

1 *Fayemi v. Hambrecht & Quist, Inc.*, 174 F.R.D. 319, 326 (S.D.N.Y. 1997) (the court may utilize  
2 its inherent authority to preclude use of wrongfully obtained information even where the  
3 documents are otherwise subject to disclosure during the normal course of discovery). Nor does  
4 the wrongfulness of the conduct depend on whether the documents are proprietary, confidential,  
5 or privileged, although the documents at issue are, in fact, confidential and proprietary. (Fujihara  
6 Decl. ¶¶ 12, 18, 38). *Glynn*, 2010 WL 3294347, at \*5 (“The parties dispute whether the  
7 information listed above is proprietary, confidential, or protected by the attorney-client or work  
8 product privileges. I need not resolve these issues because, regardless of their merits, I believe it  
9 was inappropriate for [plaintiff and his counsel] to acquire these internal [opposing party]  
10 documents outside the normal discovery channels.”).

11 **3. WRL Caused Fujihara to Breach his Confidentiality Obligations to**  
12 **UEC**

13 In procuring UEC’s confidential and proprietary documents and information outside the  
14 course of discovery, WRL tortiously interfered with Fujihara’s contractual confidentiality  
15 obligations to UEC.<sup>10</sup> Fujihara’s Sworn Oath and the UEC Employment Rules prohibited  
16 Fujihara from disclosing the information and documents he provided WRL. (Fujihara Decl., Ex.  
17 A (Sworn Oath); Ex. B (UEC Employment Rules).) Indeed, Fujihara was not even authorized to  
18

19 <sup>10</sup> To establish tortious interference with contractual relations, a plaintiff must show (1) a  
20 valid and existing contract; (2) the defendant’s knowledge of the contract; (3) intentional acts  
21 intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract,  
22 and (5) resulting damages. *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267  
23 (2003). The confidentiality provisions in Fujihara’s Signed Oath and UEC’s Employment Rules  
24 constitute valid contractual obligations which WRL should reasonably have inferred and  
25 understood would exist because Fujihara is a current UEC employee. *Id.* (“the plaintiff must  
26 demonstrate that the defendant knew of the existing contract, or at the very least, establish facts  
27 from which the existence of the contract can reasonably be inferred.”) Fujihara’s confidentiality  
28 obligations can also reasonably be inferred from his notice to WRL that the documents WRL  
requested were outside of the scope of his authority to obtain. WRL nevertheless undertook  
intentional acts intended and designed to disrupt Fujihara’s confidentiality obligations by  
encouraging Fujihara to disclose UEC’s confidential documents, including by apparently paying  
for his travel expenses, facilitating his movements, and arranging for his interviews. As a result,  
Fujihara breached his confidentiality obligations by disclosing confidential and proprietary UEC  
information and documents to DOJ and WRL, including documents that he was not authorized to  
access, thereby resulting in damages to UEC.

1 access, much less share outside UEC, some of the documents he obtained and disclosed to WRL.  
2 (Fujihara Decl. ¶ 33.) The violation of Fujihara's confidentiality obligations to UEC, and WRL's  
3 tortious actions in inducing the breach, reinforce the wrongfulness of WRL's conduct and the  
4 necessity of imposing sanctions.

5 **B. The Court Should Permit Expedited Discovery to Determine the Full Extent**  
6 **of WRL's Wrongful Conduct.**

7  
8 The full extent of WRL's wrongful conduct is unknown at this point. To rectify the  
9 invasions of their rights as soon as possible, UEC and Aruze USA seek the issuance of a Letter  
10 Rogatory to Japan and the following discovery on an expedited basis. UEC and Aruze USA  
11 reserve all rights to seek additional discovery within the expedited schedule to be set by the Court.

12 **1. Application for Issuance of a Letter Rogatory to Japan**

13 Pursuant to Nevada Rule of Civil Procedure 28(b), UEC and Aruze USA hereby apply for  
14 the issuance of a Letter Rogatory to the Appropriate Judicial Authority in Japan in order to  
15 compel the deposition in Japan of Kosaka, who has evidence critical to determining the extent of  
16 WRL's improper conduct. Because Kosaka is a Japanese national who resides in Japan, he is  
17 beyond the subpoena power of this Court.

18 Nevada law permits depositions to be taken in foreign countries pursuant to a letter  
19 rogatory. NRCP 28(b). Moreover, it is well settled that the Court has inherent authority to issue a  
20 letter rogatory to a foreign tribunal. *See United States v. Staples*, 256 F.2d 290, 292 (9th Cir.  
21 1958). Furthermore, the U.S. Department of State has the authority to "receive a letter rogatory  
22 issued . . . by a tribunal in the United States" and transfer it to the appropriate foreign tribunal. 28  
23 U.S.C. § 1781(a).

24 Nevada law requires that a letter rogatory "shall be issued on application and notice and  
25 on terms that are just and appropriate." NRCP 28(b). Courts interpreting "just and appropriate"  
26 standards similar to the one in Nevada have found that the terms of a letter rogatory are "just and  
27 appropriate" when the discovery sought by the letter rogatory is "reasonably calculated to lead to  
28 the discovery of admissible evidence." *DBMS Consultants Ltd. v. Computer Associates Int'l.*,

1 *Inc.*, 131 F.R.D. 367, 369 (D. Mass. 1990). Because Nevada rules permit discovery of any matter  
2 that “is relevant to the subject matter involved in the pending action,” it is incumbent upon the  
3 party opposing an application for a letter rogatory to demonstrate that the discovery request  
4 exceeds the state’s liberal discovery rules. NRCp 26(b); *see Brake Parts, Inc. v. Lewis*, 2009 WL  
5 1939039, at \*3 (E.D. Ky. July 6, 2009); *see also Evanston Ins. Co. v. OEA, Inc.*, 2006 WL  
6 1652315 at \*2 (E.D. Cal. June 13, 2006) (“[T]his court will apply the rule that letters of rogatory  
7 shall issue unless good cause is shown otherwise”).

8 UEC’s and Aruze USA’s Letter Rogatory to Japan for Kosaka’s deposition easily clears  
9 the relevance requirements of the Nevada rules. Kosaka had a prominent role in WRL’s efforts to  
10 contact UEC employees and obtain UEC’s confidential and proprietary information outside of the  
11 discovery process. Evidence from Kosaka is crucial to determine the full extent of WRL’s  
12 improper conduct, including the volume and identity of specific documents obtained by WRL,  
13 payments by WRL for obtaining information, and identification of other UEC employees whom  
14 WRL may have contacted (directly or through Kosaka). *See Evanston*, 2006 WL 1652315 at \*2  
15 (granting motion for issuance of letters rogatory where declarant’s deposition was relevant and  
16 necessary to prosecution of the action). Of course, UEC and Aruze USA will comply with any  
17 requirement to reimburse this Court for any expenses incurred in connection with the execution of  
18 this Letter Rogatory.

19 For the foregoing reasons, UEC and Aruze USA respectfully submit that the Court should  
20 grant their application and issue the proposed Letter Rogatory (attached hereto as Exhibit 4).  
21 UEC and Aruze USA also request the Court to return the Letter Rogatory to UEC’s and Aruze  
22 USA’s counsel for delivery to the proper authorities at the U.S. Department of State, who will  
23 ensure that the Letter Rogatory is transferred to the Appropriate Judicial Authority in Japan.

24 **2. Expedited Responses to Interrogatories and Requests for Production of**  
25 **Documents and Deposition of James Stern**

26 UEC and Aruze USA also respectfully request that this Court order that WRL respond by  
27 Wednesday, May 27, 2015 to UEC’s and Aruze USA’s Fourth Set of Requests for Production of  
28 Documents (“RFPs”) (Exhibit 5) and Interrogatories (Exhibit 6), served concurrently with this

1 Motion on April 24, 2015. UEC and Aruze USA request that this Court order that WRL produce  
2 all non-privileged responsive documents in response to the RFPs by Wednesday May 27, 2015  
3 and subsequently produce the privilege log associated therewith by Tuesday, June 2, 2015.<sup>11</sup>  
4 These RFPs and Interrogatories are limited in scope and serve to inquire into the extent of WRL's  
5 improprieties, in particular its interactions with UEC's and Aruze USA's employees including but  
6 not limited to Fujihara; the nature of WRL's working relationship with Kosaka; and the  
7 knowledge of the improper conduct by WRL personnel and its legal team.<sup>12</sup> *See Shell Oil*, 143  
8 F.R.D. 105 (under the court's inherent authority, ordering offending party to identify and produce  
9 the documents it received from opposing party's employee). UEC and Aruze USA further  
10 respectfully request that this Court order the deposition of WRL Senior Vice President of  
11 Corporate Security James Stern take place on June 10, 2015, in accordance with the deposition  
12 notice served concurrently with this Motion (Exhibit 7).<sup>13</sup> UEC and Aruze USA similarly request  
13 that the Court order the 30(b)(6) deposition of WRL's designee take place on June 18, 2015 in  
14 accordance with, and on the topics identified in, the Notice of 30(b)(6) Deposition to WRL,  
15 served concurrently with this Motion (Exhibit 8).<sup>14</sup> The depositions are scheduled after WRL's  
16 production of documents in order to permit the documents' use in the examinations. Because the  
17 documents may reveal further information not yet known to UEC and Aruze USA, UEC and  
18 Aruze USA respectfully request that they be permitted to finalize the 30(b)(6) deposition topics

---

19  
20 <sup>11</sup> UEC and Aruze USA request that disputes, if any, regarding UEC's and Aruze USA's  
21 specific requests and proposed response times be resolved at oral argument at the initial hearing  
22 on this Motion.

23 <sup>12</sup> Because these Interrogatories were necessitated by WRL's wrongful conduct, we  
24 respectfully request the Court should order that they not count towards the 40 interrogatories  
25 permitted under NRCP 33.

26 <sup>13</sup> Because this deposition is necessitated by WRL's wrongful conduct, the Court should  
27 order that UEC and Aruze USA are granted leave pursuant to NRCP 30(a)(2) to take a deposition  
28 of James Stern in the future on this action's claims and defenses.

<sup>14</sup> Because this deposition is necessitated by WRL's wrongful conduct, the Court should  
order that UEC and Aruze USA are granted leave pursuant to NRCP 30(a)(2) to take a future  
30(b)(6) deposition of a WRL on this action's claims and defenses and a future deposition of  
WRL's designee in this instance on this action's claims and defenses.



1 on or by Thursday, June 11, 2015. In order to narrow the issues before this Court at the hearing  
2 on further sanctions, UEC and Aruze USA anticipate serving Requests for Admission to WRL on  
3 or by Thursday, June 11, 2015. Accordingly, UEC and Aruze USA respectfully request that this  
4 Court order that WRL respond to UEC's and Aruze USA's Requests for Admission by Monday,  
5 June 22, 2015.

6 UEC and Aruze USA would be prejudiced if they cannot promptly depose Stern and  
7 WRL's 30(b)(6) designee and receive answers to interrogatories and responses to the document  
8 requests. WRL has deliberately concealed its wrongful conduct for over two years; WRL has had  
9 the benefit of UEC's improperly obtained confidential and proprietary information for the  
10 duration of that period; and WRL has failed to disclose that Stern had discoverable information.  
11 Discovery is necessary to determine the extent of WRL's improper conduct, including the volume  
12 and identity of specific documents obtained by WRL, payments by WRL for obtaining  
13 information, identification of all WRL personnel with knowledge and responsibility, and  
14 identification of other current or former UEC employees whom WRL may have contacted. The  
15 depositions of Stern and WRL, answers to interrogatories and production of documents are also  
16 necessary to determine whether Stern communicated with other employees or agents of WRL  
17 about his communications with, and receipt of UEC's confidential and proprietary documents  
18 from, current or former UEC employees. Any further delay deepens the prejudice to UEC's and  
19 Aruze USA's right to a fair proceeding.

20 **C. The Court Should Impose Sanctions Against WRL for Its Willful Misconduct**

21 WRL's conduct is sanctionable. "Under its inherent powers, a district court may sanction  
22 a party for wrongfully obtaining the property or confidential information of an opposing party."  
23 *Glynn*, 2010 WL 3294347, at \*3.<sup>15</sup>

24  
25  
26 <sup>15</sup> Courts have imposed sanctions even when the full extent of the improper conduct is  
27 unclear. *See e.g. Shell Oil*, 143 F.R.D. at 108 ("The facts regarding the contact are not entirely  
28 known."); *see also Jackson*, 211 F.R.D. at 431 (noting that "the parties have bickered for months  
over the exact manner in which [plaintiff] obtained" the confidential information).

1. Sanctions Warranted Now

a) Return of and Prohibition on the Use of UEC's Illegally  
Procured Documents

The Court should order the return of UEC's documents that were obtained from Fujihara and prohibit WRL's use of those documents in this litigation. *See Pure Power Boot Camp, Inc. v. Warrior Fitness Boot Camp*, 587 F. Supp. 2d 548, 570 (S.D.N.Y. 2008) (precluding illegally obtained e-mails from being used as evidence); *Fayemi*, 174 F.R.D. at 326 (use of wrongfully obtained information precluded where plaintiff gained access to private areas of defendant's business without permission or authority and copied confidential materials).<sup>16</sup>

b) Prohibition on Further *Ex Parte* Contact by WRL with UEC's  
and Aruze USA's Current and Former Employees

The Court should put an end to WRL's improper conduct by precluding it from contacting UEC's and Aruze USA's current and former employees on an *ex parte* basis. This sanction is necessary to preserve the integrity of the judicial proceeding where, as here, WRL obtained documents from its adversary's employee, using a former employee as a conduit, regardless of whether the employees contacted are considered a "party" under the "no-contact" rule. *Shell Oil*, 143 F.R.D. at 109 (under the court's inherent authority, barring further *ex-parte* contact with opposing party's employees where party previously contacted opposing party's employees and obtained opposing party's documents); *Giardina*, 2001 WL 1628597 at \*4 (exercising court's inherent authority to prohibit all *ex parte* contact between plaintiff and employees of defendant).

<sup>16</sup> *Lynn v. Gateway Unified Sch. Dist.*, No. 2:10-CV-00981-JAM, 2011 WL 6260362, at \*6-7 (E.D. Cal. Dec. 15, 2011) (employee's theft of emails immediately following termination of employment and disclosure to his attorney warranted sanctions prohibiting the introduction of evidence about the contents of the emails); *Shell Oil Refinery*, 143 F.R.D. at 108 (exercising the court's inherent authority to prohibit a party's use of documents received from opposing party's employee); *Giardina*, 2001 WL 1628597 at \*4 (exercising court's inherent authority to prohibit use of privileged letter obtained by plaintiff through *ex parte* contact with unknown employee of defendant); *Lahr v. Fulbright & Jaworski, L.L.P.*, No. 3-94-CV-0981-D, 1995 WL 17816334 (N.D. Tex. Oct. 25, 1995) (appropriation and delivery of defendant's documents by defendant's employee to plaintiff was improper, and ordered return of the documents and prohibited use in the litigation), *aff'd Lahr v. Fulbright & Jaworski, L.L.P.*, No. 3:94-CV-0981-D, 1996 WL 34393321 (N.D. Tex. July 10, 1996).

**2. Additional Sanctions This Court Should Order Following Expedited Discovery**

**a) Monetary Sanctions**

In order to deter WRL from similar misconduct in the future, the Court should impose monetary sanctions, including reimbursement by WRL of UEC's and Aruze USA's attorneys' fees incurred in bringing this motion and in conducting discovery necessitated in pursuing this motion. *See Chamberlain Grp., Inc. v. Lear Corp.*, 270 F.R.D. 392, 398 (N.D. Ill. 2010) (plaintiff's failure to disclose receipt of privileged and confidential documents from defendant's former employee was a breach of its ethical duty and warranted monetary sanctions); *Glynn*, 2010 WL 3294347 (monetary sanctions to punish and deter plaintiff for acquiring internal company documents from defendant's employee); *Ashman v. Solectron Corp.*, 2008 WL 5071101 (N.D. Cal. Dec. 1, 2008) (costs and attorney fees for defendant's motion to preclude the use of the unlawfully obtained documents where plaintiff accessed defendant's computer system without authorization after termination of his employment and retrieved confidential documents for use in litigation).

**b) Dismissal of WRL's Claims**

The Court should dismiss WRL's claims relating to the illegally procured documents as a sanction for its wrongful conduct. In determining whether to dismiss any of WRL's claims, the Court may consider (1) the degree of willfulness of the offending party; (2) the extent to which the victimized party would be prejudiced by a lesser sanction; (3) the severity of the sanction of dismissal relative to the severity of the discovery abuse; (4) whether any evidence has been irreparably lost; (5) the feasibility and fairness of alternative, lesser sanctions; (6) the policy favoring adjudication on the merits; (7) whether sanctions unfairly operate to penalize a party for the misconduct of counsel; and (8) the need to deter both the parties and future litigants from future abuses. *Young*, 106 Nev.at 93, 787 P.2d at 780.

WRL's conduct was willful. WRL pursued UEC's most senior accounting and finance manager and pressured him to disclose UEC's confidential and proprietary information and documents. This is not a case where WRL inadvertently stumbled upon UEC's documents, gaining access to confidential information by mistake. WRL's willfulness is reflected by its

1 secrecy. WRL's plan seems to have been to bury its impropriety by failing to make required  
2 NRCP 16.1(a) disclosures,<sup>17</sup> omitting Stern, Kosaka, and Fujihara from its list of individuals  
3 likely to have discoverable information, and by failing in the last two years to produce documents  
4 concerning its communications with Fujihara, much less the documents WRL obtained from  
5 Fujihara.<sup>18</sup> (See Exhibit 9; see also Declaration of Robert J. Cassity, Esq. ("Cassity Decl.")  
6 (attached hereto as Exhibit 1) ¶ 8.) Due to the willfulness and severity of WRL's misconduct  
7 deliberately executed over the course of multiple *ex parte* meetings on two continents over many  
8 months, as well as WRL's concealment of its misconduct, dismissal is appropriate. *Jackson*, 211  
9 F.R.D. at 430-33 (dismissing action after finding that plaintiff intentionally stole defendant's  
10 proprietary secrets, attorney-client work product, and confidential information both before and  
11 after he left his employment with defendant).

12 UEC and Aruze USA would be prejudiced in defending this lawsuit by the application of  
13 lesser sanctions because WRL has gained a tactical advantage by utilizing improperly obtained  
14 UEC confidential and proprietary information, as well as contacting UEC's most senior Finance  
15 and Accounting Manager, in formulating WRL's discovery and litigation strategy. Assessment of  
16 monetary sanctions alone would convey a "message to litigants that money could cure one's  
17 improper acts." *Perna*, 916 F. Supp. at 400. Further, WRL, by apparently paying for Fujihara's  
18 participation, has already demonstrated that money is less important to it than improperly  
19 obtaining an edge over UEC and Aruze USA. Even if WRL were to return the documents,  
20

---

21 <sup>17</sup> The Wynn Parties' Seventh Supplemental Disclosures Pursuant to NRCP 16.1 is attached  
22 as Exhibit 9 to this Motion with the omission of the production log, attached as Exhibit A to the  
Disclosures.

23 <sup>18</sup> UEC and Aruze USA requested on January 2, 2013 that WRL produce "[a]ll documents  
24 concerning communications by Wynn Resorts with Defendants (including Defendants'  
25 representatives) concerning any investigation that Wynn Resorts conducted or commissioned  
26 concerning Defendants or their businesses in the Philippines." RFP No. 35. While WRL agreed  
27 to produce responsive documents to this request, WRL's NRCP 16.1 Disclosures omit James  
28 Stern, Toshihiko Kosaka, and Yoshitaka Fujihara from their list of individuals likely to have  
discoverable information and WRL's production of documents, to date, does not include  
documents concerning its communications with Yoshitaka Fujihara or documents WRL obtained  
from Fujihara. (Cassity Decl. ¶ 8.).

1 knowledge of UEC’s proprietary information cannot be erased. *See id.* (once plaintiff reviewed  
2 the documents his knowledge of the proprietary information could not be erased; defendant had  
3 suffered prejudice which could only be cured by dismissal); *see also Lipin v. Bender*, 84 N.Y.2d  
4 562 (N.Y. App. Div. 1993) (dismissing action where plaintiff obtained and reviewed internal  
5 memoranda prepared by opposing counsel because the wrongdoing and knowledge were the  
6 party’s own “so that neither suppression of the document nor suppression of the information was  
7 a realistic alternative” to dismissal), *aff’d* 193 A.D. 2d 424 (N.Y. App. Div. 1993).

8 Moreover, dismissal is necessary to deter future abuses. No other sanction will deter  
9 WRL and future litigants from engaging in similar behavior as well as dismissal. *Perna*, 916  
10 F. Supp. at 401. (“[D]ismissal is the only form of discipline that will insure the orderly  
11 administration of justice and the integrity of the courts.”).

12 **V. CONCLUSION**

13 In sum, UEC and Aruze USA request that this Court order (i) expedited discovery to be  
14 completed by June 22, with disputes if any regarding UEC’s and Aruze USA’s specific requests  
15 and proposed response times to be resolved at the initial oral argument on this Motion; (ii) initial  
16 sanctions against WRL, specifically the return of, and prohibition on the use of, illegally procured  
17 documents, and a prohibition on further ex parte contact with Aruze Party employees; and (iii)  
18 oral argument after expedited discovery on UEC’s and Aruze USA’s requests for further  
19 sanctions, using the following overall schedule:

Date	Event
To be determined (but no earlier than May 4)	Oral argument on requests for <ul style="list-style-type: none"><li>expedited discovery (including the resolution of any disputes over the particulars of discovery being served on WRL concurrently with this Motion);</li><li>issuance of a letter rogatory; and</li><li>initial sanctions. (including return of UEC’s documents wrongfully misappropriated by WRL, precluding the use of such documents in this proceeding and prohibiting further <i>ex parte</i> contact between WRL and current and former UEC and Aruze USA employees)</li></ul>

1 Wed., May 27	Service by Wynn Resorts, Limited's ("WRL") of
2	<ul style="list-style-type: none"> <li>• responses to UEC's and Aruze USA's First Set of Interrogatories (served April 24); and</li> </ul>
3	<ul style="list-style-type: none"> <li>• non-privileged documents responsive to UEC's and Aruze USA's 4th Request for Production of Documents (served April 24)</li> </ul>
4	
5 Tues., June 2	Service of WRL's privilege log in response to UEC's and Aruze USA's 4th Request for Production of Documents
6	
7 Wed., June 10	Deposition of James Stern
8 Thurs., June 11	Deadline
9	<ul style="list-style-type: none"> <li>• for service of any requests for admission (responses due by close of expedited discovery); and</li> </ul>
10	<ul style="list-style-type: none"> <li>• to finalize topics for Deposition of 30(b)(6) designee(s).</li> </ul>
11 Thurs., June 18	Deposition of 30(b)(6) designee(s)
12 Mon., June 22	Completion of expedited discovery
13 Mon., June 29	Service of WRL's opposition to the request for further sanctions
14 Mon., July 6	Service of UEC's and Aruze USA's reply papers
15 To be determined (UEC and Aruze USA request Fri., Jul. 10)	Oral argument on Motion's request for further sanctions
16	

DATED this 24th day of April, 2015.



J. Stephen Peek, Esq. (1758)  
Bryce K. Kunimoto, Esq. (7781)  
Robert J. Cassity, Esq. (9779)  
Brian G. Anderson, Esq. (10500)  
HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134

David S. Krakoff, Esq. (*Admitted Pro Hac Vice*)  
Benjamin B. Klubes, Esq. (*Admitted Pro Hac Vice*)  
Joseph J. Reilly, Esq. (*Admitted Pro Hac Vice*)  
Adam Miller, Esq. (*Admitted Pro Hac Vice*)  
BUCKLEY SANDLER LLP  
1250 24th Street NW, Suite 700  
Washington DC 20037

*Attorneys for Defendant Kazuo Okada and  
Defendants/Counterclaimants Aruze USA, Inc.  
and Universal Entertainment Corp.*











































































































































































































































































































































































Electronically Filed  
Oct 15 2015 09:02 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court



























































1 Foreclosure Deed to the Nevada Real Estate Division (NRED) Ombudsman (OMB) within 30  
2 days after the sale.

3 63. This intentional failure allowed HOA AGENTS to keep covert the fact that they held  
4 the HOA sale illegally after cancelling the Notice of Sale (NOS) on May 15, 2014, because the  
5 “owner was retained.” **(Exhibit 5).**

6 64. NRS 116.31085 governs limitations on power of executive board to meet in executive  
7 session; procedure governing hearings on alleged violations; requirements concerning minutes of  
8 certain meetings. The guaranteed forms of due process were not provided in that: a) The HOA  
9 Board did not hold a hearing allowing; b) presentation of evidence c) right to counsel, d) the  
10 right to present witnesses or comply with section (5)...provide even “the minimum protections  
11 that the executive board must provide before it may make a decision. The provisions of  
12 subsection 4 do not preempt any provisions of the governing documents that provide greater  
13 protections.”

14 65. The HOA violated and continues to violate section (6) “The executive board shall  
15 maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation  
16 and, upon request, provide a copy of the decision to the person who was subject to being  
17 sanctioned at the hearing or to the person's designated representative” in that they refuse direct  
18 requests from the affected individual's representative wrongly claiming to be bound by  
19 unspecified NRS 116 provisions requiring confidentiality of all executive session discussions  
20 with no exceptions. **(Exhibit 6).**

21 **The HOA Sale Is Null and Void For Noncompliance with HOA Governing Documents**  
22 **and HOA Board Policy**

23 66. Cross-Claimant incorporates and re-alleges all previous paragraphs, as if fully set forth  
24 herein.

1 hearing, no appeal, and no notice that the decision had been made to foreclose by the HOA  
2 Board.

3 68. There has never been any notice from the HOA or the HOA AGENTS that the HOA  
4 sale had occurred, even though such a sale all Cross-Claimant's title rights to a \$400,000 house  
5 had been removed without notice or due process.

6 69. The extreme irony is that at the exact same time, relating to the exact same Subject  
7 Property, an allegation was made of a trivial violation of the CC&Rs, i.e., dead plants, for which  
8 the exact same Owner could be sanctioned.

9 70. For the trivial violation of dead plants, an HOA AGENT, employed by FSR,  
10 implemented the procedure for due process impeccably:

11 71. a) with notice of the violation of dead plants, b) with the possible sanction of \$100, c)  
12 a hearing, d) that the owner could attend, e) opportunity to defend against the allegations, f)  
13 appeal to the Board, and then g) on August 13, 2014 the Notice Sanctions for of \$100, two days  
14 before the surprise HOA sale took all Cross-Claimant's rights the \$400,000 house without any  
15 due process or even notice afterward that the sale had occurred.

16 72. The HOA Board's most momentous decision of how to sanction Cross-Claimant, an  
17 HOA member, based on an allegation of delinquent HOA dues was to decide among their legal  
18 options: a) to purchase the Subject Property in delinquency, b) to offer a payment plan, c) to sue  
19 in small claims court or d) to foreclose, was made based solely on allegations made in secret by  
20 HOA AGENTS who financially benefitted from wrongful foreclosure of the Subject Property.

21 73. That HOA AGENTS conducted the collection process in a manner that deceived the  
22 HOA Board and tricked them into not following their own procedures and into making decisions  
23 which caused damages to Cross-Claimant.

24 ///

1 thereby perpetuating a fraud which caused damages to Cross-Claimant.

2 86. Conspirators evaded paying the required real Subject Property transfer taxes (RPTT) and  
3 HOA-mandated New Member Set-up Fee and Asset Enhancement Fees.

4 **FOURTH CAUSE OF ACTION:**  
5 **FRAUDULENT CONCEALMENT**  
6

7 87. Cross-Claimant incorporates and re-alleges all previous paragraphs, as if fully set  
8 forth herein, and further alleges:

9 88. That the HOA AGENTS withheld/provided false information to enforcement officials  
10 to conceal their illegal conduct of HOA sale.

11 89. That the HOA AGENTS violated NRS 38.310 (1)(a) process that defines mediation  
12 as a necessary prerequisite of a valid HOA foreclosure.

13 90. That the HOA AGENTS provided false information to enforcement officials by  
14 telling the Ombudsman (OMB) that the "Owner was retained" so the HOA could avoid  
15 completing the OMB Notice of Sale (NOS) process and still conduct the foreclosure sale,

16 91. That the HOA AGENTS tricked the OMB into believing that the OMB-NOS process  
17 was no longer necessary by telling the OMB the "Owner was retained."

18 92. That the enforcement agency canceled the February 14, 2012 Notice of Sale on May  
19 15, 2014.

20 93. After deceiving the enforcement agency, HOA AGENTS held the foreclosure sale on  
21 August 15, 2014, illegally anyway, even though the mandatory NOS process was cancelled on  
22 May 15, 2014 based on their deception thereby permitting HOA AGENTS to evade enforcement  
23 by having the HOA sale without a Notice of Sale in effect.

24 94. That the HOA AGENTS concealed the unlawful sale by failing to deliver the



1 any notice to the owner.

2 102. After the illegal sale, the HOA AGENTS did not provide a Notice of Sanctions Letter  
3 or in any way communicate that HOA AGENTS had used the HOA's authority to take the  
4 ultimate sanction against the owner without due process.

5 103. NRS 116.1113 imposes an obligation of good faith which was violated by HOA  
6 AGENTS when they conducted the HOA sale for their own enrichment and in violation of the  
7 rights of due process of TOBIN and their contractual and fiduciary obligations to the HOA  
8 whose authority they usurped.

9 104. That the HOA has separate contracts with the Managing Agent (FSR) and its Debt  
10 Collector Agent (RRFS) who failed to disclose that it is the Managing Agent (FSR) that holds  
11 the debt collection license d/b/a RRFS and that a separate contract is a ruse to camouflage their  
12 substantial conflict of interest.

13 105. In the management contract with FSR, RRFS is described merely as an "Affiliate" that  
14 the HOA "is not required to use", falsely implying that RRFS is a separate legal entity with its  
15 own separate debt collector license.

16 106. Failure to disclose this very significant financial conflict of interest in addition to HOA  
17 AGENTS' multiple violations of laws, regulations, and the governing documents invokes section  
18 5.3 of the March 31, 2014 FSR Management Agency Agreement that requires FSR to defend,  
19 indemnify and hold HOA harmless for FSR's negligence and statutory and procedural violations.

20 107. Section 7, second paragraph of the April 27, 2012 RRFS Delinquent Assessment  
21 Collection Agreement is triggered both by HOA AGENTS' violation of that agreement, but by  
22 their violations of statutes, governing documents and HOA rules and regulations.

23 108. HOA AGENTS' actions in violating statutes violates the contract provision in the FSR  
24 Management Agreement requiring FSR to manage the HOA "...pursuant to all provisions of the

## EXHIBIT 1

### 12/14/12 LIEN FOR DELINQUENT ASSESSMENTS

The 12/14/12 Lien was recorded 45 days after the first day of actual delinquency on 10/31/12.

The lien claims \$925.76 of which \$625.76 is erroneous, fraudulent or impermissible collection fees.

None of these "errors" were ever corrected, only compounded.

On the same day, 12/5/12 that the lien claimed \$925.76, RRFS's 3/38/14 ledger claims \$553.15 was due on 12/5/12 and the Resident Transaction log claims \$476.21 was due that same day.











I  I  
/1  /1  NO          O  S          NOS  
      D/O          CO  
      S



























Section 3.16B Recording .....	16
Section 3.17. Powers .....	16
Section 3.18. Duties.....	16
Section 3.19. Right of Declarant to Disapprove Actions .....	18
Section 3.20. Management .....	18
Section 3.21. Accounts and Reports.....	18
Section 3.22. Borrowing.....	19
Section 3.23. Right to Contract .....	20
Section 3.24. Board Training.....	20
Section 3.25. Board Standards.....	20
Section 3.26. Enforcement Procedures.....	20
ARTICLE IV OFFICERS .....	22
Section 4.1. Officers.....	22
Section 4.2. Election and Term of Office.....	22
Section 4.3. Removal and Vacancies.....	22
Section 4.4. Powers and Duties .....	22
Section 4.5. Resignation .....	22
Section 4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.....	22
Section 4.7. Compensation .....	22
ARTICLE V COMMITTEES .....	23
Section 5.1. General .....	23
Section 5.2. Deed Restriction Enforcement Committee.....	23
Section 5.3. Neighborhood Committees.....	23
ARTICLE VI MISCELLANEOUS.....	23
Section 6.1. Fiscal Year.....	23
Section 6.2. Parliamentary Rules.....	23
Section 6.3. Conflicts .....	24
Section 6.4. Books and Records .....	24
Section 6.5. Notices .....	24
Section 6.6. Amendment .....	25
Section 6.7. Membership Book .....	25
Section 6.8. Diagrams.....	25
Section 6.9 Severability.....	25

















1 **EIGHTH AFFIRMATIVE DEFENSE**  
2 **(Void for Vagueness and Ambiguity)**

3 Chapter 116.3116-NRS116.31168 and other statutes, bylaws and CC&Rs that govern  
4 liens and collections for overdue assessments, notices, and the HOA's granting of its authority to  
5 its Agent or Trustee to conduct foreclosure sales for delinquent assessments are void for  
6 vagueness and ambiguity.

7 **NINTH AFFIRMATIVE DEFENSE**  
8 **(Violation of Due Process)**

9 Defendant cannot be deprived of her property interest in violation of the Procedural Due  
10 Process Clause of the 5th and 14th Amendments of the United States Constitution and Article 1,  
11 Sec. 8, of the Nevada Constitution. The August 19, 2016 *Bournes Valley Court Trust v. Wells*  
12 *Fargo*, Ninth Circuit Appellate Court Decision, No. 15-15233 D.C. No. 2:13-cv-00649-PMP-  
13 NJK established the NRS 116 statutes controlling HOA foreclosures violated the banks'  
14 Constitutional protection. The facts of the case will show that the due process rights and title  
15 interests of Defendant as the property owner were also violated by the HOA Agents'  
16 implementation of the flawed statute.

17 *"We hold that the Statute's "opt-in" notice scheme... facially violated the lender's*  
18 *constitutional due process rights under the Fourteenth Amendment to the Federal*  
19 *Constitution. We therefore vacate the district court's judgment and remand for*  
20 *proceedings consistent with this opinion."*

21 *Id.*

22 A determination that the disputed HOA sale was defective would unwind the title record  
23 of the Subject Property, and open the door for quiet title judgment in the Defendant's favor.

24 **TENTH AFFIRMATIVE DEFENSE**  
**(Violation of Procedural Due Process)**

The HOA sale was conducted in a manner that deprived Defendant of her property

1 the Trustee of, the Gordon B. Hansen Trust, dated 8/22/08 as amended 8/10/11 (Herein "*GBH*  
2 *Trust*"), the titleholder of the Subject Property at the time of the disputed foreclosure sale (Herein  
3 "HOA sale") for delinquent assessments (Herein "HOA dues").

4 2. Upon information and belief, Counter-Defendants, JOEL A. STOKES and SANDRA  
5 F. STOKES, (Herein "*Stokes*" or "*Counter-Defendants*") are the trustees of the JimiJack  
6 Irrevocable Trust (Herein "*Jimijack*"), and are residents of Nevada.

7 3. Counter-Defendants DOES 1-10, and ROE CORPORATIONS 1-10 are unknown at  
8 this time. Counter-Claimant expressly reserves the right to add additional parties when and if the  
9 names of such parties become available.

10 4. The Real Property that is the subject of this civil action is in Sun City Anthem  
11 Community Association, Inc. (HOA), and is commonly known as: 2763 White Sage Drive,  
12 Henderson, Nevada 89052, A.P.N 191-13-811-052 ("*Subject Property*").

13 5. Venue and jurisdiction is proper as this action is within the jurisdictional limits of this  
14 Court. Venue is proper because the Subject Property involved in this case is located in, and a  
15 substantial part of the event or omissions giving rise to Counter-Claimant's claims occurred in  
16 Clark County, Nevada.

17 6. That pursuant to NRS 30.010 et seq. and NRS 40.010, this Court has the power and  
18 authority to declare Counter-Claimant's rights and interests in the Property and to resolve  
19 Counter- Defendants' adverse claims in the Property.

20 7. Further, that pursuant to NRS 30.010 et seq. this Court has the power and authority to



1        21. That Counter-Claimant has been required to incur legal fees and costs for the  
2 prosecution of this matter, and therefore, is entitled to reasonable legal fees and costs.

3        22. That Subsequent Purchasers STOKES/JIMJACK and F. BONDURANT were not Bona  
4 Fide Purchasers nor Innocent Third Parties who deserve the Court's protection. (*Smith v. United*  
5 *States*, 373 F.2d 419, 424 as cited in *Shadow Wood*.)



1 f. refusing to provide a certified copy of the page where the entry should have been;  
2 and

3 g. Refusing to allow her journal to be inspected for other signatures she notarized  
4 involving parties in this case, or their Counsel, Mr. Hong. *See*, NRS 240.120(6)(a)  
5 NRS 240.147

6 40. Counter-Claimant alleges that the notary, CluAynne A. Corwin, and her attorney,  
7 Peter Mortenson, share a law office with F. Bondurant's non-commercial agent and Stokes'  
attorney, Joseph Hong, and that their actions unfairly advantaged Hong's client, the Stokes.







- 1 a) violated their licenses to purchase at the HOA sale and/or to facilitate fraudulent re-  
2 conveyances;
- 3 b) utilized insider information in violation of the Exclusive Agency (ER) agreement  
4 Tobin had with BHHS Broker, Forrest Barbee;
- 5 c) violated MLS directives by marketing an HOA foreclosed-property on the MLS;
- 6 d) caused to be recorded the fraudulent June 9, 2015, Quit Claim Deeds that falsified  
7 the chain of title;

8 70. That Cross-Defendants' conduct deviated from the usual course of business when  
9 conveying property in Nevada and failed to utilize the customary written documentation,  
10 purchase agreements, neutral escrow for proper handling and accounting for funds taken in and  
11 disbursed, and proper recording of instruments of conveyance.

12 **FIFTH CAUSE OF ACTION:**

13 **PRELIMINARY AND PERMANENT INJUNCTIONS**

14 71. Counter-Claimant incorporates and re-alleges all previous paragraphs, as if fully set  
15 forth herein.

16 72. Counter-Claimant requests that the Court temporarily and permanently enjoin the  
17 Stokes, Jimijack, their agents and/or assigns from marketing, transferring or controlling profits  
18 from the Subject Property during the pendency of this action.

19 73. That Counter-Defendants claim an ownership interest in the Property that is adverse to  
20 Counter-Claimant;

21 74. That Counter-Defendants' have unfairly profited from possession of the Property since  
22 the HOA sale;  
23  
24

- 1 Stokes' complicity in the fraudulent conveyance of the Subject Property;
- 2 c. For a declaration and determination that the HOA Sale is null, void, and did not
- 3 convey title from Counter-Claimant to any alleged purchaser;
- 4 d. For a declaration and determination that the HOA sale was invalid and null and
- 5 void for the HOA's and HOA Agents' statutory and procedural violations;
- 6 e. For a declaration and determination that the conduct of Counter-Defendants and
- 7 the HOA Agents in connection with the HOA sale and the subsequent transfer of
- 8 title to Counter-Defendants was accompanied by actual fraud, deceit, or trickery.
- 9 f. Declaration by the Court that neither the Realtor Thomas Lucas d/b/a Opportunity
- 10 Homes, LLC, purported purchaser at the HOA sale, nor F. Bondurant, LLC or the
- 11 Stokes/Jimijack were bona fide purchasers for value in arms-length,
- 12 commercially reasonable transactions, thereby negating any and all of their
- 13 claimed rights to ownership of the Subject Property;
- 14 g. For a declaration and determination that Jimijack is not properly formed as a
- 15 business entity and, as such, cannot be a real party in interest or, in any way,
- 16 shield the Stokes from being dispossessed of the property by Court order.
- 17 h. For a declaration and determination that the Stokes' manner for taking title in
- 18 their own names while simultaneously claiming Jimijack is the real party in
- 19 interest, and implying that their ownership is "Irrevocable" is, at a minimum,
- 20 duplicitous and renders their title claims null and void.
- 21 i. For a declaration and determination that F. Bondurant, LLC and the Stokes were
- 22 complicit in the fraudulent re-conveyances and are not, in any way, innocent third
- 23 parties whose rights are worthy of the Court's protection;
- 24



# EXHIBIT 1

6/8/15 FRAUDULENT QUIT CLAIM DEED



STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 191-13-811-052  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

a. ☐ Vacant Land b. ☒ Single Fam. Res.  
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural h. ☐ Mobile Home  
Other \_\_\_\_\_

FOR RECORDERS OPTIONAL USE ONLY	
Book _____	Page: _____
Date of Recording: _____	
Notes: _____	

3. a. Total Value/Sales Price of Property \$ 270,000  
b. Deed in Lieu of Foreclosure Only (value of property) \$ \_\_\_\_\_  
c. Transfer Tax Value: \$ \_\_\_\_\_  
d. Real Property Transfer Tax Due \$ 1377.00

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity: Manager

Signature \_\_\_\_\_ Capacity: \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
(REQUIRED)

Print Name: F. Bondurant LLC  
Address: 10781 W. Twain  
City: Las Vegas  
State: Nevada Zip: 89135

**BUYER (GRANTEE) INFORMATION**  
(REQUIRED)

Print Name: Joel A Stokes and Sandra Stokes Trust  
Address: 5 Summit Walk Trail  
City: Henderson  
State: Nevada Zip: 89052

**COMPANY/PERSON REQUESTING RECORDING** (Required if not seller or buyer)

Print Name: Robert Goldsmith  
Address: 444 Beautiful Hill  
City: Las Vegas

Escrow # \_\_\_\_\_  
State: Nevada Zip: 89138

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



















1 68. That Cross-Defendant Yuen K. Lee' and fellow conspirators' conduct deviated from  
2 the usual course of business when conveying property in Nevada and failed to utilize the















1       24.   That the HOA sale is void as there was no bona fide purchaser per NRS 111.180, who  
2 had no unfair advantage over other potential bidders who met the statutory conditions: 1) act in  
3 good faith; 2) purchase for valuable consideration; and 3) not have actual knowledge, constructive  
4 notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or  
5 interest to, the real property.

6       25.   That the Buyer, Realtor Thomas LUCAS (Herein "*LUCAS*") d/b/a OPPORTUNITY  
7 HOMES (Herein "*OP HOMES*") does not meet any of these criteria.

8       26.   That the "Good Faith" condition was not met. OP HOMES was the name in which  
9 LUCAS purchased the property at the HOA sale, but evidence indicates that OP HOMES is  
10 actually illegally functioning as his alter ego, allowing LUCAS to act in a manner which would  
11 not otherwise be legal for a licensed Realtor, and which violates NRS 86.141, i.e., forming an  
12 LLC for an illegal purpose. NRCP Rule 9(a) specifies a challenge "the legal existence of any  
13 party" is to be made by "specific negative averment, which shall include such supporting  
14 particulars as are peculiarly within the pleader's knowledge."

15       27.   That NRS 86.211 authorizes a challenge to rebut the sufficiency of the Articles of  
16 Organization of an LLC, and the facts set forth and to make such rebuttal a part of a record of a  
17 court of competent jurisdiction.

18       28.   That there are irregularities in OP HOMES corporate filings, which exists in the public  
19 record, and indicate bad faith as well as specific violations of Nevada, Clark County, and City of  
20 Henderson statutes and ordinances governing commercial registration and business licensing:

21       29.   a) an attempt to conceal ownership by claiming to be a Manager rather than a Member  
22 (NRS 86.151),

23       30.   b) Articles of Organization do not identify a physical residential or office address as  
24 required by NRS 86.161.







1 venture or the business of an individual or another corporation (McCombs v.  
2 *Rudman*, supra, 197 Cal. App. 2d 46; *Asamen v. Thompson*, supra, 55 Cal. App.  
3 2d 661;

4 the confusion of the minds of the corporation [210 Cal. App. 2d 171]



# EXHIBIT 1

## 8/22/14 FORECLOSURE DEED


This deed was recorded on 8/22/14 purporting to transfer Homeowner's interest to Opportunity Homes, LLC for \$63,100 by falsely claiming that:

1. Default occurred as set forth in 3/12/13 NODES when the 3/12/13 NODES had been rescinded on 4/3/13 and the rescission was recorded on 4/8/13.
2. RRFS complied with all the requirements of law, (but had not).

This deed does not have the power to take title from TOBIN as the recitals are false and do not comply with NRS 116.31166 to take away the right of redemption.

# EXHIBIT 1


Dated: August 18, 2014

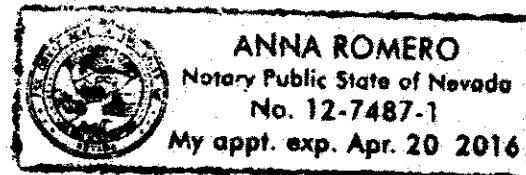
  
By: Christie Marling, employee of Red Rock Financial Services, agent for Sun City Anthem  
Community Association

STATE OF NEVADA                    )  
COUNTY OF CLARK                )

On August 18, 2014, before me, personally appeared Christie Marling, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.





When Recorded Mail To: Opportunity Homes, LLC  
2657 Windmill Parkway, #145  
Henderson, NV 89074

Inst #: 20150609-0001537

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$1377.00 Ex: #

06/09/2015 12:58:36 PM

Receipt #: 2452509

APN: 191-13-811-052

Res: #