1234, 1240 (D. Nev. 2008) (citation omitted). Meanwhile, the Second Action is  
16 a fraud lawsuit filed by the Sunridge Parties against the Defendants. To maintain a claim for  
17 fraud, a party must establish: (1) defendant made a false representation; (2) defendant knew or  
18 believed that the representation was false at the time that it was made; (3) defendant intended to  
19 induce plaintiff to act or refrain from acting based upon the misrepresentation; (4) plaintiff  
20 justifiably relied upon the misrepresentation; and (5) plaintiff sustained damages. *Barmettler v.*  
21 *Reno Air, Inc.*, 114 Nev. 441, 446, 956 P.2d 1382, 1386 (1998).

22 Given the difference in the elements that must be proven to succeed on a breach of  
23 contract claim compared to the elements that must be satisfied to succeed on a fraud claim, the  
24 set of facts necessary to maintain the two suits differs greatly. This is especially true here,  
25 where the First Action was filed against the Sunridge Parties, and the Second Action was filed  
26 by the Sunridge Parties against the Defendants, who were not parties to the First Action, for  
27 fraudulent actions Defendants committed in their individual capacity. Because the set of facts  
28

1 essential to maintaining the two actions are not the same, the Sunridge Parties' claims are not  
2 barred by the doctrine of res judicata. *Round Hill Gen. Improvement Dist.*, *supra*.

3 **3. The Claims Asserted By The Sunridge Parties In The Second**  
4 **Action Could Not Have Been Asserted In The First Action.**

5 The third element for claim preclusion is that the subsequent action must be based on the  
6 same claims or any part of them that were or could have been brought in the first case. *Five*  
7 *Star*, 124 Nev. at 1054, 194 P.3d at 713. In support of their assertion that the Sunridge Parties'  
8 claims are barred by the doctrine of res judicata, Defendants maintain that the claims asserted  
9 by the Sunridge Parties in the Second Action could have been brought in the First Action.  
10 Specifically, Defendants' Motion states that "Mendenhall's Motion to Amend in the First Case  
11 seeking to assert the same claims now brought in the case at bar, clearly demonstrates that the  
12 claims in this case could have been brought in the First Case." *See* Defendants' Motion at p. 9.

13 Despite Defendants' claims to the contrary, the Sunridge Parties could not have asserted  
14 their claims against the Defendants in the First Action. In an effort to resolve the First Action,  
15 the Sunridge Parties served an Offer of Judgment on the Brownstone Plaintiffs on July 10, 2014  
16 based upon the Sunridge Parties' knowledge and understanding of the facts *at that time*.  
17 Pursuant to NRCP 68 and NRS 17.115, after service, an offer of judgment is irrevocable for a  
18 period of ten (10) days. In other words, after the Sunridge Parties served The Brownstone  
19 Plaintiffs with the Offer of Judgment, the acceptance period for the Offer of Judgment remained  
20 open until July 24, 2014, and the Sunridge Parties could not withdraw the offer made to  
21 Brownstone Plaintiffs.

22 On July 14, 2014, while the acceptance period for the Offer of Judgment remained open,  
23 the Sunridge Parties deposed Tassinari. It was during Tassinari's deposition that the Sunridge  
24 Parties learned *for the first time* of Defendants' and the Brownstone Plaintiffs' fraudulent acts.  
25 Accordingly, on July 22, 2014, the Sunridge Parties filed a Motion for Leave to Amend to add  
26 Defendants as parties to the First Action and to assert claims against The Brownstone Plaintiffs  
27 and Defendants for: (1) fraud in the inducement; (2) fraud; (3) negligent misrepresentation; and  
28 (4) fraudulent omission. However, before the Motion to Amend could be heard by the Court,

1 the Brownstone Plaintiffs accepted the Sunridge Parties' Offer of Judgment, and the First  
2 Action was dismissed. Due to the timing of the service of the Offer of Judgment and the nature  
3 of the testimony elicited at the Tassinari deposition, the Sunridge Parties could not have  
4 asserted the causes of action raised in the Second Action in the First Action. In order to be able  
5 to assert those claims in the First Action, the Sunridge Parties would have had to obtain leave of  
6 the court, and due to acceptance of the Offer of Judgment, the Court never considered the  
7 Motion to Amend.

8 **4. The Sunridge Parties' Claims Against The Defendants Were**  
9 **Not Compulsory Counterclaims.**

10 In arguing that the Sunridge Parties' claims are barred by the doctrine of res judicata, the  
11 Defendants are essentially claiming that the Sunridge Parties' claims were compulsory  
12 counterclaims. NRCP 13(a) governs compulsory counterclaims and provides:

13 A pleading shall state as a counterclaim any claim which **at the**  
14 **time of serving the pleading** the pleader has against any  
15 opposing party, if it arises out of the transaction or occurrence  
16 that is the subject matter of the opposing party's claim and does  
17 not require for its adjudication the presence of third parties of  
18 whom the court cannot acquire jurisdiction.  
(Emphasis added).

18 The purpose of NRCP 13(a) is "to encourage swift adjudication of claims against the  
19 same parties in one action." *United Factory Furnishings Corp. v. Alterwitz*, 2012 WL 2138115,  
20 \*2 (D. Nev. June 13, 2012) (citing *Great W. Land & Cattle Corp. v. Sixth Judicial Dist. Court*,  
21 86 Nev. 282, 285, 467 P.2d 1019, 1021 (1970). "The general rule is that a claim must have  
22 matured before it will be subject to the compulsory counterclaim rule." *Id.* (quoting *Bennett v.*  
23 *Fid. & Deposit Co. of Maryland*, 98 Nev. 449, 453, 652 P.2d 1178, 1181 (1982)). "A  
24 counterclaim that would have been based in an action but occurred after the serving of the  
25 defendant's answer is not a compulsory counterclaim." *Id.* (citing *Madsen Const. Corp. v.*  
26 *Riverside County Mortg. & Loan Co.*, 71 Nev. 356, 358, 291 P.2d 1056, 1057 (1955). Pursuant  
27 to FRCP 13(a), a claim is "mature" when it has accrued for statute of limitations purposes. *Id.*  
28 at \*3 (citing *Cabrera v. Courtesy Auto, Inc.*, 192 F.Supp.2d 1012, 1015 (D. Nebr. 2002).

1 Other jurisdictions take a similar view of the compulsory counterclaim rules. *See*  
2 *Allan Block Corp. v. County Materials Corp.*, 239 F.R.D. 523, 529 (W.D. Wisc. 2006) (citation  
3 omitted) (“[E]ven when a counterclaim meets the same “transaction or occurrence” test a party  
4 “need not assert it as a counterclaim if it has not matured when the party serves [its] answer.”);  
5 *Allen v. Martin*, 203 P.3d 546 (Colo. App. 2008), cert. denied, 2009 WL 501890 (Colo. 2009)(A  
6 party need not assert a compulsory counterclaim unless it has matured at the time of the  
7 responsive pleading, even if it arises from the same transaction or occurrence described in the  
8 complaint.). “Implicit within this requirement, however, is the *knowledge* that one has a claim  
9 against the opposing party. Certainly Rule 13(a) cannot be construed to require a party to file as  
10 a compulsory counterclaim a claim which it does not know it has.” *Sho-Me Motor Lodges, Inc.*  
11 *v. Jehle-Slauson Const. Co.*, 466 So.2d 83, 90 (1985); *Stines v. Satterwhite*, 294 S.E.2d 324, 328  
12 (N.C. App. 1982) (citation omitted) (“Where a cause of action, arising out of the transaction or  
13 occurrence that is the subject matter of the opposing party’s claim, matures or is acquired by a  
14 pleader *after* he has served his pleading, the pleader is not required thereafter to supplement his  
15 pleading with a counterclaim.”).

16 As set forth above, the Sunridge Parties did not learn of the Brownstone Plaintiffs’ and  
17 Defendants’ fraudulent acts until Tassinari’s deposition on July 14, 2014, which was long after  
18 the Sunridge Parties served their Answer in the First Action. As such, the Sunridge Parties  
19 could not have brought the claims that they are asserting in this action at the time of filing their  
20 Answer in the First Action. *See* NRS 11.190 (the cause of action shall be deemed to accrue  
21 upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.)

22 The Sunridge Parties were not aware of Defendants’ fraudulent actions at the time of the  
23 filing of their Answer in the First Action. In fact, the Sunridge Parties only became aware of  
24 Defendants’ fraudulent actions on July 14, 2014, the date of Tassinari’s deposition. Thus, the  
25 claims asserted in the Second Action had not accrued until such time. *Id.* Because the Sunridge  
26 Parties’ claims against the Defendants had not arisen at the time of serving their Answer in the  
27 First Action, the claims are not considered compulsory counterclaims. *Stines, supra* (Trial court  
28 did not err by denying defendant’s motion to dismiss plaintiff’s action for failure to assert claim

1 for construction defects as a compulsory counterclaim in prior related actions between the  
2 parties, where the construction defects had been discovered subsequent to the time plaintiff's  
3 answer was filed in the related matters.)

4 Moreover, NRCP 13(e) addresses situations like the present action, where a  
5 counterclaim matures after the filing of a pleading. Specifically, NRCP 13(e) provides:

6 A claim which either matured or was acquired by the pleader  
7 after serving a pleading **may**, with the permission of the court, **be**  
8 **presented as a counterclaim by supplemental pleading.**  
(Emphasis added).

9 In other words, where a cause of action arises after a party has plead in a matter, the party may  
10 seek to amend to add the newly-matured claim, but is not required to do so. And, if an existing  
11 party to a lawsuit can file a subsequent lawsuit against the same party to address the newly-  
12 acquired cause of action, then surely a new lawsuit can be initiated to assert a newly-acquired  
13 cause of action against someone that is not a party to the current lawsuit. Thus, Defendants'  
14 attempt to expand the doctrine of res judicata beyond its intended purpose and to bar claims that  
15 could not have even been asserted in the First Action is directly contrary to the Nevada Rules of  
16 Civil Procedure, and cannot be permitted.

17 **5. NRCP 11 Prevented The Sunridge Parties From Asserting**  
18 **Their Claims Against Defendants And The Brownstone**  
19 **Plaintiffs In The First Action.**

20 In order to allege a cause of action, a party must have a good faith basis for doing so.  
21 NRCP 11. Specifically, NRCP 11(b) provides, in pertinent part:

22 By presenting to the court (whether by signing, filing, submitting,  
23 or later advocating) a pleading, written motion, or other paper, an  
24 attorney or unrepresented party is certifying that to the best of the  
person's knowledge, information, and belief, formed after an  
inquiry reasonable under the circumstances, -

25 (2) the claims, defenses, and other legal contentions therein are  
26 warranted by existing law or by a nonfrivolous argument for the  
27 extension, modification, or reversal of existing law or the  
28 establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . . .

As set forth above, the Sunridge Parties were not aware of the Defendants' fraudulent acts until Tassinari's deposition on July 14, 2014, i.e. after their Offer of Judgment had been served. Upon learning of the Defendants' wrongful conduct, the Sunridge Parties promptly moved to add the Defendants as parties to the First Action and to allege fraud claims against the Brownstone Plaintiffs and Defendants. Before the Court could hear the Sunridge Parties' Motion to Amend, however, the Brownstone Plaintiffs accepted the Offer of Judgment, preventing the Sunridge Parties from being able to pursue the fraud-based claims in the First Action.

The Sunridge Parties, however, could not have asserted fraud claims against the Defendants prior to the Tassinari deposition because they did not have a good faith basis for doing so, and would have been in violation of NRCPC 11. Accordingly, the Sunridge Parties' claims should not be barred by the doctrine of res judicata.

Moreover, if the Court finds that the Sunridge Parties' claims are barred by the doctrine of res judicata, this will only encourage parties to plead all possible claims, in fear of losing the opportunity to pursue a cause of action, regardless of whether a good faith basis for raising the claim exists. Such conduct, however, would be in direct contravention of NRPC 11.

**B. Equity Requires That The Sunridge Parties Be Allowed To Pursue Their Fraud Claims Against Defendants.**

Res judicata is an equitable doctrine that is designed to prevent a multiplicity of lawsuits between the same parties where the facts and issues are the same. *Murnigh v. Gainer*, 685 N.E.2d 1357, 1363 (Ill. 1997). "Res judicata promotes judicial economy by preventing repetitive litigation and [additionally] protects parties from being forced to bear the unjust burden of relitigating essentially the same case." *Arvia v. Madigan*, 809 N.E.2d 88, 97 (Ill. 2004). The doctrine of res judicata is not meant to become the tool of inequitable or unjust results. *See e.g., Kopp v. Fair Political Practices Commission* 905 P.2d 1248 (Cal. 1995); *City*

1 of *Sacramento v. State of California*, 785 P.2d 522 (Cal. 1990). Equity dictates that the doctrine  
2 of res judicata will not be technically applied if to do so would create inequitable and unjust  
3 results. *City of Chicago v. Midland Smelting Co.*, 896 N.E.2d 364 (Ill. App. Ct. 1st Dist. 2008);  
4 *Best Coin–Op, Inc. v. Paul F. Ilg Supply Co.*, 545 N.E.2d 481, 489 (1989). Res judicata should  
5 not be applied by this court where it would be fundamentally unfair to do so. *Nowak v. St. Rita*  
6 *High School*, 757 N.E.2d 471, 477 (Ill. 2001). The doctrine should only be applied as fairness  
7 and justice require. *Best Coin–Op*, 545 N.E.2d at 489.

8 As set forth above, at the time that the Sunridge Parties learned of Defendants’ and the  
9 Brownstone Plaintiffs’ fraudulent acts, an Offer of Judgment was pending. Despite their  
10 wishes, the Sunridge Parties could not withdraw the Offer of Judgment. The Brownstone  
11 Plaintiffs accepted the Offer of Judgment before the Court heard or decided the Sunridge  
12 Parties’ Motion to Amend<sup>1</sup>, thereby preventing the Sunridge Parties from being able to pursue  
13 their fraud claims against Defendants. Due to the timing of service of the Offer of Judgment  
14 and the Sunridge Parties learning of the Defendants’ fraudulent conduct, equity requires that the  
15 Sunridge Parties be allowed to pursue their fraud claims against the Defendants in the Second  
16 Action. The Second Action is against parties that were not parties in the First Action, and only  
17 for their independent fraudulent actions perpetrated against the Sunridge Parties. *Long v. TRW*  
18 *Vehicle Safety Systems, Inc.* 796 F.Supp.2d 1005 (D. Ariz. 2011) (Claim preclusion doctrine did  
19 not apply to bar claims asserted against seatbelt manufacturer in products liability action arising  
20 out of single-vehicle rollover accident, since manufacturer was different party than seat belt  
21 manufacturer named in first suit arising out of accident, and first suit produced no final  
22 judgment on merits with respect to claims asserted against manufacturer.)

23 Moreover, “[t]he purpose of the doctrine [res judicata] is to ‘relieve parties of the cost  
24 and vexation of multiple law suits [sic], conserve judicial resources and, by preventing  
25 inconsistent decisions, encourage reliance on adjudication.’” *Taylor*, 2012 WL 4361026 at \*3  
26 (quoting *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411 (1980) (internal citation omitted)).

27 <sup>1</sup> The Offer of Judgment was accepted before any Opposition to the Motion to Amend was due. Undoubtedly,  
28 Brownstone would have vehemently opposed the Motion to Amend had Brownstone not accepted the Offer of  
Judgment or had an Offer of Judgment not been pending at that time.

Any judgment obtained by the Sunridge Parties against Defendants in this action will not result in inconsistent decision obtained in the First Action. In fact, the judgment in this action will have no bearing whatsoever on any decisions made in the First Action.

**IV.**  
**CONCLUSION**

For the forgoing reasons, this Court should deny Defendants' Motion to Dismiss in its entirety, as the claims alleged by Sunridge Parties in the Second Action are not barred by the doctrine of res judicata.

DATED this 24<sup>th</sup> day of February 2015.

HOWARD & HOWARD ATTORNEYS PLLC

/s/ Gwen Rutar Mullins

GWEN RUTAR MULLINS, ESQ.

Nevada Bar No. 3146

WADE B. GOCHNOUR, ESQ.

Nevada Bar No. 6314

3800 Howard Hughes Parkway, Ste. 1000

Las Vegas, Nevada 89169

*Attorneys for Plaintiffs Robert L. Mendenhall  
and Sunridge Corporation*



**CERTIFICATE OF E-SERVICE**

I do hereby certify that on the 24<sup>th</sup> day of February 2015, I served a copy of the **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS** on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

James J. Lee, Esq. – james@leelawonline.com  
Harry Marquis, Esq. - harry@marquislaw.net

/s/ Kellie Piet  
An employee of Howard & Howard Attorneys PLLC

# MENDENHALL AFFIDAVIT

MENDENHALL AFFIDAVIT

AFFIDAVIT OF ROBERT L. MENDENHALL

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

I, ROBERT L. MENDENHALL, being first duly sworn, depose and state:

1. I am over 18 years of age, a resident of the State of Nevada, and competent to testify to the matters contained in this Affidavit, which are based upon my personal knowledge, except as to those matters that are based upon my information and belief. As to those matters, I believe them to be true.

2. This Affidavit is given in support of Plaintiffs' Opposition to Defendants' Motion to Dismiss.

3. On either December 4 or December 5, 2007, a Carson Valley Casino Project Term Sheet (the "Term Sheet") was executed by American Vantage Brownstone, LLC ("AVB"), Brownstone Gold Town, LLC, "Other Investor(s)" and me.

4. The Term Sheet provides in pertinent part:

This term sheet shall serve as an outline of the basic business terms and conditions upon which Brownstone GoldTown, LLC ("Brownstone GoldTown"), a subsidiary of American Vantage Brownstone, LLC ("AVB"), Robert L. Mendenhall, Ph.D. or an entity wholly-owned by Mr. Mendenhall ("Mendenhall"), and other potential equity investor(s) (the "Other Investors"), will acquire membership interests in the Nevada limited liability company, Brownstone GoldTown CV, LLC (the "Company") for the primary purpose of constructing, owning and operating a hotel casino to be located in Carson Valley, Douglas County, Nevada (the "Project").

5. The Term sheet further provides in relevant part:

The Project membership interests (the "Membership Interests") will be allocated based on the following:

- For contribution of the 46-acre project site, value at \$15,000,000, Mendenhall will receive a 27% Membership Interest. The acreage will be contributed in full on or before the option expiration date of December 27, 2007 or as mutually agreed between Brownstone GoldTown and Mendenhall.
- It is expected that the Other Investor(s) will contribute \$7,000,000.00 U.S. Dollars for a 12.6% Membership Interest.
- Brownstone GoldTown will contribute \$1,500,000.00 U.S. dollars for a 2.7% Membership Interest.

6. I was told by Ronald Tassinari ("Tassinari") and Robert Gross that they had a Canadian group of equity investors that would be committing to contribute \$7,000,000.00 to acquire a 12.6% Membership Interest in Brownstone GoldTown CV, LLC, and that the Canadian group would also be signing the Term Sheet.

7. In reliance on these representations, I signed the Term Sheet, and returned the Term Sheet to Tassinari and Mr. Gross on December 5, 2007.

8. That same day, December 5, 2007, a fully executed copy of the Term Sheet was faxed back to me, with all of the signature lines completed.

9. I was never told that the Canadian group did not sign the Term Sheet.

10. I was never told that Tassinari signed the Term Sheet as the "Other Investor(s)," rather than the third party Canadian group that I had been told would be the "Other Investor(s)."

11. I was also never told that despite signing the Term Sheet as the "Other Investor(s)" that Tassinari had no expectations or intent of contributing \$7,000,000.00.

12. It was my understanding that it was the Canadian group that had signed as the "Other Investor(s)."

1 13. In signing the Term Sheet I relied on those representations and would not have  
2 signed the Term Sheet had I known that those representations were false and untrue and that  
3 there was no third party investor group who would be committing to contribute \$7,000,000.00.  
4 I was misled to believe that the Canadian group had signed the Term Sheet and would be  
5 committing to contribute the \$7,000,000 to this project.  
6

7 14. Prior to Tassinari's deposition, I was not aware that Tassinari signed the Term  
8 Sheet as the "Other Investor(s)."  
9


10 15. Additionally, prior to Tassinari's deposition, I was not aware of the fraudulent  
11 actions and omissions that were perpetrated against myself and Sunridge Corporation by the  
12 Defendants, as alleged in the Complaint in this action.

13 Further your affiant sayeth naught.

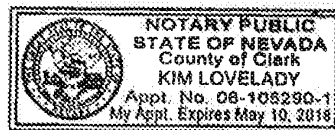
14 DATED this 24th day of February, 2015.  
15

16  
17   
ROBERT L. MENDENHALL

18  
19 SUBSCRIBED AND SWORN TO  
20 before me this 24th day of February, 2015.

21   
22 NOTARY PUBLIC in and for  
23 said County and State.

24 4816-4568-7585, v. 2



# GOCHNOUR AFFIDAVIT

GOCHNOUR AFFIDAVIT

AFFIDAVIT OF WADE B. GOCHNOUR

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

I, WADE B. GOCHNOUR, being first duly sworn, depose and state:

1. I am an attorney licensed to practice law in the State of Nevada and I am one of the counsel of record for Plaintiffs, Sunridge Corporation and Robert L. Mendenhall (collectively, the "Sunridge Parties").

2. This Affidavit is given in support of Plaintiffs' Opposition to Defendants' Motion to Dismiss.

3. At the time of filing of their Answer in Case No. A-11-653822-C (the "First Action"), the Sunridge Parties were not aware of the fraudulent actions of Defendants that are the subject to this action. Defendants were not parties in the First Action.

4. On July 14, 2014, the deposition of Ronald Tassinari ("Tassinari") was conducted. During Tassinari's deposition, Tassinari testified: (1) that he had signed the Term Sheet that was the basis for the contract claims in the First Action, signing on behalf of the "Other Investor(s)" and on behalf of AVB; and (2) that he had no expectation to invest \$7,000,000 as set out in the Term Sheet. See excerpts of Tassinari's Deposition Transcript attached as **Exhibit 1**.

5. Prior to Tassinari's deposition, the Sunridge Parties were unaware that Tassinari had signed the Term Sheet as the "Other Investor(s)."

6. Prior to Tassinari's deposition the Sunridge Parties believed that the signature contained for the "Other Investor(s)" was that of the Canadian Investor.

7. During the depositions of Anna M. Morrison on July 6, 2014, and the deposition of Robert F. Gross on July 11, 2014, both representatives of the Brownstone Plaintiffs, both witnesses testified that they believed that the signature for "Other Investor(s)" was that of a Canadian investor who was also looking into investing in Brownstone Gold Town CV, LLC. See excerpts of the deposition of Anna M. Morrison, attached as **Exhibit 2**. See also excerpts of the deposition of Robert F. Gross, attached as **Exhibit 3**.

8. Once Tassinari testified that he had signed the allegedly binding Term Sheet on behalf of the "Other Investor(s)," Tassinari was asked if he expected to contribute \$7,000,000.00 to the deal as stated in the Term Sheet. Tassinari testified that he did not expect to contribute \$7,000,000.00 as stated in the Term Sheet. See **Exhibit 1**.

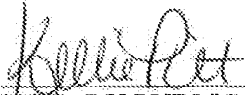
9. Prior to Tassinari's deposition, the Sunridge Parties were not aware of the fraudulent actions and omissions that were perpetrated against them as alleged in the Complaint, and therefore no affirmative claims were asserted against Brownstone or Tassinari and AVB when the Sunridge Parties filed their Answer to the Complaint in the First Action.

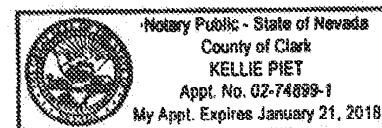
Further your affiant sayeth naught.

DATED this 20<sup>th</sup> day of February 2015.

  
WADE B. GOCHINOUR

SUBSCRIBED AND SWORN TO  
before me this 20 day of February, 2015.

  
NOTARY PUBLIC in and for  
said County and State.





# EXHIBIT 1

# EXHIBIT 1

DISTRICT COURT  
CLARK COUNTY, NEVADA

BROWNSTONE GOLD TOWN, LLC, a  
Nevada limited liability company,  
BROWNSTONE GOLD TOWN CV, LLC, a  
Nevada limited liability company,  
Plaintiffs,

vs.

Case No. A-11-653822-C

ROBERT L. MENDENHALL, an  
individual, SUNRIDGE CORPORATION,  
A Nevada corporation, and DOES 1  
through 10, inclusive,  
Defendants.

VIDEOTAPED DEPOSITION OF RONALD J. TASSINARI  
Las Vegas, Nevada  
Monday, July 14, 2014  
Volume I

Reported by:  
BARBARA R. JUSTL  
CSR No. 878  
Job No. 1884789

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DISTRICT COURT  
CLARK COUNTY, NEVADA

BROWNSTONE GOLD TOWN, LLC, a  
Nevada limited liability company,)  
BROWNSTONE GOLD TOWN CV, LLC, a )  
Nevada limited liability company,)

Plaintiffs,

vs.

Case No. A-11-653822-C

ROBERT L. MENDENHALL, an  
individual, SUNRIDGE CORPORATION,)  
A Nevada corporation, and DOES 1 )  
through 10, inclusive,

Defendants.

Videotaped Deposition of RONALD J. TASSINARI,  
Volume I, taken on behalf of Defendants, at 3800 Howard  
Hughes Parkway, Suite 1000, Las Vegas, Nevada, beginning  
at 9:11 a.m. and ending at 5:28 p.m. on Monday, July 14,  
2014, before BARBARA R. JUSTL, Certified Shorthand  
Reporter No. 878.

Page 2

1 APPEARANCES:

2 For Plaintiffs:

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8 harry@marquislaw.net

9

10 For Defendants:

11 HOWARD & HOWARD ATTORNEYS, PLLC

12 By: WADE B. GOCHNOUR, Attorney at Law

13 3800 Howard Hughes Parkway, Suite 1000

14 Las Vegas, Nevada 89169

15 (702) 257-1483

16 wbg@h2law.com

17

18 Also present:

19 James M. Barker, Esq.

20 General Counsel

21 Las Vegas Paving Corp.

22

23

24 Videographer:

25 MARK STATES, VERITEXT

Page 3

1 A Yes.

2 Q Okay. Any other contracts that you feel have been  
3 breached, or any other claims that you think you're  
4 making in this lawsuit?

5 MR. MARQUIS: Object to the form of the question.

6 THE WITNESS: To me, it's a simple breach of 10:01  
7 contract.

8 BY MR. GOCHNOUR:

9 Q Okay. And I just want to be sure that this is --

10 A Yes.

11 Q -- "this" being Exhibit 1, is the contract that  
12 we're talking about.

13 A Yes, sir.

14 Q That you guys -- the Brownstone entities are  
15 claiming that there was a breach of, correct?

16 A Correct.

17 Q Okay. And if I could have you turn back to page  
18 5, please, the fifth page of the exhibit, the signature 10:01  
19 page.

20 And there's a signature for American Vantage  
21 Brownstone LLC.

22 A Yes.

23 Q Is that your signature?

24 A Yes.

25 Q Are you familiar with Mr. Gross's signature?

Page 37

1 A Looks like his.

2 Q And was Mr. Gross the chief executive officer of  
3 Brownstone Gold Town, LLC?

4 A He was.

5 Q I'm sorry, in December of 2007? 10:02

6 A Yes.

7 Q And then there's the other investor. Can you tell  
8 me whose signature that is?

9 A Looks like mine.

10 Q Looks like yours. Why would you have been the  
11 other investor in this agreement?

12 A You know, I don't remember, but that is definitely  
13 my signature.

14 Q Well, were you committing to put \$7 million into 10:02  
15 this project as of December 4, 2007?

16 A I did not make a commitment to put \$7 million into  
17 this project on December 4, 2007.

18 Q Can you please tell me why you signed on behalf of 10:02  
19 other investors?

20 A I can't tell you today. I don't remember.

21 Q Did you think signing on behalf of other investors  
22 had any legal consequences to you?

23 A Never really thought about it.

24 Q So you didn't think signing as an other investor  
25 in an agreement that you're claiming is a binding

Page 38

1  
2 I, the undersigned, a Certified Court Reporter of  
3 the State of Nevada, do hereby certify:


4 That the foregoing proceedings were taken before  
5 me at the time and place herein set forth; that any  
6 witnesses in the foregoing proceedings, prior to  
7 testifying, were duly sworn; that a record of the  
8 proceedings was made by me using machine shorthand which  
9 was thereafter transcribed under my direction; that the  
10 foregoing transcript is a true record of the testimony  
11 given.

12 Further, that before completion of the  
13 proceedings, review of the transcript [ ] was [XX] was  
14 not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee of  
17 any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: July 26, 2014  
22  
23

24   
25 BARBARA JUSTL, RPR  
CCR No. 878

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# EXHIBIT 2

# EXHIBIT 2



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DISTRICT COURT  
CLARK COUNTY, NEVADA

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)  
BROWNSTONE GOLD TOWN, LLC, a )  
Nevada limited liability company,) )  
BROWNSTONE GOLD TOWN CV, LLC, a )  
Nevada limited liability company,) )  
 )  
Plaintiffs, )  
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vs. ) Case No. A-11-653822-C  
 )  
ROBERT L. MENDENHALL, an )  
individual, SUNRIDGE CORPORATION,) )  
A Nevada corporation, and DOES 1 )  
through 10, inclusive, )  
 )  
Defendants. )  
\_\_\_\_\_ )

VIDEOTAPED DEPOSITION OF ANNA M. MORRISON  
Las Vegas, Nevada  
Thursday, July 3, 2014  
Volume I

Reported by:  
BARBARA R. JUSTL  
CSR No. 878  
Job No. 1884749  
  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

\_\_\_\_\_)  
BROWNSTONE GOLD TOWN, LLC, a )  
Nevada limited liability company,) )  
BROWNSTONE GOLD TOWN CV, LLC, a )  
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Videotaped Deposition of ANNA M. MORRISON,  
Volume I, taken on behalf of Defendants, at 3800 Howard  
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9 \*\*and\*\*

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21 (702) 257-1483

22 wbg@h2law.com

23

24 Videographer:

25 TOM BURTNEY, VERITEXT

Page 3

1 lawsuit that was filed by Brownstone Gold Town and  
2 Brownstone Gold Town CV. Do you understand that? 09:14  
3 A Yes.  
4 Q Do you know what the claims of Brownstone Gold  
5 Town and Brownstone Gold Town CV are making in this  
6 action?  
7 A My understanding is both -- from the litigation  
8 and from information while I was there that Mendenhall  
9 breached the agreement between the parties. 09:15  
10 Q And that's your understanding. That's your  
11 understanding of the claims that Brownstone are asserting  
12 against Mr. Mendenhall and Sunridge?  
13 A Yes.  
14 Q Okay. Do you know of any other claims as you sit  
15 here today?  
16 A I'd have to see the specific document to refresh  
17 my memory.  
18 Q And when you say that your understanding is that  
19 Mendenhall breached the agreement, what agreement are you  
20 talking about?  
21 A There was a binding agreement that was reached in 09:15  
22 approximately the end of 2007 that was signed between  
23 Mendenhall, Brownstone and a Canadian investor.  
24 Q Do you recall the title of that agreement? 09:16  
25 A I'd have to see the document to get the specific

Page 25

1 BY MR. GOCHNOUR:

2 Q Ms. Morrison, I'm showing you what's titled the  
3 "Carson Valley Casino Project Term Sheet." If you'd just  
4 take a second to look through and then tell me if you  
5 recognize this document. 09:18

6 MR. MARQUIS: What's the exhibit number?

7 MR. GOCHNOUR: 1. 09:18

8 THE WITNESS: (Witness complies.) Yes.

9 BY MR. GOCHNOUR:

10 Q So this is the agreement that you were talking 09:19  
11 about?

12 A Yes, it does appear to be, yes.

13 Q You're back on the signature page right now,  
14 right?

15 A Yes.

16 Q And that is -- it has a little mark down at the  
17 bottom that says BROW00271?

18 A Yes.

19 Q And it seems that it's signed by American Vantage  
20 Brownstone, LLC?

21 A Correct.

22 Q And Brownstone Gold Town, LLC?

23 A Correct.

24 Q And Mr. Mendenhall's signature line has a 09:20  
25 signature on it?

Page 27

1 A Correct.

2 Q And then it says "Other investor." Do you know  
3 who that other investor is?

4 A It's hard to read, isn't it. I don't know.

5 Q Do you know who any other potential investors were  
6 about December 4th of 2007?

7 A At that time, we were talking with a Canadian  
8 group.

9 Q Do you have any -- was there a particular -- was  
10 it a group? Was it an individual?

11 A They had a contact person. His name was Robert 09:20  
12 Sim.

13 Q Now, I know it's been a long time since you've  
14 probably seen this, but what language in this agreement 09:21  
15 makes you believe that this is a binding agreement?

16 A If you look at the signature page --

17 Q Sure.

18 A -- on the paragraph at the top of the page, the  
19 last sentence, "shall be binding upon any party who so  
20 executes." 09:21

21 Q Let me ask you, during your time at American  
22 Vantage and/or in dealing with Brownstone, was this a  
23 typical contract form that you entered into in order to  
24 tie down investors to projects, a term sheet like this? 09:21

25 A We would have had letters of intent which would

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1 MR. GOCHNOUR: Can we mark the next two in order.  
2 (Deposition Exhibit 6 marked.) 10:12  
3 (Deposition Exhibit 7 marked.)  
4 BY MR. GOCHNOUR:  
5 Q Ms. Morrison, I'm showing you two -- they're  
6 unsigned, but they're two separate Carson Valley Casino  
7 project term sheets, and I hope you can look those over  
8 and tell me whether they look familiar to you or not.  
9 A Well, they would have -- they are likely to have  
10 been prepared internally at American Vantage Companies.  
11 Q Would this -- do you know if these were prepared 10:12  
12 before, after, contemporaneously with Exhibit 1?  
13 A Well, this one has a date of January 20, '07.  
14 Q I'm sorry to stop you, but when you say "this  
15 one," just so we can figure out which exhibit --  
16 A Exhibit 7. 10:13  
17 Q Okay.  
18 A Has a date on it of -- it's blank, but January  
19 blank, 2007. That would appear to precede the term  
20 sheet. The other one has no date, so I can't -- I don't  
21 know when it was drafted.  
22 Q On Exhibit 7, down at the last page, down in the  
23 signature blocks, it says "Investor Group," Robert Sims 10:13  
24 and Richard Coglon. Do you know who Robert Sims is?  
25 A Robert Sim was -- I referred to him earlier as

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1 being in charge or leading the Canadian investor group.

2 Richard Coglon I don't remember. I feel like I  
3 should know that name, but I just don't remember  
4 specifically who he is. I'm sure I'll remember it about 10:14  
5 2 o'clock this morning.

6 Q And during 2007, do you know, were there term  
7 sheets being provided to other investors, potential  
8 investors in the Gold Town project?

9 A '07. I would have to actually see the documents 10:14  
10 to be able to tell you for sure, but I would have thought  
11 that at least discussions. I don't know if -- I don't  
12 remember if they got to the level of a term sheet.

13 Q Now, the Canadian investors, were they the other  
14 investors that signed the term sheet that's Exhibit 1?

15 A As I mentioned, I don't recognize that signature  
16 that's there.

17 Q Okay.

18 A So I can't assert that that's definitely who it 10:15  
19 was or who signed it.

20 Q But you don't have any recollection of discussions  
21 about who the other investor was?

22 A The other investor that there were discussions  
23 with was the Canadian group.

24 Q I'm sorry, could I have you look back at  
25 Exhibit 1?

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1 A Oh, 1?

2 Q Yes.

3 A Uh-huh.

4 Q Second page, top item says, "It is expected the 10:15  
5 Other Investors will contribute \$7 million U.S. for a  
6 12.6 percent Membership Interest."

7 Does that refresh your recollection as to whether  
8 the other investor was the Canadian group you're talking  
9 about?

10 A Yes.

11 Q It does refresh your recollection?

12 A I do believe the other investor was the Canadian  
13 group.

14 Q Okay.

15 A I just don't know who the signer was.

16 Q Okay. And is it your belief that -- the term 10:16  
17 sheet was binding on all the parties that signed it,  
18 right?

19 A Correct.

20 Q Including Mr. Mendenhall?

21 A Yes.

22 Q Including Brownstone?

23 A Yes.

24 Q And American Vantage?

25 A Yes.

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1 Q And the other investor?

2 A Correct. I do want to clarify, American Vantage  
3 Companies did not sign this term sheet, American Vantage  
4 Brownstone did --

10:16

5 Q Okay.

6 A -- which was a subsidiary, wholly owned.

7 Q Not the same thing?

8 A Not the same thing, just to clarify.

9 Q No, I appreciate that. Thank you.

10 Other than the Canadian group and Mr. Mendenhall,  
11 do you recall any other potential investors that  
12 Mr. Gross or Mr. Tassinari were talking to in 2007 about  
13 the Gold Town project?

14 A You'd have to address that question to them.

10:17

15 Q I'm just asking, you don't recall any?

16 A No.

17 Q Now the Canadian group, did they end up investing  
18 in Gold Town?

19 A How so?

20 Q Did they invest any money in Gold Town?

21 A They -- we entered into -- yes, the answer is  
22 yes.

23 Q What did they invest into the Gold Town group --  
24 into the Gold Town project, excuse me?

10:18

25 A There were three promissory notes.

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1  
2 I, the undersigned, a Certified Court Reporter of  
3 the State of Nevada, do hereby certify:

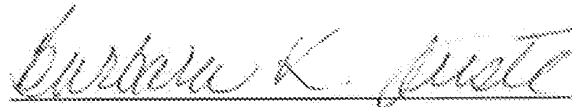
4 That the foregoing proceedings were taken before  
5 me at the time and place herein set forth; that any  
6 witnesses in the foregoing proceedings, prior to  
7 testifying, were duly sworn; that a record of the  
8 proceedings was made by me using machine shorthand which  
9 was thereafter transcribed under my direction; that the  
10 foregoing transcript is a true record of the testimony  
11 given.

12 Further, that before completion of the  
13 proceedings, review of the transcript [ ] was [XX] was  
14 not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee of  
17 any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: July 17, 2014

22   
23

BARBARA R. JUSTL, RPR

24 CCR No. 878  
25

# EXHIBIT 3

# EXHIBIT 3

DISTRICT COURT  
CLARK COUNTY, NEVADA

BROWNSTONE GOLD TOWN, LLC, a  
Nevada limited liability company,  
BROWNSTONE GOLD TOWN CV, LLC, a  
Nevada limited liability company,  
Plaintiffs,

vs.,

Case No. A-11-653822-C

ROBERT L. MENDENHALL, an  
individual, SUNRIDGE CORPORATION,  
A Nevada corporation, and DOES 1  
through 10, inclusive,  
Defendants.

VIDEOTAPED DEPOSITION OF ROBERT F. GROSS  
Las Vegas, Nevada  
Friday, July 11, 2014  
Volume I

Reported by:  
BARBARA R. JUSTL  
CSR No. 878  
Job No. 1884784

PAGES 1 - 261

Page 1

DISTRICT COURT  
CLARK COUNTY, NEVADA

BROWNSTONE GOLD TOWN, LLC, a  
Nevada limited liability company,)  
BROWNSTONE GOLD TOWN CV, LLC, a )  
Nevada limited liability company,) )  
Plaintiffs, )

vs. ) Case No. A-11-653822-C

ROBERT L. MENDENHALL, an )  
individual, SUNRIDGE CORPORATION,) )  
A Nevada corporation, and DOES 1 )  
through 10, inclusive, )  
Defendants. )

Videotaped Deposition of ROBERT F. GROSS,  
Volume I, taken on behalf of Defendants, at 3800 Howard  
Hughes Parkway, Suite 1000, Las Vegas, Nevada, beginning  
at 9:18 a.m. and ending at 6:20 p.m. on Friday, July 11,  
2014, before BARBARA R. JUSTL, Certified Shorthand  
Reporter No. 878.

1 APPEARANCES:

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9

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15 (702) 257-1483

16 wbg@h2law.com

17

18 Also present:

19 James M. Barker, Esq.

20 General Counsel

21 Las Vegas Paving Corp.

22

23 Videographer:

24 KENNETH LAURSEN, VERITEXT

25

Page 3

1 facsimile or email transmission" --

2 THE REPORTER: I'm sorry?

3 MR. GOCHNOUR: Speak up and slow down. I'm sorry,

4 sir.

5 THE WITNESS: -- "shall be significant (sic) for

6 all purposes and shall be binding upon any party who so 10:17

7 executes."

8 BY MR. GOCHNOUR:

9 Q And so that sentence is what you believe makes

10 this a binding contract?

11 A Correct.

12 Q And you're on the signature page still, correct?

13 A Yes.

14 Q Who is the other investor who signed this?

15 A I can't see the signature here. The investor -- I 10:18

16 believe that is American Vantage or signed by American

17 Vantage.

18 Q You're still on the signature page, correct?

19 A Uh-huh, yes, correct.

20 Q The top signature is American Vantage Brownstone,

21 LLC?

22 A Uh-huh.

23 Q Yes?

24 A Yes.

25 Q And you think that the bottom one that says "Other

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1 Investor(s)," is also American Vantage? 10:18

2 A To the best of my knowledge, yes. It looks like

3 the same signature. I can't read this copy that well,

4 but --

5 Q Okay. Well, let me ask you, as of December 4th,

6 2007, what other investors did the Brownstone entities

7 have signed on for this project for the Gold Town Casino 10:19

8 project?

9 A Other investors would be Bob Sim from Canada.

10 Other investors would be -- would be entities through Bob 10:19

11 Sim, whether it's Level 10 or whatever entity he would

12 come in with who agreed to participate.

13 Q Was there a separate term sheet or other document

14 signed between the Brownstone entities and Bob Sim or one

15 of his entities?

16 A We had loan documents through Level 10 for

17 approximately a million dollars towards the project. We 10:20

18 had a term sheet for Bob Sim, but right now I can't -- I

19 just don't remember. I'd have to look in my documents.

20 Q Well, you looked in your documents to prepare as a

21 30(b)(6) representative today, correct?

22 A Correct.

23 Q And do you recall seeing a term sheet that was

24 ever signed by Bob Sim or one of his entities? 10:20

25 A No.

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1 Q And can I have you turn to the second page of the  
2 term sheet, please. Let me ask you -- let me back up a  
3 second first.

4 With regard to that other investor signature, if 10:21  
5 you don't recognize who that is, would there be somebody  
6 else who would have more knowledge than you as to who  
7 that might be?

8 A I don't know. I would have to get a better copy  
9 than this and -- corporate maybe.

10 Q When you say corporate, who would that be?

11 A Mr. Tassinari or -- who was in the corporate  
12 office.

13 Q We're going to take just a second to adjust your 10:21  
14 microphone so the videographer can hear what you're  
15 saying.

16 And are you aware of any other signed term sheets  
17 other than Exhibit 1?

18 A No.

19 Q And just so we're clear, when I say any other, I 10:22  
20 mean between Brownstone entities and any other potential  
21 investor, not just another one with Mr. Mendenhall or  
22 Sunridge or anything like that. Just are there any other  
23 signed term sheets that you're aware of relating to the  
24 Gold Town Casino project?

25 A As far as Brownstone entity that I was in charge

Page 40

1 of, no.

2 Q Is there a term sheet you're aware of that relates  
3 to a non-Brownstone entity that you're in charge of?

4 A Not to my recollection. 10:22

5 Q Okay. I just want to be sure because you seemed  
6 to make a differentiation.

7 A Well, there is a difference, because I ran  
8 Brownstone. I was not in corporate. So American  
9 Vantage, I don't know.

10 Q On page 2, the first bullet on the top of that  
11 page --

12 A Uh-huh.

13 Q -- it says, "It is expected that the other  
14 investors will contribute \$7 million U.S. dollars for a  
15 12.6 percent membership interest." 10:23

16 Does that help you recall who the other investors  
17 were?

18 A The other investor would be Bob Sim.

19 Q Because Bob Sim was signed on to contribute  
20 \$7 million to the Gold Town Casino project?

21 A Bob Sim committed 7 million or more.

22 Q And just so I'm clear, does that tell you that Bob  
23 Sim is the other investor rather than American Vantage,  
24 or you're not sure?

25 A I'm not sure on the signature.

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1 Q But you recall that Bob Sim had committed 10:23  
2 \$7 million to the project?  
3 A Correct.  
4 Q What was that \$7 million to be used for?  
5 A As equity into the project.  
6 Q But it wasn't just going to sit in a bank account  
7 as equity, it was actually going to be used for 10:24  
8 something, correct?  
9 A Correct. That was the portion of equity we needed  
10 to move the project.  
11 Q What was that portion of the equity to move the  
12 project going to be used for?  
13 A Development of the project.  
14 Q Like pre-development, actual construction, what?  
15 A Construction. Pre-development and construction.  
16 All of the above.  
17 Q And as of December 4th, 2007, were there any 10:25  
18 business terms that still had to be worked out between  
19 the Brownstone entities, Mr. Mendenhall, and the other  
20 investor in order to make this project go?  
21 A Business terms? 10:25  
22 Q Yes.  
23 A There needed to be an operating agreement  
24 finalized.  
25 Q Okay. Anything else you can think that needed to

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1 little conflict here, I thought you testified during the  
2 period of August 1, 2007, to September 27, 2007, you 13:35  
3 didn't present any term sheets to Mr. Mendenhall. But  
4 now you're saying that he insisted on this binding  
5 language which is in this agreement --

6 A Uh-huh.

7 Q -- in this draft that was drafted between August  
8 1, 2007, and August 27, 2007. So you're saying he asked  
9 for that, even though you weren't giving him term sheets  
10 at that time. Is that what you're testifying?

11 MR. MARQUIS: I'm going to object to the form of  
12 the question. That mischaracterizes his testimony.

13 BY MR. GOCHNOUR:

14 Q If I've mischaracterized your testimony, please, 13:35  
15 I'm trying to correct it so I know what you're saying.

16 A I'm trying to get the dates correct. All I can  
17 remember is we had binding -- binding -- the term sheet  
18 was binding, and we put it in for the Canadians. We also  
19 put it in -- and Mr. Mendenhall wanted binding agreement.  
20 That's all I can say. I mean, I can't remember any more.  
21 I mean --

22 Q The binding -- the Canadians were the other  
23 investors in the Exhibit 1 term sheet, right?

24 A Yes.

25 Q Okay. And it was binding -- that term sheet was 13:36

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1 binding on them as well, right?

2 A Of course. 13:36

3 Q Okay. Can I have you turn to the part of Exhibit  
4 89 that is BROW-9968. Can you tell me when this term 13:38  
5 sheet was drafted? 13:38

6 A I am looking at the dates below, but they don't  
7 correspond with the term sheet.

8 Q Okay.

9 A This term sheet was probably automatically updated  
10 each time we used it and corrected it, so I don't know --  
11 whoever did the term sheet, how their computer changes 13:39  
12 the dates on it.

13 Q But on page 1, which is BROW-9968, the bullet  
14 point at the very bottom says, "For each \$1 million of  
15 Contributed Capital, Investor will receive a 1.8  
16 Membership Interest."

17 Now, that occurred because that was a term that  
18 Mr. Mendenhall demanded somewhere in your negotiations,  
19 right?

20 A Correct.

21 Q And you then presented it to other potential  
22 investors on that basis? 13:39

23 A After we were in agreeance (sic) with Mendenhall,  
24 yes.

25 Q Turning to the next page, the top bullet point, it

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1       A    He probably -- I don't know what percentage he  
2       owned of it, but he had invested some money in Level 10,  
3       and he said that, you know, look for them for the  
4       million-and-a-half, but look for me for the 7 to  
5       25 million.

6       Q    Okay. So was Bob Sim, again, the other investor  
7       that's listed in the term sheet who was --

8       A    Yeah.

9       Q    -- going to contribute \$7 million?

10      A    That's who was in mind when we did the term sheet,  
11      absolutely. 15:44

12      Q    And again, I don't understand how it came that  
13      Level 10 is talking about \$7 million. This isn't an  
14      additional 7 million, this is in place of that 7 million,  
15      right?

16      A    No. No. Well, it would be in place of it, but  
17      they would look and do it themselves. You know, you've  
18      got to remember Bob was only an investor in Level 10.  
19      Ralph was a little greedy CPA that would borrow from Bob,  
20      and Ralph wanted to do it himself, but he just didn't 15:44  
21      have the capacity. So we really didn't look to him for  
22      the 7 million. It was always Bob Sim, always.

23      Q    Then why are you writing a note, whether it  
24      actually got sent or just to yourself, that says that "We  
25      do understand that you may need some time on the

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1 have Bob. Bob was -- like I said, he was the staple  
2 because he lived here, he already had a gaming license,  
3 he had the land value. We didn't have to do anything if  
4 we kept Bob in as a partner. 17:22

5 But the fact he didn't contribute the land, we  
6 lost a lot of smaller investors. Bob Sim is the one that  
7 stuck with us for awhile. He stayed committed.

8 Q On the term sheet, there was Bob Mendenhall.

9 A Uh-huh.

10 Q There was Brownstone. There was the possibility  
11 of the Sunridge Golf Course, and there was the other  
12 investor, which I thought we've established was Bob Sim  
13 for \$7 million. 17:22

14 A Bob Sim was the other investor.

15 Q Yes.

16 A We only needed the 7 million.

17 Q Okay. So why were we still talking to other  
18 potential Canadians about additional money being  
19 invested?

20 A If we wanted to do the whole job, we needed more  
21 equity.

22 Q But you had decided to cap out the equity at  
23 25 million.

24 A Correct. But you always have backups. You know,  
25 any project you have a backup. And depending on the 17:22

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1 Q And who were the other investors who were  
2 concerned?

3 A The Canadians.

4 Q Which Canadians are we talking about?

5 A Bob Sim and his group.

6 Q And they were concerned? 17:43

7 A Yes.

8 Q Were they still committed to investing the  
9 25 million to buy the property if Mr. Mendenhall wasn't  
10 in in that period?

11 A Oh, in that period?

12 Q In the December 4, 2007, to April 8, 2008 period.

13 A Well, he was in, so there wasn't a need for the  
14 25 million, so the discussion was a moot issue.

15 Q Okay. After you received Mr. Mendenhall's letter, 17:43  
16 did you go back to Mr. Sim and say, "Are you still  
17 willing to invest the 25 million?"

18 A Yes.

19 Q And what was his response?

20 A He was still -- he was still interested in  
21 investing himself. He said he would have to get back  
22 with the Germans and see if they were, so, you know --  
23 and that went on for months and months. So we looked for  
24 different investment, different equity.

25 Q Mr. Sim never came in with \$25 million, correct? 17:44

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1  
2 I, the undersigned, a Certified Court Reporter of  
3 the State of Nevada, do hereby certify:

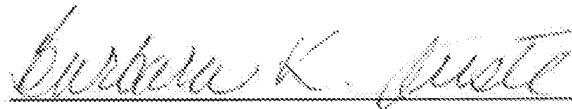
4 That the foregoing proceedings were taken before  
5 me at the time and place herein set forth; that any  
6 witnesses in the foregoing proceedings, prior to  
7 testifying, were duly sworn; that a record of the  
8 proceedings was made by me using machine shorthand which  
9 was thereafter transcribed under my direction; that the  
10 foregoing transcript is a true record of the testimony  
11 given.

12 Further, that before completion of the  
13 proceedings, review of the transcript [ ] was [XX] was  
14 not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee of  
17 any attorney or party to this action.

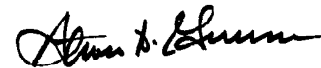
18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: July 22, 2014

22   
23

BARBARA R. JUSTL, RPR

24 CCR No. 878  
25



CLERK OF THE COURT

1 **RIS**

2 **JAMES J. LEE, ESQ.**

3 Nevada Bar No. 01909

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16 *Attorneys for Defendants Ronald Tassinari*

17 *And American Vantage Brownstone, LLC*

18 **DISTRICT COURT**  
19 **CLARK COUNTY, NEVADA**

20 ROBERT L. MENDENHALL, an individual,  
21 SUNRIDGE CORPORATION, a Nevada  
22 Corporation,

23 Plaintiffs,

24 v.

25 RONALD TASSINARI, an individual,  
26 AMERICAN VANTAGE BROWNSTONE,  
27 LLC, a Nevada limited liability company,  
28 DOES 1 through 5, inclusive and ROE  
CORPORATIONS 1 through 5, inclusive,

Defendants.

Case no.: A-14-708281-C

Dept. no.: XXXII

**REPLY IN SUPPORT OF  
DEFENDANT'S MOTION  
TO DISMISS**

Date of Hearing: March 17, 2015

Time of Hearing: 9:00 a.m.

COMES NOW, Defendants by and through their counsel James J. Lee, Esq. and Harry

Paul Marquis, Esq. and submit their Reply in Support of Defendant's Motion to Dismiss


REPLY RE MOTION TO DISMISS - 1

1 pursuant to NRCP 12(b)(6) and/or NRCP 56 on grounds that this action is barred by the  
2 *doctrine of claim preclusion*.

3 Defendant's Reply is made and based on the following points and authorities, all  
4 pleadings and papers on file herein and any and all arguments the court may entertain upon  
5 hearing.  
6

7 DATED this 10<sup>TH</sup> day of March, 2015.

8 **HARRY PAUL MARQUIS, CHARTERED**

9  
10   
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17 ***Attorney for Defendants***

18 In Association with:

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26 ***Attorney for Defendants***

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **A. Introduction**

This action is an attempt by Plaintiffs, Robert Mendenhall and Sunridge Corporation,  
(hereinafter both referred to as "Mendenhall") to revive a case that was dismissed with  
prejudice in August of 2014. That case was styled *Brownstone Gold Town LLC v. Robert*

1 Mendenhall et al, A-11-653822-C (“First Case”). In the First Case, Brownstone Gold Town,  
2 LLC and Brownstone Gold Town CV, LLC (“Brownstone Plaintiffs”), sued Mendenhall for  
3 breach of contract and unjust enrichment in connection with the contract—referred to as a “term  
4 sheet”—which is attached as Exhibit 1 to the Complaint on file herein. After years of litigation,  
5 Mendenhall made an offer of judgment and the Brownstone Plaintiffs timely accepted it.  
6 Consequently, the District Court entered an order dismissing the case with prejudice, fully  
7 discharging and releasing the parties with respect to any and all claims alleged as well as any  
8 related or potential claims that *could have* been alleged.  
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10  
11 Now, Mendenhall has singled out Ronald Tassinari (“Tassinari”) an officer and  
12 managing agent of American Vantage Brownstone LLC (AVB), the owner of the Brownstone  
13 Plaintiffs, as well as AVB itself, to assert claims grounded in the same transactions that gave  
14 rise to the First Case and which indeed he tried to assert in that case before it was settled and  
15 dismissed with prejudice.  
16

17 As a matter of law, a dismissal with prejudice *is just that*, it permanently bars all claims  
18 that were brought, *or that could have been brought*, in the dismissed action. Since Mendenhall’s  
19 claims in this case are based on the same core transactions which gave rise to the First Case and  
20 could *have been brought* in that case, and since Tassinari and AVB were and are *privies* to the  
21 Brownstone Plaintiffs in the First Case, this action is barred.  
22

### 23 **B. Admissions of Mendenhall in Plaintiff’s Opposition**

24 In their Opposition, Plaintiff’s Robert L. Mendenhall (“Mendenhall”) and Sunridge  
25 Corporation (“Sunridge”) (collectively the “Mendenhall Parties”) admit that: 1) Mendenhall  
26 was the first to sign the Term Sheet; 2) Mendenhall signed the Term Sheet containing no other  
27 signatures; 3) that Mendenhall returned the Term Sheet signed only by Mendenhall to the  
28

1 Brownstone Plaintiffs; and 4) that Mendenhall subsequently received a copy of the Term Sheet  
2 with all signatures. Mendenhall's affidavit attached to Plaintiff's Opposition states in pertinent  
3 part as follows:

4        "... I signed the Term Sheet, and returned the Term Sheet to Tassinari and Mr.  
5        Gross on December 5, 2007.

6        8. That same day, December 5, 2007, a fully executed copy of the Term Sheet  
7        was faxed back to me, with all of the signature lines completed."

8        There is no question that Mendenhall did not sign the Term Sheet in reliance upon any  
9        existing signatures on the Term Sheet because it is undisputed that Mendenhall signed the  
10       Term Sheet first.

11       Mendenhall's affidavit attached to Defendant's Motion to Amend in the First Case  
12       contains verbatim the same language quoted above from Mendenhall's affidavit attached to  
13       Plaintiff's Opposition. Mendenhall's affidavit attached to Defendant's Motion to Amend in the  
14       First Case also specifically identifies the Term Sheet he signed and returned as Exhibit 1 to said  
15       Motion to Amend. A copy of Exhibit 1 to the Motion to Amend is attached hereto as Exhibit  
16       "F" and contains bates numbers from the First Case of MEN00670-MEN00674 identifying the  
17       document as being produced by the Mendenhall Parties (the "Undisputed Term Sheet").

18       Defendants respectfully ask the Court to closely examine the signature page of the  
19       Undisputed Term Sheet (MEN00674) particularly in regard to the signatures of American  
20       Vantage Brownstone, LLC, which was signed by Ronald Tassinari, Chairman, and the signature  
21       for Other Investor(s). The signature of Ronald Tassinari for American Vantage Brownstone,  
22       LLC is extremely distinctive and is the same signature for Other Investor(s). The affidavits of

1 **Mendenhall admit that Mendenhall had possession of the Undisputed Term Sheet (Ex. F) on**  
2 **December 5, 2007.**

3 Plaintiffs argue that they could not have brought the claims they attempted to assert in  
4 the First Case through their Motion to Amend, and which they have asserted in this case,  
5 because the claims did not accrue until Plaintiffs' "discovery" of the fact that Mr. Tassinari  
6 signed the Undisputed Term Sheet in the Other Investor(s) signature block. However, what  
7 Plaintiffs fail to acknowledge, and what Plaintiffs cannot escape, is that **Mendenhall admits**  
8 **that Mendenhall had possession of the Undisputed Term Sheet (Ex. F) on December 5, 2007.**

9  
10 Mendenhall's admission that he was in possession of the Undisputed Term Sheet since  
11 December 5, 2007 irrefutably demonstrates that Plaintiffs discovered, or should have  
12 discovered, that Mr. Tassinari signed the Undisputed Term Sheet in the Other Investor(s)  
13 signature block.

14  
15 In their Opposition, Plaintiff's argue that at their depositions in the First Case both  
16 Robert F. Gross and Anna M. Morrison were unable to identify the signature in the Other  
17 Investor(s) signature block of the Term Sheet. However, Plaintiffs fail to disclose to the Court  
18 that the Term Sheet presented to Mr. Gross and Ms. Morrison at their respective depositions  
19 was not the Undisputed Term Sheet, but was a much less clear copy of the Term Sheet which  
20 was marked as "Exhibit 1" to both depositions and which contained bates numbers from the  
21 First Case of BROW00267-BROW00272 (the "Deposition Term Sheet"). A copy of the  
22 Deposition Term Sheet is attached hereto as Exhibit "G". It is undisputed and admitted by  
23 Mendenhall that Plaintiffs had possession of the clear and distinct Undisputed Term Sheet since  
24 December 5, 2007, that Plaintiffs produced the Undisputed Term Sheet as MEN00670-  
25 MEN00674 in the First Case, and that Plaintiffs had possession of the clear and distinct

26  
27  
28  
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1 Undisputed Term Sheet at the time of the depositions of Mr. Gross and Ms. Morrison in the  
2 First Case.

3 Contrary to the assertions in Plaintiff's Opposition, Mendenhall admits that Mendenhall  
4 signed the Term Sheet first when no other signatures were present and that on December 5,  
5 2007 Mendenhall had possession the Undisputed Term Sheet which plainly shows that Ronald  
6 Tassinari signed the Undisputed Term Sheet both on behalf of American Vantage Brownstone,  
7 LLC and for Other Investor(s).

## 10 ARGUMENT

### 11 1. This Case is Barred by the Doctrine of Claim Preclusion.

12 The doctrine of claim preclusion provides that a final judgment on the merits bars  
13 further claims by parties or their privies based on the same cause of action or operative facts.  
14 *Five Star Capital Corp v Ruby*, 124 Nev. 1048, 194 P3d 709, 713 (2008). The Nevada Supreme  
15 Court has established a three-part test for determining whether claim preclusion applies: "(1)  
16 The parties or their privies are the same; (2) the final judgment is valid; and (3) the subsequent  
17 action is based on the same claims or any part of them that were or could have been brought in  
18 the first case." (Emphasis Supplied) *Id* at 710.

#### 21 a. Defendants Ronald Tassinari and American Vantage Brownstone 22 LLC are Privies of the Plaintiffs in the First Case.

23 Defendants Ronald Tassinari and American Vantage Brownstone LLC were and are  
24 privies to the Brownstone Plaintiffs in the First Case. Privy exists when a person is identified  
25 and shares a commonality of interest with another. See *Headwaters Inc. v. U.S. Forest Serv.*,  
26 399 F.3d 1047, 1054 (9th Cir.2005). The focus of the inquiry regarding privity is whether the  
27 party in the later action was "sufficiently close" to the party in the first action so as to justify  
28

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1 applying preclusion principles. *Clemmer v Hartford Insurance Co.* 22 Cal .3d 865, 151 Cal  
2 Rptr. 285, 587 P.2d 1098, 1102 (Cal.1978).

3 Plaintiff's argument in their Opposition that the fact corporate officers or agents could  
4 be liable for torts committed within the course and scope of their duties does not mean privity  
5 does not exist for purposes of claim preclusion pursuant to *Five Star Capital Corp. See Bloom*  
6 *v Claimetrics Management*, 2011 U.S. Dist. Lexis. 75841 (Nev. 2011) (Since defendants in  
7 second case were managing agents, members and owners of defendant limited liability company  
8 in first case, they were privies for purposes of claim preclusion.)  
9

10 Here, Defendant American Vantage Brownstone LLC (AVB) is the owner of both  
11 Brownstone Plaintiffs, Brownstone Gold Town, LLC, and Brownstone Gold Town CV, LLC. In  
12 fact the Term Sheet, attached as Exhibit 1 to the Complaint herein, specifically identifies  
13 Brownstone Gold Town, LLC as a subsidiary of AVB as follows:  
14

15 "This term sheet shall serve as an outline of the basic business terms and  
16 conditions upon which Brownstone GoldTown, LLC ("Brownstone GoldTown"),  
17 a subsidiary of American Vantage Brownstone, LLC ("AVB"), Robert L.  
18 Mendenhall, Ph.D. or an entity wholly-owned by Mr. Mendenhall  
19 ("Mendenhall"), and other potential equity investor(s) (the "Other Investor(s)),  
20 will acquire membership interests in the Nevada limited liability company,  
21 Brownstone GoldTown CV, LLC (the "Company") for the primary purpose of  
22 constructing, owning and operating a hotel casino to be located in Carson Valley,  
23 Douglas County, Nevada (the "Project")." (Emphasis Supplied)  
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