

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

Electronically Filed
Apr 01 2016 11:07 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DAVID DEZZANI AND ROCHELLE
DEZZANI,

Plaintiffs,

vs.

Sup. Ct. Case No. 69896

Case No. CV15-00826

Dept. 10

KERN & ASSOCIATES, LTD and GAYLE

A KERN, et al,

Defendants.

_____ /

RECORD ON APPEAL

VOLUME 4 OF 4

DOCUMENTS

APPELLANT

David Dezzani and
Rochelle Dezzani
17 Camino Lienzo
SanClemente, CA 92673

RESPONDENT

Gayle Kern
KERN & ASSOCIATES, LTD
5421 Kietzke Lane Suite 200
Reno, Nevada 89511

APPEAL INDEX

Case No. CV15-00826
DEZZANI vs KERN & ASSOCIATES, ET AL
APRIL 1, 2016

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APRIL 1, 2016

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Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2015-12-02 10:27:37.868.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

12-02-2015:10:24:15

Clerk Accepted:

12-02-2015:10:26:53

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Mtn for Attorney's Fee

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Filed By:

Gayle Kern

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN,
KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

David and Rochelle Dezzani
 17 Camino Lienzo
 SanClemente, CA 92673
 (808) 291-2302

FILED

2015 DEC 14 AM 9:00

JACQUELINE BRYANT
 CLERK OF THE COURT
 DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and
 ROCHELLE DEZZANI,
 Plaintiffs

vs.

Case No. CV15 00826
 Dept. No. 10

KERN & ASSOCIATES, LTD; GAYLE KERN;
 KAREN HIGGINS; JOHN DOES 1-10;
 JANE DOES 1-10; DOE BUSINESSES 1-5

**MEMORANDUM OF
 ANSWERING POINTS
 AND AUTHORITIES IN
 OPPOSITION TO MOTION
 FOR ATTORNEY'S FEES
 AND COSTS;
 COUNTER-AFFICAVIT AND
 AFFIRMATION**

After obtaining an ORDER granting dismissal of Plaintiffs' Complaint, two of the defendants, self-identified as "Kern & Associates, Ltd. and Gayle Kern ("Kern")", have filed a motion, purportedly "by and through their counsel, Kern & Associates, Ltd.", asking this Court to award them nearly \$11,000, for "incurred attorneys fees and costs defending this action". (MOTION FOR ATTORNEY'S FEES AND COSTS, p.1:17-20).

The MOTION for an award of attorney's fees must be denied, especially in light of the fact that defendants Kern, like plaintiffs herein, were self-represented throughout this matter and, as self-represented parties, are not entitled to be awarded attorney's fees for the following reasons:

I. SELF-REPRESENTED PARTIES, INCLUDING ATTORNEYS WHO CHOOSE TO REPRESENT THEMSELVES, ARE NOT ENTITLED TO AN AWARD OF ATTORNEYS FEES.

The fact that defendants Kern added the words "*Attorneys for Kern & Associates, Ltd. and Gayle Kern*" to their filings herein, and assert that their present motion is submitted "by and through their consul, Kern & Associates Ltd", does not alter the fact that these defendants did not retain legal counsel or incur legal fees in the defense of this matter.

Plaintiffs' limited research capabilities have yielded no Nevada authority discussing the issue of attorney's fees in matters concerning attorney self-representation, however, a decision by the Supreme Court of the United States, in the case of *Kay v. Ehrler Et. Al.*, 499 US 432 (1991), is instructive.

In *Ehrler*, a licensed attorney who had successfully represented himself in an action, requested attorney's fee pursuant to a federal statute.

The question before the Court was whether an attorney who has successfully represented himself in a action based upon a federal statute should be awarded attorneys fees.

In affirming the Court of Appeals' denial of the self-represented attorney's claim for fees, Justice Stevens pointed that "A rule that authorizes awards of consul fees to pro se litigants – even if limited to those who are members of the bar – would create a disincentive to avoid consul whenever such a plaintive considered himself competent to litigate on his own behalf".

In the present case, Kern chose to be self-represented and, in truth and in fact, incurred no attorney's fees.

Therefore, even if the present case merited an award of attorneys fees, which it does not, as more fully discussed below, the fact that Kern chose to proceed in proper person means that no such fees can be awarded.

II. IN ANY EVENT, AN AWARD OF ATTORNEY'S FEES IS NOT MERITED AGAINST PLAINTIFFS IN THIS CASE.

In addition to the fact that the issue of attorney self-representation is not addressed in Kern's MEMORANDUM OF POINTS AND AUTHORITIES, it should be noted that the entirety of its section entitled "ARGUMENT" concedes that any award of attorney's fees should be "left to the sound discretion of the Court" *Id.* at 3.

Most of what appears under the MEMORANDUM'S heading "FACTS", presumably offered as support for the Court to exercise discretion, is simply hyperbole i.e. employing phrases such as "unfounded complaint", "erroneous and unjustifiable filing", "completely devoid of any legal merit", "unsubstantiated pleadings", etc. without any reference to any actual facts in the record.

Because there is no factual basis to support the hyperbole, Plaintiffs will not address it here, other than simply to point out that defendants would have the Court overlook that, as indicated by the record and the attached Counter-Affidavit of David Dezzani, nearly two years elapsed before Plaintiffs filed their Complaint herein, during which Plaintiffs sought to achieve an amicable and mutually-satisfactory resolution of disputed matters and that their Complaint contained forty paragraphs and was accompanied by numerous exhibits and cited specific provisions of the Nevada Revised Statutes .

That this Court dismissed Plaintiff's Complaint based upon an interpretation of the cited NRS statutes contrary to that urged by Plaintiffs does not mean that contentions in the Complaint were "frivolous" (MEMORANDUM at p.3) or "brought or maintained without reasonable ground or to harass" (Id. at p.4) or were "baseless and made without a reasonable and competent inquiry" (Id. at p.5); it simply means that the Court's interpretation of the cited statutes differs from Plaintiffs'.

As indicated in the Complaint, and as stated in the attached Counter-Affidavit, Plaintiffs' factual allegations against defendants were made in good faith, based upon knowledge and belief obtained over many months.

Plaintiffs' Complaint sets forth their view that Kern violated specific provisions of Nevada law, focusing its first claim for relief upon NRS 116.31183, which specifically authorizes legal actions against "an agent of an association" for retaliatory action against homeowners.

Because, until this Court's ruling, Plaintiffs were unaware of any Nevada law or case authority interpreting NRS116.31183 as providing immunity to agents of an association who happen to be attorneys, and because plaintiffs believe that Kern's actions were motivated by an intention to retaliate against them for their good faith complaints to the association and their recommendations Kerns be replaced and because, prior to this Court's ruling, Plaintiff's did not know that Kern would be deemed to have blanket immunity from the legal action authorized by NRS116.31183, it would be unfair for this Court to grant an award of attorneys fees, even if Kern had not chosen to self-represent.

Accordingly, for the reasons stated above, in the attached Counter-Affidavit and for reasons of fairness and appropriate Nevada law, Plaintiffs request that Kern's MOTION FOR ATTORNEY'S FEES AND COSTS be denied.

Signed and dated this 9th day of December, 2015.


David Dezzani

COUNTER-AFFIDAVIT

I, David Dezzani, being first duly sworn does hereby swear under penalty of perjury as follows:

1. I am one of the plaintiffs herein.
2. Co-plaintiff Rochelle Dezzani and I have been married since 1967 and we live in San Clemente, California.
3. I am 79 years old and have been retired for more than 10 years.
4. Before retirement, I practiced law in the State of Hawaii for 40 years but, during that time, had no occasion to consider or deal with issues related to Nevada law.
5. In 2004, after departing Hawaii, my wife and I purchased a condominium townhouse in Incline Village, Nevada, which was our residence until 2010.
6. In March, 2013, after moving to California, we became involved in a disagreement with our homeowners' association regarding the size of our unit's deck.
7. After becoming aware of that disagreement, we sent communications to the association's Board of Directors, complaining in good faith views regarding violations of the NRS and association documents, requesting to review files of the association and recommending replacement of the attorney for the association, defendant Gayle Kern.
8. In addition to describing our perception of violations of the NRS by the association, our communications were harshly critical of defendants Kern, ~~and~~ alluding to said defendants' "faulty knowledge", "erroneous understanding" and "flawed legal advice" and recommending replacement of defendants as the association's attorney, for having "erroneously assumed the truth of crucial and contested facts, without supporting evidence, and rendered legal advice to the Board based upon probably untrue assumptions regarding those facts". (Complaint, Exhibit 2, attached to Kern's MOTION) DD
9. In May, 2013, after sending ^{via} our harsh criticism, request and recommendation for replacement, we received a letter from Kern indicating awareness thereof. (MOTION, Exhibit 3) DD
10. In and after May, 2013, I personally spent many hours reviewing records, documents, minutes and recordings pertaining to events prior and subsequent to the initial dispute and spoke with and/or exchanged emails with people who were involved with and/or knowledgeable regarding Kern's actions following receipt of the communications referred to above.
11. Based upon knowledge and information obtained in the manner described above, I

DD believe DD
 1 that, after becoming aware of our complaints, requests and recommendation that Kern
 be replaced as attorney for the association, and especially because of the harsh and
 unflattering wording thereof, defendants Kern intentionally, and motivated by a desire
 to retaliate against us rather than in fulfillment of professional responsibilities as an
 attorney, undertook and/or directed and/or encouraged retaliatory action against my
 wife and me.

12. At the time I handed the Complaint herein to the Clerk of the Second District
 Judicial DD
 Court, on May 4, 2015 and asked that it be filed, I believed in good faith, as I still
 believe, that my wife and I had were retaliated against, in violation of Nevada law and
 entitled to bring our claims for relief to the Court pursuant to the provisions of the
 Nevada Revised Statutes cited therein.

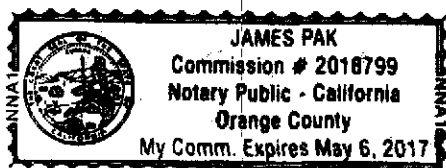
I hereby affirm that the preceding document does not contain the social security
 number of any person.

DATED this 7th day of December, 2015.


 David Dezzari

SUBSCRIBED AND SWORN to before me
 this 9th day of December, 2015.


 NOTARY PUBLIC



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

JURAT

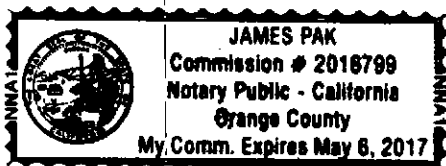
State of California

County of Orange } ss.

Subscribed and sworn to (or affirmed) before me on this 9th day of

December, 20 15, by David Dezzani and

/, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(seal)

Signature of Notary

Name of Notary: **James Pak**

(seal)

OPTIONAL INFORMATION

Date of Document

Dec 09, 2015

Type or Title of Document

Counter - Affidavit

Number of Pages in Document

2

Document in a Foreign Language

N/A

Capacity of Signer:

☒ Individual

☐ Corporate Officer - Title(s): _____

☐ Partner - ☐ Limited ☐ General

☐ Attorney In Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

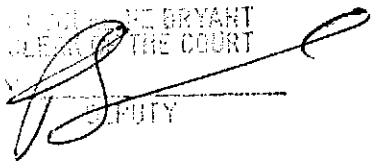
Signer Is Representing: _____

CV15-00826
 DC-09900072498-005
 DAVID DEZZANI ETAL VS. KERN & 1 Page
 District Court 12/14/2015 03:44 PM
 Washoe County \$2515
 VULI ANTA

David and Rochelle Dezzani
 17 Camino Lienzo
 SanClemente, CA 92673
 (808) 291-2302

FILED

2015 DEC 14 PM 3:44

CLERK OF THE COURT
 BY  DEPUTY

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

DAVID DEZZANI and
 ROCHELLE DEZZANI,
 Plaintiffs

vs.

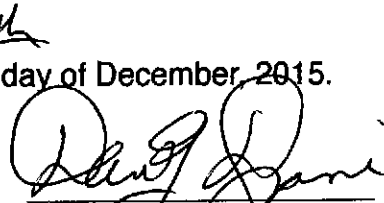
Case No. CV15 00826
 Dept. No. 10

KERN & ASSOCIATES, LTD; GAYLE KERN;
 KAREN HIGGINS; JOHN DOES 1-10;
 JANE DOES 1-10; DOE BUSINESSES 1-5

NOTICE OF APPEAL

Notice is hereby given that David Dezzani and Rochelle Dezzani, Plaintiffs above named, hereby appeal to the Supreme Court of Nevada from the ORDER signed by District Judge Elliot Sattler on November 19, 2015, entered in this action on the 19th day of November, 2015.

Signed, in San Clemente, California, this 16th day of December, 2015.



David Dezzani, in proper person



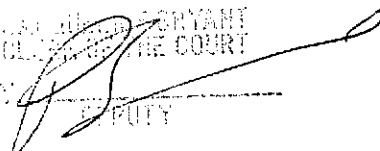
Rochelle Dezzani, in proper person

CV15-00826
DC-09900072496-022
DAVID DEZZANI ETAL VS. KERN & 1 Page
District Court 12/14/2015 03:45 PM
Washoe County 1830
PMSFWF11

David and Rochelle Dezzani
17 Camino Lienzo
SanClemente, CA 92673
(808) 291-2302

FILED

2015 DEC 14 PM 3:45

CALIFORNIA
CLERK OF THE COURT
BY:  DEPUTY

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

DAVID DEZZANI and
ROCHELLE DEZZANI,
Plaintiffs

vs.

Case No. CV15 00826
Dept. No. 10

KERN & ASSOCIATES, LTD; GAYLE KERN;
KAREN HIGGINS; JOHN DOES 1-10;
JANE DOES 1-10; DOE BUSINESSES 1-5

**PLAINTIFF ROCHELLE
DEZZANI'S JOINDER IN
MEMORANDUM OF
ANSWERING POINTS
AND AUTHORITIES IN
OPPOSITION TO MOTION
FOR ATTORNEY'S FEES
AND COSTS;
COUNTER-AFFICAVIT AND
AFFIRMATION**

Plaintiff Rochelle Dezzani hereby joins in the **MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS, COUNTER-AFFICAVIT (sic) AND AFFIRMATION** filed by Plaintiff David Dezzani herein.

DATED this 11th day of December, 2015.


Rochelle Dezzani

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

**DAVID DEZZANI and ROCHELLE
DEZZANI,**

Plaintiffs,

vs.

Case No. CV15-00826

Dept. No. 10

**KERN & ASSOCIATES, LTD; GAYLE KERN;
KAREN HIGGINS; JOHN DOES 1-10; JANE
DOES 1-10; DOE BUSINESSES 1-5,**

Defendants.

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellants are David Dezzani and Rochelle Dezzani.
2. This appeal is from an order entered by the Honorable Judge Elliott Sattler.
3. Appellants are representing themselves in Proper Person on appeal, the Appellant's address is:

David and Rochelle Dezzani

17 Camino Lienzo

San Clemente, CA 92673

4. Respondents are Kern & Associates, LTD and Gayle Kern. Respondents were represented in District Court by:

Gayle A. Kern, Esq. #1620

5421 Kietzke Lane Suite 200

Reno, Nevada 89511

5. Respondent's attorney is not licensed to practice law in Nevada: n/a
6. Appellants were not represented by counsel in District Court.
7. Appellants are not represented by counsel on appeal.
8. Appellants were not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of a Civil Complaint filed on May 4, 2015.
10. This is a civil proceeding and the Appellants are appealing the Order filed November 19, 2015.
11. The case has not been the subject of a previous appeals to the Supreme Court.
12. This case does not involve child custody or visitation.
13. It is unknown if the case involves the possibility of a settlement.

Dated this 15th day of December, 2015.

Jacqueline Bryant
Clerk of the Court

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

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

DAVID DEZZANI and ROCHELLE
DEZZANI,

Case No. CV15-00826

Plaintiffs,

Dept. No. 10

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN;
KAREN HIGGINS; JOHN DOES 1-10; JANE
DOES 1-10; DOE BUSINESSES 1-5,

Defendants.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 15th day of December, 2015, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 15th day of December, 2015

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2015-12-15 14:22:29.071.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

12-15-2015:14:21:31

Clerk Accepted:

12-15-2015:14:21:57

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN,
KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS
ROCHELLE DEZZANI
DAVID DEZZANI

1 3870

2 GAYLE A. KERN, ESQ.
3 Nevada Bar No. 1620
4 KERN & ASSOCIATES, LTD.
5 5421 Kietzke Lane Suite 200
6 Reno, Nevada 89511
7 Telephone: (775) 324-5930
8 Telefax: (775) 324-6173
9 E-mail: gaylekern@kernltd.com

10 *Attorneys for Kern & Associates, Ltd.*
11 *and Gayle Kern*

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

13 IN AND FOR THE COUNTY OF WASHOE

14 DAVID DEZZANI and ROCHELLE CASE NO.: CV15-00826
15 DEZZANI,

DEPT. NO.: 10

16 Plaintiffs,

17 vs.

**REQUEST FOR CORRECTION TO CASE
APPEAL STATEMENT**

18 KERN & ASSOCIATES, LTD; GAYLE KERN;
19 KAREN HIGGINS; JOHN DOES 1-10; JANE
20 DOES 1-10; DOE BUSINESSES 1-5,

21 Defendants.
22 _____ /

23 Respondents, Kern & Associates, Ltd. and Gayle Kern, hereby request that Paragraph 4 of the Case
24 Appeal Statement be corrected to read:

25 "4. Respondents are Kern & Associates, Ltd. and Gayle Kern.

26 Respondents were represented in District Court by:

27 Gayle A. Kern, Esq. #1620
28 Kern & Associates, Ltd.
5421 Kietzke Lane, Suite 200
Reno, Nevada 89511"

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document filed
in the above-entitled case does not contain the social security number of any person.

DATED this 21st day of December, 2015.

KERN & ASSOCIATES, LTD.

By 
GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd.
and Gayle Kern

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

REQUEST FOR CORRECTION TO CASE APPEAL STATEMENT

On the party(s) set forth below by:

- ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- ☐ Personal delivery.
- ☐ Facsimile (FAX).
- ☐ Federal Express or other overnight delivery.
- ☐ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 21ST day of December, 2015.


TERESA A. GEARHART

1 3795
2 GAYLE A. KERN, ESQ.
3 Nevada Bar No. 1620
4 KERN & ASSOCIATES, LTD.
5 5421 Kietzke Lane Suite 200
6 Reno, Nevada 89511
7 Telephone: (775) 324-5930
8 Telefax: (775) 324-6173
9 E-mail: gaylekern@kernltd.com

10 *Attorneys for Kern & Associates, Ltd.*
11 *and Gayle Kern*

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

13 IN AND FOR THE COUNTY OF WASHOE

14 DAVID DEZZANI and ROCHELLE CASE NO.: CV15-00826
15 DEZZANI,

DEPT. NO.: 10

16 Plaintiffs,

17 vs.

18 KERN & ASSOCIATES, LTD; GAYLE
19 KERN; KAREN HIGGINS; JOHN DOES
20 1-10; JANE DOES 1-10; DOE BUSINESSES
21 1-5,

**REPLY TO MEMORANDUM OF
ANSWERING POINTS AND
AUTHORITIES IN OPPOSITION TO
MOTION FOR ATTORNEY'S FEES &
COSTS; COUNTER-AFFICAVIT [SIC]
AND PLAINTIFF ROCHELLE
DEZZANI'S JOINDER THERETO**

22 Defendants.

23 _____ /
24 Defendants, Kern & Associates, Ltd. and Gayle Kern ("Kern"), by and through their counsel,
25 Kern & Associates, Ltd., hereby submits the following Reply to Memorandum of Answering Points
26 and Authorities in Opposition to Motion for Attorney's Fees & Costs; Counter-Affidavit [Sic] and
27 Plaintiff Rochelle Dezzani's Joinder Thereto.

28 This Reply is based upon the following points and authorities, all records, documents,
pleadings, and papers on file or to be filed herewith, the arguments of counsel made herein or at a
later date, and any other matters that may properly come before this Court in consideration of this
motion. Plaintiffs contend that Defendants are not entitled to an award of attorney's fees and costs
because they are self-represented and because Plaintiffs' actions do not merit an award of attorney's
fees and costs. Kern hereby asserts that she is entitled to an award of attorney's fees and costs on
the basis of her representation of Kern & Associates, Ltd. and based on the fact that Plaintiffs filed

the Complaint without any reasonable basis or supporting law or fact. Kern hereby respectfully requests this Court enter an award of attorney's fees and costs in the amount of \$10,932.34, plus the fees and costs for filing this Reply.¹

1. The Supreme Court's Holding in *Kay v. Ehrler* Does Not Preclude an Award of Attorney's Fees and Costs.

Plaintiffs contend that the United State Supreme Court's ruling in *Kay v. Ehrler*, 499 U.S. 432 (1991), precludes an award of attorney's fees and costs to Kern. Plaintiffs assert that Kern proceeded in proper person and, as a result, an award of attorney's fees and costs would be improper under *Kay*. Plaintiffs ignore, however, the clear implications of *Kay* as it relates to Kern's defense of the law firm itself. Pursuant to clear language in *Kay*, Kern is entitled to an award of attorney's fees and costs incurred as a result of her defense of the law firm Kern & Associates, Ltd. ("Kern & Associates"). Further, sanctions have also been requested under Nev.R.Civ.P. 11.

A. Kern is Entitled to Reasonable Attorney's Fees in Costs Incurred as a Result of Defending the Law Firm Kern & Associates, Ltd.

Throughout the litigation, Kern represented herself and the law firm Kern & Associates. Plaintiffs chose to file their Complaint against Kern directly *and* the law firm Kern & Associates. There are consequences to such a choice. While Plaintiffs correctly assert that an individual attorney proceeding *pro se* is not entitled to an award of attorney's fees and costs under *Kay*, that result is not the same when the attorney represents the law firm.² In *Kay*, the Supreme Court noted that "the word 'attorney' assumes an agency relationship" and that such a relationship was the predicate to an award of attorneys fees and costs under the civil rights statute. *Kay*, 499 U.S. at 435-36. Except as for sanctions, to the extent Kern's Motion attempts to recover any fees for the defense of Defendant

¹A supplemental affidavit for final attorney's fees and costs will be filed on December 22, 2015.

²The Nevada Supreme Court has similarly held that "attorneys who represent themselves in litigation generally may not recover attorney fees for doing so." *Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1221, 197 P.3d 1051, 1061 (Nev. 2008); *Sellers v. Dist. Ct.*, 119 Nev. 256, 259, 71 P.3d 495, 498 (2003). In *Smith & Harmer*, the Nevada Supreme Court found that the law firm represented itself in the attorneys fees litigation and was not entitled to an award of attorneys fees. The Court did not squarely address the narrow issue of the law firm organization as a client represented by in-house counsel. Rather, *Kay* is instructive on this point.

1 Kern individually, Kern acknowledges that the Court may decline to award such fees in accordance
 2 with *Kay*. However, the Court in *Kay* distinguished between individual *pro se* litigants and
 3 organizations. The Court recognized the difference between an individual attorney who represents
 4 themselves and an organization that is represented by in-house counsel as it relates to whether
 5 attorney's fees were actually incurred to justify an award of attorney's fees and costs. The Court
 6 stated:

7 Petitioner argues that because Congress intended organizations to receive an
 8 attorney's fee even when they represented themselves, an individual attorney should
 9 also be permitted to receive an attorney's fee even when he represents himself.
 10 ***However, an organization is not comparable to a pro se litigant because the
 organization is always represented by counsel, whether in-house or pro bono, and
 thus, there is always an attorney-client relationship.***

11 *Kay v. Ehrler*, 499 U.S. 432, 436 at n. 7 (U.S. 1991).

12 The Supreme Court "made crystal clear, however, that the exception for individual plaintiffs
 13 who represent themselves does not apply to organizations." *Baker & Hostetler LLP v. United States*
 14 *DOC*, 473 F.3d 312 (D.C. Cir. 2006). The Court made no distinction between law firms and any
 15 other type of organization. *Id.* The reasoning behind the Court's reluctance to award attorney's fees
 16 to *pro se* attorney litigants is inapplicable to situations in which an organization is the client because
 17 of the agency relationship inherently present in the latter situation.

18 Other courts have similarly held that an organization is entitled to an award of reasonable
 19 attorney's fees and costs based on the existence of an agency relationship. Specifically, courts have
 20 held that law firms are eligible for attorney's fees awards even when represented by an attorney
 21 employed by the organization. *See Dipaolo v. Moran*, 277 F. Supp. 2d 528, 536 (E.D. Pa. 2003)
 22 (holding that attorney who represented himself and law firm was entitled to "incremental fees
 23 incurred as a result of defending his law firm" and that "by representing his law firm, [the attorney]
 24 created an attorney-client relationship."); *Baker & Hostetler LLP v. United States DOC*, 473 F.3d
 25 312 (D.C. Cir. 2006) (holding that law firm that represents itself remains eligible for attorney's fees
 26 because "the exception to fees statutes for individual litigants who represent themselves does not
 27 extend to organizational litigants."); *Bond v. Blum*, 317 F.3d 385, 399 (4th Cir. 2003) (finding
 28 "[w]hen a member of an entity who is also an attorney represents the entity, he is in an attorney

1 client relationship with the entity” and “[t]hough representation of a law firm by one of its members
2 presents an increased risk of emotional involvement and loss of independence, the law firm still
3 remains a business and professional entity distinct from its members, and the member representing
4 the firm as an entity represents the firm's distinct interests in the agency relationship inherent in the
5 attorney-client relationship.”); *Gold, Weems, Bruser, Sues & Rundell v. Metal Sales Mfg. Corp.*, 236
6 F.3d 214, 218-19 (5th Cir. 2000) (holding “when an organization is represented by an attorney
7 employed by the organization, the attorney has a status separate from the client.”); *Treasurer v.*
8 *Goding*, 692 F.3d 888, 898 (8th Cir. 2012) (holding “where an attorney represents his or her own
9 firm, *Kay* does not forbid the award of attorneys' fees. We agree that there is no meaningful
10 distinction between a law firm and any other organization on the issue of whether there exists an
11 attorney-client relationship between the organization and its attorney.”); *Fontanillas-Lopez v. Morel*
12 *Bauza Cartagena & Dapena LLC*, 2015 U.S. Dist. LEXIS 137066 (D.P.R. Sept. 30, 2015).

13 There is clear authority for the proposition that an attorney representing a law firm has an
14 attorney-client relationship with the law firm as an organization and is thus entitled to an award of
15 reasonable attorney’s fees and costs. Attorney’s fees and costs are actually incurred by the law firm
16 as the client. There is a separate and distinct relationship present when a member attorney represents
17 the law firm. In representing the law firm as an entity, the agency relationship is created. Even when
18 holding that an attorney proper person litigants are not entitled to an award of attorney’s fees and
19 costs, the Nevada Supreme Court noted that, as a prerequisite to an award of attorney’s fees and
20 costs, a party must actually incur an obligation to pay fees or costs.” *Sellers*, 119 Nev. at 259-60. As
21 stated above, such obligation is created when an individual attorney represents the law firm.

22 Pursuant to the above-cited cases, Kern is entitled to an award of her attorney’s fees and costs
23 in representing the law firm Kern & Associates. Kern & Associates, Ltd. is a dba for a Nevada
24 corporation (Gayle A. Kern, Ltd.) duly created under the laws of the state of Nevada. *See* Nevada
25 Secretary State Business Entity Information for Gayle A. Kern, Ltd. attached as Exhibit “1” and
26 Washoe County Certificate of Business: Fictitious Firm Name attached as Exhibit “2”. Regardless
27 of the fact that Kern is an attorney with Kern & Associates, there exists an attorney-client
28 relationship. Kern as the attorney has an independent status from the law firm. Because Kern &

1 Associates is a law firm organization, the rule that attorney *pro se* litigants may not recover
 2 attorney's fees and costs is inapplicable. To apply the rule for individual applicants to the law firm
 3 would be to deny the actual costs incurred by the organization to have representation by counsel in
 4 this matter. Kern & Associates was successfully represented by Kern in this litigation and is entitled
 5 to an award for the actual and reasonable attorney's fees and costs incurred as a result of Plaintiffs'
 6 bringing this action which was entirely unsupported by law or fact. Kern respectfully requests this
 7 Court award reasonable attorney's fees and costs incurred by Defendant Kern & Associates.

8
 9 **B. This Court May Impose Appropriate Sanctions on Plaintiffs Pursuant to its Inherent Power.**

10 This Court may impose sanctions pursuant to its inherent judicial power. The Nevada
 11 Supreme Court has consistently held that district courts have the inherent power to impose sanctions.
 12 *See Emerson v. Eighth Judicial Dist. Court*, 263 P.3d 224, 229 (Nev. 2011); *Young v. Johnny*
 13 *Ribeiro Bldg.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (Nev. 1990); *S. Fork Band of the Te-Moak Tribe*
 14 *v. State Eng'r (in Re Determination of Relative Rights of Claimants & Appropriators of Waters of*
 15 *the Humboldt River Stream Sys.)*, 118 Nev. 901, 59 P.3d 1226, 1229 (Nev. 2002). "[T]hese powers
 16 may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute."
 17 *Young*, 106 Nev. at 92.

18 The Court's inherent power is an independent basis for assessing sanctions against a party
 19 to litigation. *See Pickholtz v. Rainbow Techs., Inc.*, 284 F.3d 1365, 1377 (Fed. Cir. 2002). In
 20 *Pickholtz*, the court found that the Supreme Court's ruling in *Chambers v. NASCO, Inc.*, 501 U.S.
 21 32 (U.S. 1991), requires a court to separately consider a motion for attorney fees under its inherent
 22 power. *Id.* The court noted that sanctions have been imposed under a court's inherent power and that
 23 sanctions have been imposed in favor of a *pro se* attorney independent of a court's inherent power.
 24 It follows, the court continued, that "in proper circumstances" a court may use its inherent power to
 25 apply sanctions in favor of a *pro se* attorney.

26 Even if the Court finds that the statutory authority cited in Kern's Motion for Attorney's Fees
 27 and Costs is insufficient to support an award of attorney's fees and costs to Kern, the Court may use
 28 its inherent power to impose a sanction on Plaintiffs in the amount of Kern's attorney's fees and

1 costs. As articulated in the Motion, sanctions under NRCP 11 are appropriate in this situation. There
2 is no question that Plaintiffs' Complaint was not well grounded in fact or existing law. The Court
3 agreed and found "to permit such causes of action against Kern would result in a chilling effect on
4 individuals' ability to hire and retain counsel." *See* Order dismissing claims in their entirety, filed
5 November 19, 2015, page 3, lines 7-10. The Court may use its inherent authority to impose sanctions
6 against Plaintiffs for pursuing this unsupported and inappropriate lawsuit against Defendants. Not
7 only are such sanctions supported by NRCP 11, they may be imposed in favor of Defendants
8 pursuant to this Court's inherent authority. Kern acknowledged this Court's inherent authority in the
9 Motion by requesting "such further relief the Court determines to be appropriate."

10 **2. An Award of Attorney's Fees and Costs is Merited.**

11 Plaintiffs contend that the allegations and claims in the Complaint were not baseless or
12 frivolous and were made in good faith. Plaintiffs further assert that they "did not know that Kern
13 would be deemed to have blanket immunity from the legal action authorized by NRS 116.31183."
14 *See* Memorandum page 3. To the contrary, Plaintiffs were given clear and sufficient warning that
15 such claims were without merit. Kern sent Plaintiffs a Notice Pursuant to NRCP 11(b) and (c) which
16 outlined the deficiencies of Plaintiffs' claims and set forth an overwhelming amount of legal
17 authority as support. The letter, dated September 9, 2015, is attached as Exhibit "3". Plaintiffs chose
18 to ignore the clear implications of the legal authority cited in the letter and proceeded to file its
19 baseless Complaint against Kern. Such actions constitute bad faith and entitle Kern to an award of
20 attorney's fees and costs as set forth in the Motion and this Reply.

21 **3. Conclusion.**

22 The Court may properly exercise its discretion and authority to award attorney's fees in this
23 matter pursuant to the authority cited above and the authority cited in Defendants' Motion for
24 Attorney's Fees and Costs. The authority set forth by Plaintiffs does not necessitate the result it
25 requests. Rather, this Court may award Kern reasonable attorney's fees and costs as a result of her
26 representation of the law firm Kern & Associates. There exists an attorney-client relationship
27 between Kern and the law firm and, as a result, an award of attorney's fees and costs is proper and
28 warranted. Further, this court may impose attorney's fees and costs as a sanction in Kern's favor

1 pursuant to its inherent authority. Finally, an award of attorney's fees and costs is merited against
2 Plaintiffs as a result of their baseless claims against Defendants. Plaintiffs were warned there was
3 no valid cause of action after they filed their frivolous Complaint. *See* Exhibit "3". They ignored
4 the sound advice and proceeded with the action against Kern. Such action should not be without
5 consequence. Plaintiffs should be required to pay all of Kern's attorney's fees and costs for their
6 unlawful, unprofessional, and unnecessary actions. All fees and costs sought were necessary and
7 reasonably incurred in the defense of Kern & Associates.

8 Kern respectfully requests an award of attorney's fees against the Plaintiffs in the amount of
9 \$10,580.00, and costs in the amount of \$352.34, for a total amount of \$10,932.34, plus the fees and
10 costs for this Reply. Interest should accrue at the statutory rate from the date judgment is entered.
11 Kern requests any further relief the Court determines to be appropriate.

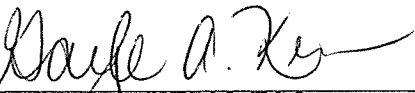
12 AFFIRMATION

13 Pursuant to NRS 239B.030

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

16 DATED this 21st day of December, 2015.

17 KERN & ASSOCIATES, LTD.

18 By 
19 GAYLE A. KERN, ESQ.
20 *Attorneys for Kern & Associates, Ltd.*
21 *and Gayle Kern*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

**REPLY TO MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION FOR ATTORNEY'S FEES & COSTS; COUNTER-AFFICAVIT
[SIC] AND PLAINTIFF ROCHELLE DEZZANI'S JOINDER THERETO**

On the party(s) set forth below by:

- ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- ☐ Personal delivery.
- ☐ Facsimile (FAX).
- ☐ Federal Express or other overnight delivery.
- ☐ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 21st day of December, 2015.


TERESA A. GEARHART

INDEX OF EXHIBITS

| <u>Exhibit No.</u> | <u>Exhibit Description</u> | <u>No. of Pages in Exhibit</u> |
|--------------------|--|--------------------------------|
| 1 | Nevada Secretary of State Business Entity Information for Gayle A. Kern, Ltd. | 3 |
| 2 | Washoe County Certificate of Business: Fictitious Firm Name | 1 |
| 3 | September 9, 2015, Rule 11 Letter | 72 |

EXHIBIT “1”

EXHIBIT “1”

GAYLE A. KERN, LTD.

| Business Entity Information | | | |
|-----------------------------|-----------------------------------|-----------------------|-------------|
| Status: | Active | File Date: | 7/17/2003 |
| Type: | Domestic Professional Corporation | Entity Number: | C17144-2003 |
| Qualifying State: | NV | List of Officers Due: | 7/31/2016 |
| Managed By: | | Expiration Date: | |
| NV Business ID: | NV20031405227 | Business License Exp: | 7/31/2016 |

| Additional Information | |
|------------------------|--|
| Central Index Key: | |

| Registered Agent Information | | | |
|------------------------------|-----------------------------|--------------------|-----------------------------|
| Name: | GAYLE A. KERN, LTD. | Address 1: | 5421 KIETZKE LANE SUITE 200 |
| Address 2: | | City: | RENO |
| State: | NV | Zip Code: | 89511 |
| Phone: | | Fax: | |
| Mailing Address 1: | | Mailing Address 2: | |
| Mailing City: | | Mailing State: | NV |
| Mailing Zip Code: | | | |
| Agent Type: | Commercial Registered Agent | | |
| Status: | Active | | |

| Financial Information | | | |
|---|--------|-----------------|------|
| No Par Share Count: | 100.00 | Capital Amount: | \$ 0 |
| No stock records found for this company | | | |

| <input checked="" type="checkbox"/> Officers <input type="checkbox"/> Include Inactive Officers | | | |
|--|-----------------------------|------------|-----|
| President - GAYLE A KERN | | | |
| Address 1: | 5421 KIETZKE LANE SUITE 200 | Address 2: | |
| City: | RENO | State: | NV |
| Zip Code: | 89511 | Country: | USA |
| Status: | Active | Email: | |
| Secretary - GAYLE A KERN | | | |
| Address 1: | 5421 KIETZKE LANE SUITE 200 | Address 2: | |
| City: | RENO | State: | NV |
| Zip Code: | 89511 | Country: | USA |
| Status: | Active | Email: | |
| Treasurer - GAYLE A KERN | | | |

| | | | |
|------------|-----------------------------|------------|-----|
| Address 1: | 5421 KIETZKE LANE SUITE 200 | Address 2: | |
| City: | RENO | State: | NV |
| Zip Code: | 89511 | Country: | USA |
| Status: | Active | Email: | |

Director - GAYLE A KERN

| | | | |
|------------|-----------------------------|------------|-----|
| Address 1: | 5421 KIETZKE LANE SUITE 200 | Address 2: | |
| City: | RENO | State: | NV |
| Zip Code: | 89511 | Country: | USA |
| Status: | Active | Email: | |

| | | | |
|---------------------------------------|---------------------------------|-----------------|---|
| - Actions\Amendments | | | |
| Action Type: | Articles of Incorporation | | |
| Document Number: | C17144-2003-001 | # of Pages: | 5 |
| File Date: | 7/17/2003 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Initial List | | |
| Document Number: | C17144-2003-004 | # of Pages: | 1 |
| File Date: | 8/29/2003 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Registered Agent Address Change | | |
| Document Number: | C17144-2003-003 | # of Pages: | 7 |
| File Date: | 10/9/2003 | Effective Date: | |
| GAYLE A. KERN SUITE 202 JPH | | | |
| 499 WEST PLUMB LANE RENO NV 89509 JPH | | | |
| Action Type: | Annual List | | |
| Document Number: | C17144-2003-002 | # of Pages: | 1 |
| File Date: | 6/14/2004 | Effective Date: | |
| List of Officers for 2004 to 2005 | | | |
| Action Type: | Annual List | | |
| Document Number: | 20050286303-29 | # of Pages: | 1 |
| File Date: | 7/13/2005 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Registered Agent Address Change | | |
| Document Number: | 20050489870-83 | # of Pages: | 2 |
| File Date: | 10/6/2005 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Annual List | | |
| Document Number: | 20060318881-27 | # of Pages: | 1 |
| File Date: | 5/17/2006 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Annual List | | |

| | | | |
|----------------------------|----------------|-----------------|---|
| Document Number: | 20070360890-45 | # of Pages: | 1 |
| File Date: | 5/23/2007 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Annual List | | |
| Document Number: | 20080333211-83 | # of Pages: | 1 |
| File Date: | 5/14/2008 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Annual List | | |
| Document Number: | 20090394399-38 | # of Pages: | 1 |
| File Date: | 5/6/2009 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Annual List | | |
| Document Number: | 20100498731-05 | # of Pages: | 1 |
| File Date: | 7/7/2010 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Annual List | | |
| Document Number: | 20110522523-33 | # of Pages: | 1 |
| File Date: | 7/15/2011 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Annual List | | |
| Document Number: | 20120339599-63 | # of Pages: | 1 |
| File Date: | 5/14/2012 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Annual List | | |
| Document Number: | 20130454330-95 | # of Pages: | 1 |
| File Date: | 7/10/2013 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Annual List | | |
| Document Number: | 20140325992-87 | # of Pages: | 1 |
| File Date: | 5/1/2014 | Effective Date: | |
| (No notes for this action) | | | |
| Action Type: | Annual List | | |
| Document Number: | 20150219299-50 | # of Pages: | 1 |
| File Date: | 5/14/2015 | Effective Date: | |
| (No notes for this action) | | | |

EXHIBIT “2”

EXHIBIT “2”

CORPORATION, LLC, BUSINESS TRUST & LEGAL ENTITIES**CERTIFICATE OF BUSINESS: FICTITIOUS FIRM NAME*** * * **THIS CERTIFICATE EXPIRES 5 YEARS FROM FILE DATE** * * *

(If renewing, expires 5 years from original file date unless it has lapsed)

FILED**2015 JUL 17 AM 9:31**☒ Renewal ☐ New Filing Contact Number: (775) 324-5930 Email: gakltd@kernltd.comNANCY HART
WASHOE COUNTY CLERK
BY [Signature] #208
DEPUTYTHE UNDERSIGNED does hereby certify that _____ IT IS
conducting a Law Office business at
5421 Kietzke Lane, Suite 200 Reno NV 89511
(Physical street address) (City) (State) (Zip code)under the fictitious firm name of: Kern & Associates, Ltd.

and that said firm is composed of the following legal entity* (or entities) whose mailing address, signing officer's name, and title are as follows:

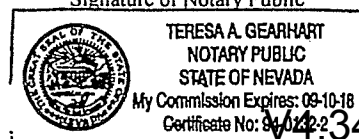
Legal Entity Name: Gayle A. Kern, Ltd.

(Legal entity must state name exactly as it is on file in state of incorporation)

Entity Mailing Address: 5421 Kietzke Lane, Suite 200 Reno NV 89511
(Physical street address) (City) (State) (Zip code)Signing Officer Name: Gayle A. KernSigning Officer Title: President**FOR ADDITIONAL OWNERS, PLEASE USE ADDITIONAL PAGES**Alternate Mailing Address: _____
(P.O. Box or Physical street address other than listed above) (City) (State) (Zip code)Prior Related DBA Filing (if applicable): July 20, 2010WITNESS my hand this 8th day of July, 20 15.The undersigned hereby swears under penalty of perjury that
he/she has authority to sign on behalf of and to bind the above-
named legal entity to a contract.X [Signature]
Signature of authorized officerSTATE OF NEVADA
COUNTY OF WASHOE } ss.On this 8th day of July, 20 15 personally appeared before me, a Notary Public,
Gayle A. Kern

(Name of individual whose signature is being notarized)

who acknowledged that he/she executed the above instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official stamp at my office in
the County of Washoe the day and year in this certificate first above written.[Signature]
Signature of Notary Public**For office use only**IF SUBMITTING A NOTARIZED DOCUMENT, PLEASE PROVIDE AN ORIGINAL AND 3 COPIES,
A SELF-ADDRESSED STAMPED ENVELOPE AND \$20.00 FILING FEE TO:WASHOE COUNTY CLERK
P.O. BOX 11130
RENO, NV 89520

V4.346

107510

EXHIBIT “3”

EXHIBIT “3”

KERN & ASSOCIATES, LTD.
ATTORNEYS AT LAW

GAYLE A. KERN, ESQ.
gaylekern@kernltd.com

KAREN M. AYARBE, ESQ.
karenayarbe@kernltd.com

5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511

TELEPHONE: (775) 324-5930
FACSIMILE: (775) 324-6173

September 9, 2015

*VIA EMAIL: djdezani@yahoo.com
ORIGINAL VIA CERTIFIED MAIL
& COPY VIA FIRST CLASS MAIL*

David Dezzani
Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

Re: *Dezzani v. Kern & Associates, Ltd., et al.*
Case No. CV 15-00826 | Second Judicial District Court | Washoe County

NOTICE PURSUANT TO NRCP 11(b) and (c)

Dear Mr. and Mrs. Dezzani:

As you know, this firm represents the McCloud Condominium Association (the "Association"). Our office was served a copy of your Complaint, filed on May 4, 2015, in the above referenced matter against Ms. Karen Higgins ("Ms. Higgins"), a board member of the Association, and counsel for the Association Kern & Associates, Ltd. ("K&A") and Ms. Gayle Kern ("Ms. Kern").

Be advised this letter is sent in compliance with NRCP 11(c) for purposes of providing notice and an opportunity for you to respond to and remedy the substantive deficiencies of the above referenced Complaint as outlined below. Such deficiencies are in clear violation of NRCP 11(b)(1)(2) and (3).¹

NRCP 11(b)(1)(2) and (3) provide:

...[b]y representing to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney...is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -

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Significantly, *as a matter of law*, you cannot assert any cause of action against K&A or Ms. Kern. *At all times material* to the allegations of the Complaint, K&A and Ms. Kern were acting as counsel for the Association and owed no duty to you. To this point, the Honorable Janet Berry, district court judge in the Second Judicial District, County of Washoe, State of Nevada, recently ruled in a similar action that the prior owner of a property located in one of the associations ("HOA") represented by K&A and Ms. Kern could not maintain an action against K&A. In *Vainuku v. Highland Ranch Homeowners Association, et al.*, Case No. CV14-02399, Second Judicial District Court, the plaintiff asserted various claims against K&A as counsel for the HOA, with such claims sounding in breach of contract, tort, unjust enrichment, injunctive relief, declaratory relief/quiet title, and all arising from a prior foreclosure. Judge Berry dismissed plaintiff's complaint against K&A *with prejudice*, ruling

...The Court finds *there is no basis in law or fact to support the causes of action alleged against Kern*. There are no issues of material fact which preclude summary judgement [sic]. Additionally, *the Court finds that to permit such causes of action against Kern would result in a chilling effect on individuals' ability to hire and retain counsel*. Accordingly, and good cause appearing, Kern's Motion to Dismiss Verified Complaint for Quiet Title, Declaratory Judgment and Damages is **GRANTED**. All claims against Kern are hereby dismissed *with prejudice*.

See Judge Berry's May 13, 2015 Order, p. 4, ll. 16-22, a copy of which is enclosed. (*Emphasis added.*)

Here, you are attempting to do precisely what plaintiff in the *Vainuku* case cited above did, i.e. sue the attorneys for the Association, over the issues related to enforcement of the governing documents and application of Chapter 116 related to the common area encroachment. Amongst the allegations of the Complaint include criticism of Ms. Kern and her legal advice, competence, services, and opinions to her client, *the Association*. In addition, you allege violations of various provisions of NRS Chapter 116 and the Association's governing documents, including its CC&Rs.

-
- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
 - (2) the claims, defenses, and other legal contentions therein are warranted by existing law...
 - (3) the allegations and other factual contentions have evidentiary support...

Further, 11(c) states "...[i]f after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may...impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation."

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Additional allegations are made that Ms. Kern (as well as Ms. Higgins) acted “negligently, wrongfully, wantonly, willfully and/or intentionally in violation of...” various provisions of Chapter 116.

Regardless of your opinions or interpretations of the Association’s governing documents and NRS Chapter 116, only *a client* may maintain an action against an attorney for claims sounding in contract, tort, negligence, breach of fiduciary duty, or a failure to adhere to a recognized standard of care.² To the extent your claims allege tortious conduct on the part of Ms. Kern and/or K&A, they are barred by law. K&A, as attorneys for the Association, owed no duty to you individually as members of the Association. Any liability sounding in tort must be based upon some underlying duty owed to the aggrieved party. No such duty is present here. Rather, K&A owed a duty to its client, the Association.

In *B.L.M. v. Sabo & Deitsch*, 55 Cal. App. 4th 823, 64 Cal. Rptr. 2d 335 (1997), the California appellate court affirmed the granting of a motion for summary judgment against B.L.M. because respondent law firm represented only its client, the City, and the law firm owed no duty to respondent as a third party beneficiary of that employment contract. *See also Bily v. Arthur Young & Co.*, 3 Cal 4th 370, 834 P.2d 745 (1992), wherein the court addressed an auditor’s liability and found no liability to third parties unless the employment contract specifically identifies the party as a third party beneficiary. As noted by the court in the *B.L.M. v. Sabo* decision, to find that by entering into a contract to provide legal services, the attorney also owed a duty to the party against whom action was to be taken, is unworkable and undermines the very nature of the attorney-client relationship.³

It is a fundamental principle of law that a lawyer representing an organization as a client

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Under Nevada law, no civil cause of action even exists against an attorney for any violation of the Rules of Professional Conduct. *See Ricks v. Dabney (In re Jane Tiffany Living Trust)*, 124 Nev. 74; 177 P.3d 1060 (2008); *see also, Mainor v. Nault*, 120 Nev. 750, 768-769; 101 P.3d 308, 320-321 (2004). Other jurisdictions are in accord. *See Ex. Parte Toler*, 710 So.2d 415, 416 (Ala. 1998); *Orsini v. Larry Moyer Trucking Inc.*, 310 Ark. 179, 184, 833 S.W.2d 366,369 (Ark 1992).

3

Numerous other decisions have confirmed that an attorney for an adverse party cannot be liable to a third party because no duty is owed by the attorney to that third party. *See Norton v. Hines*, 49 Cal. App. 3d 917, 123 Cal. Rptr. 237 (1975); *Weaver v. Superior Court*, 95 Cal. App. 3d 166,180, 156 Cal. Rptr. 745 (1979); *Parnell v. Smart*, 66 Cal. App. 3d 833, 837-838, 136 Cal. Rptr. 246 (1977); *Omega Video Inc. v. Superior Court*, 146 Cal. App. 3d 470, 480, 194 Cal. Rptr. 574 (1983); *St. Paul Title Co. v. Meier*, 181 Cal. App. 3d 948, 952, 226 Cal. Rptr 538 (1986).

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represents the entity itself rather than the individual constituents who make up the organization. The Nevada Rules of Professional specifically provide as much.⁴ Throughout the course of her representation of the Association, Ms. Kern's primary obligation has been to the Association itself. All members collectively constitute third party beneficiaries of Ms. Kern's representation of the Association. Not only is protecting your interests as individual property owners not the primary purpose and intent of the attorney-client relationship between K&A and the Association, it is often the case that your interest will be contrary to the interests of the Association. As a result, it is clear that you are not a third party beneficiary to any contract *between K&A and its client the Association*.⁵

There is no question that you were made aware of Ms. Kern's status as counsel for the Association during the extensive communications between you and K&A. The documents in the Complaint and upon which the allegations of the Complaint are apparently based specifically identify K&A as *attorneys* for the Association. You acknowledge the representation directly in your allegations. You are not, and have never been, in privity of contract with K&A nor (as established above) did K&A owe any duty to you as an individual owner in the Association. K&A's duties were, and still are, owed only to its client, the Association.

While it is unclear whether your complaint asserts any action against K&A for breach of

4

Rule 1.13. Organization as Client.

(a) *A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.*

(b) *If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization.* Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

...
 (f) *In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client to the constituent and reasonably attempt to ensure that the constituent realizes that the lawyer's client is the organization rather than the constituent.* In cases of multiple representation such as discussed in paragraph (g), the lawyer shall take reasonable steps to ensure that the constituent understands the fact of multiple representation.

5

See Pelham v. Griesheimer, 92 Ill. 2d 13, 21 (Ill. 1982), holding that "for a nonclient to succeed in a negligence action against an attorney, he must prove that the primary purpose and intent of the attorney-client relationship itself was to benefit or influence the third party."

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contract, any attempt to that effect would be unsubstantiated. In Nevada, “[a] breach of contract may be said to be a material failure of performance of a duty arising under or imposed by agreement.” *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987). “A plaintiff in a breach of contract action must show (1) the existence of a valid contract; (2) a breach by the defendant, and (3) damage as a result of the breach.” *Brown v. Kinross Gold U.S.A., Inc.*, 531 F.Supp. 2d 1234, 1240 (D.Nev. 2008) (internal quotations omitted), citing *Saini v. Int’l Game Tech.*, 434 F.Supp. 2d 913, 920-21 (D.Nev. 2006).

The essential element of a claim for breach of contract, i.e., a contract, is missing as to K&A. K&A is not a party to or bound by the CC&Rs. There is not now, and never was, any contract between you and K&A. Furthermore and as stated above, you are not a third party beneficiary to any contract between K&A and the Association. You do not even allege the existence of a contract between yourself and K&A, because one simply does not exist. As a matter of law, there can be no claim sustained against K&A for a breach of a non-existent contract.

You cite various provisions of Chapter 116 of the Nevada Revised Statutes to justify your direct claims against Ms. Kern and K&A. Not only are the allegations in your Complaint factually insufficient to justify your reliance on these statutes, they simply do not provide an avenue by which you may sue Ms. Kern and K&A for any actions during the course of representation of the Association. As stated above, K&A owed you no duty and there was no contractual relationship between you and K&A such that direct claims are warranted.

In short, your attempt to sue K&A as attorneys for the Association is legally and fundamentally flawed, and can only be viewed as a strong armed, warrantless litigation tactic used for improper purposes. Judge Berry’s Order in *Vainuku* establishes as much. There is absolutely no cognizable claim for relief against another party or entity’s counsel by a third party with the potential exception of fraud or unfair debt collection. Even as to such claims, no facts whatsoever exist here to support these claims and/or withstand Rule 11 scrutiny as well, especially as to fraud which *must* be pled with particularity and be based upon clear and convincing evidence. Furtherance of any such spurious claims against K&A as counsel for the Association by you will be met with an immediate and proportionate response including, but not limited to, a request for sanctions and attorney’s fees and costs. (See further discussion below.)

Additionally, NRCP 12(h)(3) provides that “whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. Assuming *solely for the sake of argument* that a claim may be stated against K&A (which it cannot), the court has no subject matter jurisdiction over the Association or K&A due to the fact that your claims are not exempt from the mediation requirements of NRS 38.310. As such, they are subject to dismissal under NRCP 12(h)(3).

More specifically, Nevada law requires that all claims involving the interpretation,

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application or enforcement of the governing documents applicable to residential property be mediated pursuant to the provisions of NRS 38.300 to 38.360, inclusive, before any action may be filed in this Court. *See* NRS 38.310(1).

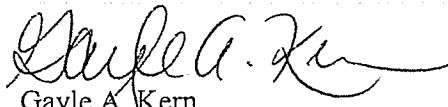
The allegations of the Complaint and the spurious, non-cognizable claims asserted against K&A and Ms. Kern rest entirely upon an interpretation of the provisions of the CC&Rs and whether the Association was entitled to take enforcement action for the modifications made to your rear deck and the resulting taking of common area. The Complaint alleges the Association and/or K&A failed to follow the provisions of the CC&Rs and NRS Chapter 116 while taking enforcement action and while negotiating a resolution to the significant issue raised by the modification of your deck. Again, while you contest the Association's authority to take the actions it did, K&A at all times advised the Association regarding what would be in the best interest of the Association itself and the members collectively. There is no question that permitting the taking of common area for the exclusive use of individual members is not in the best interest of the Association because each owner owns an undivided interest in the common area that may not be reallocated without adhering to the specific procedures provided for in the CC&Rs.

Clearly, the validity of the claims contained in your Complaint depend entirely upon an interpretation, application, and/or enforcement of the CC&Rs. The Nevada Supreme Court has made clear that when resolving the merits of a complaint requires a court to interpret the meaning of an association's CC&Rs to determine if the association's actions were proper, the complaining party must first submit their claims to mediation before instituting an action in district court. *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 295 (Nev. 2008). It is apparent, therefore, that the claims asserted against Ms. Kern and K&A would be dismissed under NRCP 12(h)(3) and NRS 38.310. There is simply no subject matter jurisdiction.

Based upon the foregoing, you must dismiss your claims against Ms. Kern and K&A. Be advised that K&A is prepared to file the attached Motion to Dismiss. Additionally, should the issues presented in this letter not be addressed and corrected, and the Association and/or K&A are required to prepare and file any necessary pleadings with the Court, we will seek sanctions, including all attorneys' fees and costs incurred in connection therewith, in accordance with NRCP 11(c)(1)(a).

Very truly yours,

KERN & ASSOCIATES, LTD.


Gayle A. Kern

Enclosure
c: Client (w/enc.)

1 2315

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6 Reno, Nevada 89511
7 Telephone: (775) 324-5930
8 Telefax: (775) 324-6173
9 E-mail: gaylekern@kernltd.com

10 *Attorneys for Kern & Associates, Ltd.*
11 *and Gayle Kern*

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

14 DAVID DEZZANI and ROCHELLE CASE NO.: CV15-00826
15 DEZZANI,

16 Plaintiffs,

17 vs.

DEPT. NO.: 10

DEFENDANTS, KERN & ASSOCIATES,
LTD. AND GAYLE KERN'S MOTION TO
DISMISS COMPLAINT

18 KERN & ASSOCIATES, LTD; GAYLE KERN;
19 KAREN HIGGINS; JOHN DOES 1-10; JANE
20 DOES 1-10; DOE BUSINESSES 1-5,

21 Defendants.
22 _____ /

23 Defendant GAYLE A. KERN, dba KERN & ASSOCIATES, LTD., ("Kern"), in *pro per*, moves
24 this Court for an order dismissing the Complaint with Prejudice as to Kern pursuant to NRCP 12(b)(1),
25 NRCP 12(b)(5), NRCP 12(h)(3), and NRS 38.310, for the reasons outlined in the following Memorandum
26 of Points and Authorities, including but not limited to the following: (i) at all times material to the
27 allegations of the Complaint, Kern was acting solely as an attorney for the governing body of the McCloud
28 Condominium Association and as a matter of law, a third party cannot maintain a cause of action against
another party's attorney; (ii) Plaintiffs failed to state a claim against Kern for which relief may be granted;
and (iii) the court lacks subject matter jurisdiction over any legitimate claims against Kern because any
legally cognizable claims against Kern must first be arbitrated or mediated in accord with the provisions
of NRS 38.310-360.

///

1 This Motion to Dismiss is based upon the following Memorandum of Points and Authorities, all
2 exhibits attached hereto, all pleadings and papers on file herein, and any oral argument the court deems
3 necessary. All exhibits that are attached to this motion are referenced to and discussed in the Complaint
4 on file. Therefore, they are not exhibits outside of the allegations of the Complaint and all matters
5 discussed are within the Complaint and can be considered by the Court without converting the motion to
6 dismiss into a motion for summary judgment.

7 DATED this 9th day of September, 2015.

8 KERN & ASSOCIATES, LTD.

9
10 GAYLE A. KERN, ESQ.
11 *Attorneys for Kern & Associates, Ltd.*

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. STANDARD FOR DISMISSAL**

14 The Nevada Rules of Civil Procedure provide that the defense of lack of jurisdiction over the
15 subject matter and the defense of failure to state a claim upon which relief may be granted may, at the
16 option of the defendant, be made by motion. NRCP 12(b)(1); NRCP 12(b)(5). "If, on a motion . . . to
17 dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the
18 pleading are presented to and not excluded by the court, the motion shall be treated as one for summary
19 judgment and disposed of as provided in NRCP 56...." NRCP 12(b). "Documents whose contents are
20 alleged in a complaint and whose authenticity no party questions, but which are not physically attached
21 to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the
22 motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.
23 1994) (analyzing similar federal rule). Recording of a document imparts constructive notice of its contents.
24 NRS 111.315. The Court may take judicial notice of "facts in issue or facts from which they may be
25 inferred. A judicially noticed fact must be . . . [c]apable of accurate and ready determination by resort to
26 sources whose accuracy cannot reasonably be questioned so that the fact is not subject to reasonable
27 dispute." NRS 47.130.

28 ///

1 NRCP 12(h)(3) provides that "whenever it appears by suggestion of the parties or otherwise that
2 the court lacks jurisdiction of the subject matter, the court shall dismiss the action." The burden of proving
3 the jurisdictional requirement is properly placed on the plaintiff. *See Morrison v. Beach City LLC*, 116
4 Nev. 34, 991 P.2d 982 (2000) citing *Nelson v. Keever*, 451 F.2d 289 (3d Cir. 1971).

5 Under NRCP 8(a), a complaint must contain "a short and plain statement of the claim showing that
6 the pleader is entitled to relief." A complaint which fails to satisfy this standard is subject to dismissal for
7 failure to state a claim upon which relief can be granted. NRCP 12(b)(5).

8 In determining whether this standard is met, the district court "considers all factual assertions in
9 the complaint to be true and draws all reasonable inferences in favor of the plaintiff" *See Kahn v. Dodds*
10 (*In re AMERCO Derivative Lit.*) 252 P.3d 681, 692 (Nev. 2011) citing *Shoen v. SAC Holding Corp.*, 122
11 Nev. 621, 635, 137 P.3d 1171, 1180 (2006). The Nevada Supreme Court has reiterated, however, that "[t]o
12 survive dismissal, a complaint must contain some 'set of facts, which, if true, would entitle [the plaintiff]
13 to relief.'" *Kahn*, 252 P.3d at 692, citing *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181
14 P.3d 670, 672 (2008). In fact, the allegations must give fair notice of a *legally sufficient claim*. *See Breliant*
15 *v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (emphasis added), citing
16 *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984).

17 When ruling on a motion to dismiss, "the court is not required to accept legal conclusions cast in
18 the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged."
19 *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-755 (9th Cir. Cal. 1994) (analyzing similar federal
20 rule). In the instant matter, not only have Plaintiffs attempted to assert claims against an adverse party's
21 attorney, which they cannot do as a matter of law, the factual allegations of the Complaint are unsupported
22 by the evidence provided by the Exhibits attached hereto which relate directly to Plaintiffs' allegations.

23 For the reasons set forth herein, the Court should dismiss each of Plaintiffs' causes of action
24 against Kern, with prejudice, as Plaintiffs failed to assert any facts that give rise to any plausible claim
25 against Kern for which relief can be granted pursuant to NRCP 12(b)(5). If the Court determines Plaintiffs
26 asserted any legally sufficient claims against Kern, the Court should still dismiss all claims against Kern
27 because the Court lacks subject matter jurisdiction over those claims. Any legally cognizable claims
28 against Kern arise from the "interpretation, application and or enforcement" of the CC&Rs and, therefore,

those claims must be submitted to mediation or arbitration in accord with the mandatory requirements of NRS 38.310. If not otherwise dismissed pursuant to NRCP 12(b)(5), all claims against Kern should be dismissed in accordance with NRCP 12(b)(1), NRCP 12(h)(3), and NRS 38.310(1).

II. STATEMENT UNDISPUTED FACTS

Kern is a professional corporation providing legal services to a variety of clients in Northern Nevada including, but not limited to, over 250 common-interest community homeowner associations, including the McCloud Condominium Homeowners Association ("Association"). Complaint ¶ 2, 3. At all times material to the allegations of the Complaint, Kern was acting solely as attorney for the Association. Complaint ¶¶ 13, 14, 17, 19, 22, 35.

Plaintiffs David Dezzani and Rochelle Dezzani ("Plaintiffs" or "Dezzanis") are members of the Association and owners of Unit #211 in the Association (the "Unit" or "Property"). Complaint ¶¶ 1. The Association is governed by the Revised Declaration of Limitations, Covenants, Conditions and Restrictions of McCloud Condominium Homeowners' Association ("CC&Rs"), recorded January 28, 2008, as Document No. 3614779 with the Office of the Washoe County Recorder. Complaint ¶ 11, 12, 25, 30, 33; *See* Kern Exhibit "1". Plaintiffs purchased the Unit on July 1, 2004. Complaint ¶ 6. At the time Plaintiffs purchased the Property, the rear deck had been extended from its original dimensions by a previous owner. Complaint ¶ 8. The deck extension had been approved by the Association's Board of Directors in 2002. *See* Plaintiffs' Exhibit 3. Upon exterior inspection of the rear deck, the Association's Board of Directors issued the Dezzanis a "Notice of Violation" indicating that the deck extension was unapproved and unallowed pursuant to the CC&Rs. Complaint ¶ 11, 12, 13; Plaintiffs' Exhibit 1. The Notice of Violation proposed two options for the Plaintiffs to correct the violation - they could either submit an application for the restoration of the deck to its original condition OR could sign a Covenant stating that the deck extension in its current condition could remain on the Plaintiffs' Property during the entire course of their ownership but would be required to be removed at the owner's expense after three successive transfers of ownership. Plaintiffs' Exhibit 1. The pertinent provisions of the CC&Rs, as noticed in the Notice of Violation, provide as follows:

12.5 Association Maintenance and Decoration Authority. The Board of Directors, or its duly appointed agent, including the manager, if any, shall have the exclusive right to paint, decorate, repair, maintain and alter or modify the exterior walls, balconies, railings, exterior door surfaces, roof and all installations and improvements in the

1 common area, and no owner of a condominium shall be permitted to do, or have
2 done, any such work. The approval of the Board of Directors shall be required in
3 writing for the installation of any awnings, sunshades, or screen doors, or any
4 antennae or structures on the roof of any condominium building.

5 13.8.2 [An Owner] May not change the appearance of the Common Areas, the exterior
6 appearance of a unit, any component that may be seen from the exterior of the
7 building, or any other portion of the Project, or make any change or modification
8 to that Owner's Unit, such as replacing carpeting with hardwood floors, without
9 permission from the Board or the Architectural Committee, as applicable.

10 Kern Exhibit "1".

11 During the course of her representation of the Association, Kern advised the Association regarding
12 the extension of multiple rear decks within the Community. Complaint ¶ 35; See Kern Exhibit "2". Kern
13 assisted the Board of Directors in issuing the Notice of Violation to Plaintiffs. Complaint ¶ 13. Upon
14 receiving correspondence from the Plaintiffs regarding the Notice of Violation, the Board of Directors
15 requested Kern to reply to those communications. Complaint ¶ 14; Kern Exhibit "2". Kern communicated
16 with the Dezzanis on behalf of the Association by letter dated April 4, 2013. *Id.* The letter clearly informed
17 the Dezzanis that Kern was acting as attorney for the Association. The letter states in pertinent part:

18 "Dear Mr. And Mrs. Dezzani:

19 I represent the McCloud Condominium Homeowners Association. The Board
20 requested I respond to your email request to review communications and/or information
21 related to another unit and Board minutes.

22 Kern Exhibit "2", pg. 1.

23 The letter outlined the Association's position regarding the deck extension, stating, "The Board
24 understands your frustration and appreciates you are addressing the matter of the unapproved deck
25 extension that wrongfully encroaches in the common area. There is no question the extension exists in
26 the common area, as do the other extensions. The common area is owned in common by *all* owners of the
27 community. While it is unfortunate the issue of deck extensions and the wrongful taking of common area
28 was not addressed earlier, the Association has properly taken action to protect the integrity of the common
area. There is no question common area is not permitted to be given to any one owner for his/her
exclusive use and enjoyment, thereby reducing the common area for the other homeowners. It is the
wrongful conversion of common area that is the problem. Simply put, there is no lawful transfer of
common area to individual owners absent a vote of the membership. See NRS 116.3112; Kern Exhibit
"2". On May 3, 2013, Plaintiffs emailed the Association's Board of Directors with a lengthy tirade of

1 accusations against the Association's Board of Directors, management company and Kern directly. *See*
2 Plaintiffs' Exhibit 2. The email purported to justify the Dezzani's position regarding the deck and asserted
3 that the impropriety of the Association's position. *Id.* In various places, the email refers to Kern's
4 representation of the Association and the communications Kern had with the Plaintiffs on behalf of the
5 Association. The email explicitly acknowledges that Kern communicated directly with the Dezzanis for
6 the purpose of convening the association's legal position with regard to the deck extensions.

7 Kern responded by letter dated May 10, 2013, in which she clearly indicated that she represents
8 the Association and that the Dezzanis should direct all further communication regarding the deck
9 extension to Kern rather than directly to the Board of Directors. Specifically, the letter stated:

10 The Board of Directors requested I respond to your various communications.... If you have
11 any further communications, the Board request that you communicate with me. We
12 appreciate your anticipated cooperation. If I have failed to address any of your
13 communications, please advise me.

14 Kern Exhibit "3".

15 After a hearing on the matter, *attended by Kern on behalf of the Association*, the Board issued the
16 Result of Hearing, dated September 5, 2014. Complaint ¶ 18; *See* Plaintiffs' Exhibit 5. Kern continued
17 to receive and reply to communications regarding the deck extension from the Dezzanis. Complaint ¶ 20,
18 21, 22. At all times, Kern responded on behalf of her client, the Association, and asserted the legal
19 positions she was retained to express by her client.

20 On May 4, 2014, Plaintiffs filed the Complaint in district court asserting claims against the Kern
21 and Karen Higgins, an individual member of the Board, which have no basis in law or fact. The claims
22 asserted against Kern were never submitted to the NRED as required by NRS 38.310(1). All claims
23 against Kern must be dismissed in accord with NRCP 12(b)(5), and or NRCP 12(b)(1), NRCP 12(h)(3)
24 and NRS 38.310(1).

25 III. AUTHORITIES AND LEGAL ARGUMENTS

26 A. Plaintiff Has Failed to Assert any Claims Against Kern For Which Relief 27 May be Granted.

28 Even if the Complaint is not dismissed in its entirety based on the lack of any cognizable claim
against the attorney for the Association, there are independent grounds for dismissal of each and every

1 claim for relief. The Complaint seeks four inarticulate claims for relief. Apparently, the Plaintiffs assert
2 that Kern engaged in retaliatory action against them, threatened, harassed or otherwise caused emotional
3 distress to them in violation of NRS 116.31183 and NRS 116.31184, and further acted and/or directed
4 others to act negligently, wrongfully, wantonly, willfully and/or intentionally in violation of various
5 provisions of Chapter 116 of the Nevada Revised Statutes governing the conducting of meetings and
6 voting in a common-interest community. Complaint ¶¶ 26, 36, 38, 40. The Complaint acknowledges that
7 Kern provided legal services and advice to the Board and drafted, edited and approved Board
8 correspondence, yet seeks to hold Kern independently responsible for the acts of the Association.
9 Complaint ¶¶ 13, 14, 17, 19, 22, 24, 25, 35. At all times, Kern was acting as agent for the Association,
10 which Plaintiff does not contest. It is fundamental axiom of agency law that a principal is liable for the acts
11 of its agent committed within the scope of the agency. Even if the fact that Kern was at all times acting
12 as attorney for the Association were not determinative of all claims against Kern, there is no theory of
13 liability by which Kern could be independently liable to the Dezzanis.

14 1. *As A Matter of Law, No Cause of Action Can Be Asserted Against Kern Who*
15 *Acted as Attorney For the Association.*

16 As a matter of law, the Plaintiffs cannot assert any cause of action against Kern who was at all
17 times material to the allegations of the Complaint, acting as attorney for the association and owed no duty
18 to the Plaintiffs. The Dezzanis are suing Kern in her direct capacity as counsel for the Association, who
19 took actions authorized by law, to correct a wrongful transfer of common area property to an individual
20 unit owner without a vote of the majority of homeowners. Rather than asserting claims challenging the
21 legality of the Association's position, the Plaintiffs are attacking Kern because of the legal advice she
22 provided to her client. However the purported wrongful actions are characterized, it does not change the
23 fact that Kern owed a duty to her client, the Association, and owed no duty to the Dezzanis in their
24 individual capacity.

25 Regardless of Plaintiffs' opinions or interpretation of the CC&Rs or the provisions of NRS
26 Chapter 116, only a client may maintain an action against an attorney for breach of contract, or negligence,
27 or breach of fiduciary duty, or failure to adhere to a recognized standard of care. The Nevada Supreme
28 Court has repeatedly held that no civil cause of action exists against an attorney based upon any violation
of the Rules of Professional Conduct. *See Ricks v. Dabney (In re Jane Tiffany Living Trust)*, 124 Nev.

74; 177 P.3d 1060 (2008); *see also*, *Mainor v. Nault*, 120 Nev. 750, 768-769; 101 P.3d 308, 320-321 (2004). Other jurisdictions are in accord. *See Ex. Parte Toler*, 710 So.2d 415, 416 (Ala. 1998); *Orsini v. Larry Moyer Trucking Inc.*, 310 Ark. 179, 184, 833 S.W.2d 366,369 (Ark 1992).

Furthermore, Plaintiffs cannot maintain an action sounding in tort against Kern, because as the attorney for the Association, Kern owed no duty to them. Any liability sounding in tort must be based upon an underlying duty owed to the aggrieved party. No such duty is present in here. In *B.L.M. v. Sabo & Deutsch*, 55 Cal. App. 4th 823, 64 Cal. Rptr. 2d 335 (1997), the California appellate court affirmed the granting of a motion for summary judgment against B.L.M because respondent law firm represented only its client, the City, and the law firm owed no duty to respondent as a third party beneficiary of that employment contract. The Dezzanis are clearly not a third party beneficiary to the employment contract between Kern and the Association, and as a matter of law, Kern did not owe a duty to them. The Dezzanis are individual members of the Association; however, Kern's duty is to the Association itself. She does not represent each and every owner as members of the Association. As such, the Plaintiffs may not bring a cause of action against her directly.

In *Bily v. Arthur Young & Co.*, 3 Cal 4th 370, 834 P.2d 745 (1992), the court addressed an auditor's liability and found no liability to third parties unless the employment contract specifically identifies the party as a third party beneficiary. As noted by the court in the *B.L.M. v Sabo* decision, to find that by entering into a contract to provide legal services, the attorney also owed a duty to the party against whom action was to be taken, is unworkable and undermines the very nature of the attorney-client relationship.

Numerous decisions have confirmed that an attorney for an adverse party cannot be liable to a third party because no duty is owed by the attorney to that third party. *See Norton v. Hines*, 49 Cal. App. 3d 917, 123 Cal. Rptr. 237 (1975); *Weaver v. Superior Court*, 95 Cal. App. 3d 166,180, 156 Cal. Rptr. 745 (1979); *Parnell v. Smart*, 66 Cal. App. 3d 833, 837-838, 136 Cal. Rptr. 246 (1977); *Omega Video Inc. V. Superior Court*, 146 Cal. App. 3d 470, 480, 194 Cal. Rptr. 574 (1983); *St. Paul Title Co. v. Meier*, 181 Cal. App. 3d 948, 952, 226 Cal. Rptr. 538 (1986).

To the extent Plaintiffs' claims sound in breach of contract, Plaintiffs simply may not assert them against Kern as the attorney for the Association. In Nevada, "[a] breach of contract may be said to be a material failure of performance of a duty arising under or imposed by agreement." *Bernard v. Rockhill*

1 *Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987). “A plaintiff in a breach of contract action must
2 show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the
3 breach.” *Brown v. Kinross Gold U.S.A., Inc.*, 531 F.Supp. 2d 1234, 1240 (D.Nev. 2008)(internal
4 quotations omitted); citing *Saini v. Int’l Game Tech.*, 434 F.Supp. 2d 913, 920-21 (D.Nev. 2006).

5 The essential element of a claim for breach of contract, i.e., a contract, is missing as to Kern. Kern
6 is not personally bound by the CC&Rs. There is not now, and never was any contract between Kern and
7 Plaintiff. Plaintiff was clearly not a third party beneficiary to any contract between Kern and the
8 Association. Plaintiff does not even allege the existence of a contract between Kern and Plaintiff. As a
9 matter of law, there can be no claim sustained against Kern for a breach of a non-existent contract.

10 Plaintiffs cite the “lengthy email” which they sent to the Board of Directors accusing Kern of
11 possessing “faulty knowledge of the facts of the law, a propensity to presume matters without evidence
12 and a willingness to espouse legal opinions which ignore, overlook, misconstrue and/or fail to consider
13 applicable Nevada laws.” Complaint ¶ 24. Besides being entirely unsubstantiated, these assertions provide
14 no basis for a cause of action against Kern. Kern had no duty to provide legal opinions to Plaintiffs.
15 Rather, any legal opinions Kern communicated to the Plaintiffs were on behalf of the Association.
16 Plaintiffs apparently use this assertion to support a claim against Kern under NRS 116.31183, which
17 prohibits retaliatory action by agents of the Association against owners. Again, Plaintiffs plead no set of
18 facts which serve to prove that Kern in any way engaged in retaliatory actions towards the Plaintiffs.
19 Plaintiffs were the party who went through great lengths to attack Kern’s representation of the Association
20 and her professional capabilities. Kern merely responded to the allegations contained in Plaintiffs’
21 numerous emails and letters expressing the position of the Board.

22 Similarly, Plaintiffs point to NRS 116.31184 as an apparent source for their claim against Kern.
23 Complaint ¶ 36. There are simply no facts in the Complaint that support Plaintiffs’ reliance on this statute.
24 NRS 116.31184 prohibits an agent of the Association from threatening, harassing or otherwise causing
25 harm or serious emotional distress to an owner or creating a hostile environment for an owner. Nowhere
26 in the Complaint do Plaintiffs assert any facts which, if true, would illustrate that Kern threatened or
27 harassed Plaintiffs. Actually, it was the Plaintiffs who, by their own admission, “communicated with the
28 Board on many occasions; challenging and criticizing not only the [Notice of Violation’s] drafting, editing,

authorship, reasoning, logic and legality” and “questioning the competency of the legal services provided to the Board by Defendants Kern.” Complaint ¶ 14. To survive dismissal, Plaintiff must assert some set of facts which, if true, would justify recovery. *Kahn*, 252 P.3d at 692. As Plaintiffs offer no facts which demonstrate that Kern threatened or harassed them in any way, their claim must fail.

Finally, Plaintiffs cite various other provisions of Chapter 116 of the Nevada Revised Statutes in support of their claims, including NRS 116.3108, 116.31083, 116.31084, 116.31085, and 116.31087. ¶ 38. These provisions deal with the meetings of unit owners, meetings of the executive board, voting by members of the executive board, the right of unit owners to speak at certain meetings, the right of unit owners to have certain complaints placed on the agenda of meetings and the maintenance and availability of Association books and records. These statutes provide no cause of action against Kern, as the attorney of the Association. Kern owed a duty to the Association by virtue of her representation. She fulfilled that duty by advising the Association regarding the multiple issues that arouse because of the deck modifications. However, that duty did not extend to the Plaintiffs as individual owners.

For all of the foregoing reasons, Plaintiff has failed to state a claim against Kern upon which relief may be granted and the Complaint must be dismissed in its entirety against Kern, with prejudice, in accord with NRCP 12(b)(5).

B. Dismissal is Mandatory Where Plaintiff has Failed to Comply with NRS 38.310 and the Court Lacks Subject Matter Jurisdiction.

NRCP 12(h)(3) provides that “whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Even if the authorities and arguments set forth in Section A above did not otherwise require the dismissal of all claims against Kern, Plaintiffs’ claims against Kern are not exempt from the requirements of NRS 38.310.

Nevada law requires that all claims involving the interpretation, application or enforcement of the governing documents applicable to residential property be mediated pursuant to the provisions of NRS 38.300 to 38.360, inclusive, before any action may be filed in this Court. Nevada law could not be clearer. NRS 38.310(1) provides in pertinent part:

No civil action based upon a claim relating to:

(a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted

1 by an association; ... **may be commenced in any court in this State unless the action has**
2 **been submitted to mediation...**

3 NRS 38.310(1)(emphasis added).

4 NRS 38.320 states, in pertinent part: "Any civil action described in NRS 38.310 must be submitted
5 to mediation or referred to a program by filing a written claim with the [NRED]." (Emphasis added.) Upon
6 completion of the mediation or arbitration, NRED will issue a certificate. NAC 38.350(7).

7 NRS 38.300(3) defines a "civil action" as follows:

8 "Civil action" includes an action for money damages or equitable relief. The term
9 does not include an action in equity for injunctive relief in which there is an immediate
threat of irreparable harm, or an action relating to the title to residential property.

10 NRS 38.300(3).

11 The allegations of the Complaint and Plaintiffs' spurious claims against Kern rest entirely upon
12 an interpretation of the provisions of the CC&Rs and whether the Association was entitled to issue the take
13 enforcement action against the Plaintiffs for the deck extension as an unlawful allocation of common area
14 property. Plaintiffs allege that the deck extension was lawful pursuant to the CC&Rs and that the
15 Association and Kern's enforcement actions were unjustified. Complaint ¶¶ 25,

16 Articles 12.5 and 13.8.2 of the CC&Rs clearly provide that the Association has the exclusive
17 authority to modify the common areas. Additionally, Section 4.1 provides that "The undivided, fractional
18 interest a unit owner has in the Property's common areas... are established and are to be conveyed with
19 the unit, and cannot be changed." See Kern Exhibit "1". Plaintiffs assert that the conveyance of common
20 area property for their exclusive use, in the form of the rear deck extension, did not constitute a violation
21 of the CC&Rs. The validity of Plaintiffs' claims, assuming that any could even be asserted against Kern
22 as attorney for the Association, depend entirely upon an interpretation of the CC&Rs.

23 The assertion of a various violations of Chapter 116 of the Nevada Revised Statutes does not
24 exempt Plaintiffs from mediating or arbitrating a *legally cognizable* claim asserted against Kern.
25 However, for all of the reasons set forth in Section A above, Plaintiffs have no legally cognizable claim
26 against Kern. Even if there were a legally cognizable claim asserted, the Nevada Supreme Court has
27 previously ruled that all disputes involving the "interpretation, application or enforcement" of the CC&Rs
28 must be submitted to mediation or arbitration under NRS 38.310 before a civil action may be filed. See

1 *e.g. McKnight Family, L.L.P. v. Adept Mgmt.*, 129 Nev. Adv. Op. 64, 310 P.3d 555, 559 (2013) (a claim
2 for wrongful foreclosure involved the interpretation of covenants, conditions, or restriction and the court
3 had no jurisdiction to consider the dispute until a Chapter 38 action had been prosecuted).

4 This case similarly requires an interpretation of the Association's CC&Rs and must be submitted
5 to mediation. The Plaintiffs' assertions are dependant on the interpretations of the CC&Rs. Kern was
6 retained by the Board of Directors to enforce various provisions of the CC&Rs. The Plaintiffs are
7 challenging that representation and the authority by which the Association took enforcement action against
8 them and Kern aided with the execution of that enforcement action. The Court simply cannot address the
9 merits of the Plaintiffs' claim without an analysis of the Association's CC&Rs.

10 If not otherwise dismissed pursuant to NRCP 12(b)(5), all claims against Kern must be dismissed
11 pursuant to NRCP 12(b)(1), NRCP 12(h)(3) and NRS 38.310. The court lacks subject matter jurisdiction
12 over those claims which must be mediated or arbitrated as required by NRS 38.310.

13 IV. CONCLUSION AND RELIEF REQUESTED

14 As a matter of law, Plaintiffs failed to assert any legally cognizable claim against Kern. Kern was
15 not in privity of contract with Plaintiffs and Kern owed no duty to Plaintiffs. Kern acted solely as counsel
16 for the Association and was under no statutory or contractual duty to Plaintiff. Kern's obligations were
17 to the Association to assist in the enforcement of the CC&Rs and ensure that no individual owner was
18 permitted to retain portions of the common area at the expense of other members' undivided interest in
19 the common area.. Kern fulfilled her duties to the Association and Plaintiffs have no claim against Kern
20 under any legal theory. Even after considering all allegations of the Complaint as true, Plaintiff has failed
21 to state a cause of action against Kern for which relief may be granted and the Court must dismiss the
22 complaint pursuant to NRCP 12 (b)(5).

23 For all of the foregoing reasons, all of Plaintiffs' claims, must be dismissed against Kern. Plaintiffs
24 failed to state a cause of action against Kern for which relief may be granted, and the Complaint should
25 be dismissed, with prejudice, as to Kern.

26 To the extent the court does not dismiss all claims against Kern under NRCP 12(b)(5), this Court
27 lacks jurisdiction over any and all legally cognizable claims asserted by Plaintiffs against Kern. Those
28 claims concern the application, enforcement, or interpretation of the CC&Rs. The Court must dismiss all

claims against Kern because any legally cognizable claim against Kern must first be mediated or arbitrated as required by NRS 38.310. This Court lacks subject matter jurisdiction over those claims.

AFFIRMATION

Pursuant to NRS 239B.030

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

DATED this 9th day of September, 2015.

KERN & ASSOCIATES, LTD.

By GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd.

INDEX OF EXHIBITS

| <u>Exhibit No.</u> | <u>Exhibit Description</u> | <u>No. of Pages in Exhibit</u> |
|--------------------|--|--------------------------------|
| 1 | CC&Rs | 46 |
| 2 | Kern letter to Dezzanis dated April 4, 2013 | 2 |
| 3 | Kern letter to Dezzanis dated May 10, 2013 | 1 |

EXHIBIT “1”

EXHIBIT “1”

APN: .

When Recorded, Mail to:

Name: ROBT C. MADDOX & ASSOCIATES
Addr: 10587 Double R Blvd, Ste 100
Reno NV 89521
775 322-3666

DOC # 3614779

01/28/2008 12:25:46 PM
Requested By
ROBERT C MADDOX & ASSOCIATES
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: \$59.00 RPTT: \$0.00
Page 1 of 46



Space for Recorder's Use Only

Name of Document:

**REVISED DECLARATION OF LIMITATIONS,
COVENANTS, CONDITIONS AND RESTRICTIONS OF
McCLOUD CONDOMINIUM HOMEOWNERS' ASSOCIATION**

I the undersigned hereby affirm that the attached document, including any exhibits,
hereby submitted for recording does not contain the personal information of any
person or persons. (Per NRS 239B.030)

Dated January 24, 2008

(Signature)

ROBERT C. MADDOX, GENERAL COUNSEL

**REVISED DECLARATION OF LIMITATIONS,
COVENANTS, CONDITIONS, AND RESTRICTIONS OF
McCLOUD CONDOMINIUM HOMEOWNERS' ASSOCIATION**

This Revised Declaration of Limitations, Covenants, Conditions and Restrictions is made this 17th day of November, 2008, by McCloud Condominium Homeowners' Association, a Nevada Non-Profit Organization ("Declarant").

RECITALS:

1. McCloud Condominiums ("the Property") was created and developed by Embassy Estates, Ltd., a Canadian corporation, as a common interest condominium community pursuant to the then-applicable provisions of the Nevada Revised Statutes.
2. Embassy Estates, Ltd. sold and conveyed interests in the Property subject to a Declaration of Limitations, Covenants, Conditions, and Restrictions of McCloud Condominiums, dated April 29, 1982 ("the 1982 Declaration").
3. Ownership of the Property in its entirety is now vested in the members of the Association, and no longer under Declarant control or ownership.
4. In 2003, the Nevada Legislature enacted substantive and material changes to Nevada Law governing common interest communities.
5. Pursuant to Articles VI and XV of the 1982 Declaration, the McCloud Condominium homeowners approved a resolution to amend the 1982 Declaration to conform with the changes to Nevada Law governing common interest communities, as well as the current status of the McCloud Condominium community.

WHEREFORE, the McCloud Condominium Homeowners' Association adopts this Declaration in place and instead of the 1982 Declaration as the document that governs ownership in the McCloud Condominium complex.

DECLARATION:

The Property, which is more particularly described in Exhibit "A" to the 1982 Declaration and incorporated here by reference, shall be held, conveyed, sold, encumbered, leased, rented, used, occupied, improved, or otherwise affected in any

manner subject to the declarations, limitations, easements, covenants, conditions, and restrictions stated in this Revised Declaration of Limitations, Covenants, Conditions and Restrictions, which have been declared and agreed upon for the purpose of:

1. Enhancing, maintaining, and protecting the value, desirability and attractiveness of the Property, and to mutually benefit each of the condominiums located on the Property;
2. Creating mutual equitable servitudes upon each condominium in favor of each and all other condominiums on the Property;
3. Creating reciprocal rights and privity of contract and estate between all persons acquiring or owning an interest in the McCloud condominiums and their grantees, heirs, devisees, successors, and assigns, which shall be deemed to run with the land or any portion thereof or interest therein, and shall be of burden and benefit to all such persons, their grantees, heirs, devisees, successors, and assigns.

All provisions in this Revised Declaration shall be deemed to run with the land as covenants running with the land or as equitable servitudes, or as liens, as the case may be, and shall inure to the benefit of and be binding upon the heirs, personal representatives, grantees, lessees, successors and assigns of the owners, and to all who acquire or own any interest in the Property in whatever manner such interest may be obtained.

ARTICLE I

DEFINITIONS

Except where the context clearly indicates differently, certain terms used in this Declaration and in the Articles of Incorporation of McCloud Condominiums are defined and shall have meaning, as follows:

1.1 **1982 Declaration.** The "1982 Declaration" means the Declaration of Limitations, Covenants, Conditions and Restrictions dated April 29, 1982, and recorded against the Property.

1.2 **Act.** "Act" means Chapter 116 of the Nevada Revised Statutes, as the same may be amended from time to time.

1.3 **Allocated Interests.** "Allocated Interests" means the undivided interests in the common area and limited common areas, the liability for common expenses, and the votes in the Association, which are allocated to units on the Property pursuant to this Declaration.

1.4 **Architectural Committee.** "Architectural Committee" means the Board and those other persons acting as the architectural committee under this Declaration pursuant to Article XIII.

1.5 **Architectural Committee Rules.** "Architectural Committee Rules" means the rules, if any, adopted by the Architectural Committee.

1.6 **Articles.** "Articles" means the Articles of McCloud Condominium Homeowner's Association, as filed with the Secretary of State of the State of Nevada.

1.7 **Association.** "Association" means the McCloud Condominium Homeowners' Association, a non-profit corporation, incorporated pursuant to the laws of the State of Nevada, which manages and controls all of the common areas, including the limited common area, as more particularly defined and illustrated in Exhibit "A" to the 1982 Declaration.

1.8 **Association Property.** "Association Property" means all real and personal property now or hereafter owned by or leased to the Association or in which the Association has a recognizable legal or equitable present or future interest.

1.9 **Beneficiary.** "Beneficiary" means a beneficiary under a deed of trust or mortgagee under a mortgage, and/or the assignee of such beneficiary or mortgage.

1.10 **Board.** "Board" means the Board of Directors of the Association as duly elected or appointed pursuant to the Bylaws of the Association, and is synonymous with "Executive Board" as defined by the Act.

1.11 **Bylaws.** "Bylaws" means the Bylaws of the Association as they same may be amended, changed, or modified from time to time.

1.12 **Common Area.** "Common Area" means that portion of the project that is not located within any unit, including:

- a. Sidewalks, shrubbery, and other plantings, parking area, garages,

and all other land included in the description of the project in Exhibit "A" to the 1982 Declaration, except the land under the buildings in which units are located;

- b. The water supply system and the sewage disposal system located in the project including pipes, sewage lines, and other facilities;
- c. Foundations, columns, girders, beams, and supports of the condominium buildings, the perimeter walls around each unit to the interior surfaces of each unit, and other walls that are not within a Unit;
- d. Roofs, stairs, stairways, stairway landings, and corridors that are not within the unit;
- e. Pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets of the units;
- f. All installations of power, lights, gas, water, and heating existing for common use; and
- g. All other parts of the project, including personal property, necessary or convenient to its existence, maintenance, and safety, or normally in common use.

1.13 Common Expenses. "Common expenses" means all sums lawfully assessed against the owners by the Association, including both regular periodic assessments and special assessments as provided for in this Declaration.

1.14 Condominium. "Condominium" means a condominium as defined in NRS 117.010 and NRS 116.027, and shall be an estate and real property consisting of:

- a. A separate fee simple interest in the space within a unit;
- b. An undivided, fractional interest as a tenant in common in the building in which the unit is enclosed and that portion of the real property on which the building containing the unit is located, together with all applicable easements, rights, and appurtenances, which is equal to a fraction whose numerator is one (1) and whose denominator is the total number of units located in the building in which the

owner's unit is enclosed at any given time and from time to time; and

- c. An undivided, fractional interest as a tenant in common in the Property's Common Area, together with all applicable easements, rights, and appurtenances, which is equal to a fraction whose numerator is one (1), and the whose denominator is the total number of units on the Property at any given time and from time to time).

1.15 Declarant. "Declarant" means the McCloud Condominium Homeowners' Association or its successors, assigns, or representatives in the event Declarant assigns or otherwise transfers its rights and obligations.

1.16 Declaration. "Declaration," or "this Declaration," means this instrument entitled Revised Declaration of Limitations, Covenants, Conditions and Restrictions of McCloud Condominiums, and any and all amendments thereto.

1.17 Deed of Trust. "Deed of Trust" means a deed of trust or a mortgage encumbering any portion or all of the Property.

1.18 Foreclosure. "Foreclosure" means a foreclosure under a Deed of Trust by judicial action or exercise of power of sale.

1.19 Improvements. "Improvements" means all structures and works of improvement of every type and kind, including, but not limited to, buildings, outbuildings, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, patios, landscaping, sprinklers, hedges, windbreaks, planting, planted trees, shrubs, poles, signs, free-standing lighting fixtures, exterior air conditioning, and water softener fixtures or equipment, which have been or will be constructed on the Community.

1.20 Limited Common Area. "Limited Common Area" means that portion of the common area, such as garages, that is designated as reserved or designated by operation of NRS 116.2102(2) and/or (4) for the exclusive use of one or more, but fewer than all, of the units.

1.21 Manager. "Manager" means every person or entity designated or retained by the Board to manage the affairs of the Association and to perform various other duties assigned by the Board and by the provisions of this Declaration.

1.22 Member. "Member" means and refers to every person or entity who holds

membership in the Association by virtue of being an owner of one or more of the Property's units. If a unit has more than one owner, "Member" refers collectively to all of the owners of a unit.

1.23 Owner. "Owner" means any person or entity who owns a unit within the Property.

1.24 Plan. "Plan" means: (a) the Final Map; (b) those items set forth in NRS 116.2109(5), including drawings of improvements that are filed with agencies that issue permits for the Property, and all number and letter designations that identify the units; and (c) such other diagrammatic plans and information regarding the Property as may be required by the Act or other applicable law, or as may be included in the discretion of the Declarant, as each may be amended and supplemented from time to time, and all as recorded in the Office of the County Recorder, Washoe County, Nevada, all of which are incorporated here by reference.

1.25 Project. "Project" means the Property, as described in Exhibit "A" to the 1982 Declaration, including land, all buildings and other improvements and structures now or hereafter on the Property, all easements, rights and appurtenances belonging to the Property, and all personal property now or hereafter used in connection with the Property.

1.26 Rules and Regulations. "Rules and Regulations" means such rules and regulations as the Board from time to time may adopt pursuant to the terms of this Declaration concerning the use of the Property, or any part thereof.

1.27 The Property. "The Property" means McCloud Condominiums, as more particularly described in Exhibit "A" to the 1982 Declaration, together with all improvements now or hereafter located on the Property, and together with all easements, rights, and appurtenances belonging to the Property.

1.28 Unit. "Unit" means a physical portion of the Property designated for separate ownership or occupancy, as described in Article II. In interpreting deeds and plans, the existing physical boundaries of the unit reconstructed in substantial accordance with the original plans shall be conclusively presumed to be its boundaries, rather than metes and bounds, or other description, expressed in the deed or plan, regardless of settling or lateral movement of buildings and regardless of minor variance between boundaries shown on the plan or in the deed and those of the building.

ARTICLE II

DESCRIPTION OF LAND AND IMPROVEMENTS

2.1 **Ownership of a Unit.** Ownership of each individual unit on the Property shall consist of: (a) a fee simple interest in and to that particular unit; (b) an undivided fractional interest as a tenant in common in the building in which the unit is enclosed and the land under such building; (c) an undivided fractional interest as a tenant in common in the Common Area, as defined in this Declaration; (d) exclusive use of the limited common area designated for use by that unit; (e) the right to one garage; and (f) a membership in the Association.

2.2 **Unit Boundaries.** The boundaries of each unit are the interior surfaces of its perimeter walls, bearing walls, floors, ceilings, windows, and the portions of the building within those boundaries, except common areas or limited common areas. Each unit includes the spaces and improvements within those boundaries. Each unit has access to at least one entranceway, hallway, front porch, or stairway, which are common areas or limited common areas, and which connect with common grounds that constitute common areas.

2.3 **Limited Common Area.** Adjacent and appurtenant to any unit there may be limited common areas such as garages, balconies, porches, benches, storage lockers, entrance ways, and fireplace pods that are outside the perimeter walls of the unit but designated for the exclusive use of that unit.

2.4 **Relocation and Amendment.** Subject to the provisions of NRS 116.2112, the boundaries between adjoining units may not be relocated without the approval of the Board or the Architectural Control Committee. In addition to the plans and specifications required for approval under NRS 116.2112 and Article XIII of this Declaration, a request for a boundary adjustment must be accompanied by the written consent of all owners of the units affected by the relocation. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application shall state the proposed reallocation. In the event that the Board or the Architectural Control Committee approves the request for a boundary adjustment, the Association shall prepare an amendment that identifies the units involved, states the reallocations, and indicates the Association's consent (the consent of a majority of the members of the Association shall not be required). The amendment must be signed by those unit owners affected and contain words of conveyance between them. The approval of all holders of Deeds of Trust in the affected units shall be

endorsed on the conveyance. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

2.5 Recording Amendments. In accordance with NRS 116.2112, the Association shall prepare and record an amendment to the Plat and Plans as necessary to show the altered boundaries between adjoining units, along with the units' dimensions and identifying numbers. The applicants shall pay for the costs of preparation of the amendment and its recording, as well as any reasonable fees incurred by the Association related to the altered units boundaries so identified and recorded.

ARTICLE III

MEMBERSHIP

3.1 Members. The members of the Association shall be the owners of the units. Ownership of a unit entitles the record owner(s) of that unit to one (1) membership in the Association irrespective of the number of persons or entities that comprise the ownership of the unit (i.e., one membership per unit), and is the sole qualification for membership. The number of memberships in the Association shall be equal to the number of units on the Property at any given time. Persons or entities holding a security interest in a unit for the performance of an obligation are not entitled to membership in the Association. Membership is appurtenant to and may not be separated from the ownership of any unit that is subject to assessment by the Association.

3.2 Transfer. An owner's membership shall not be transferred, assigned, pledged, hypothecated, conveyed, or alienated in any way, except upon the transfer of title of the unit, and then only to the transferee. Any attempt to make a prohibited transfer shall be void, and will not be reflected in the books and records of the Association. Any transfer of title to a unit shall operate automatically to transfer the appurtenant membership rights in the Association to the new owner. In the event the owner of any unit fails or refuses to transfer the appurtenant membership to the unit's transferee, the Association shall have the right to record the transfer upon the books of the Association and shall issue a new certificate to the purchaser, upon which the old certificate outstanding in the name of the seller shall be null and void as though the same had been surrendered. Prior to any transfer of title to a Unit (including the sale of a Unit under a recorded contract of sale), either the transferring owner or the

acquiring owner shall give notice to the Board of such transfer, including the name and address of the acquiring owner and the anticipated date of transfer. The Association shall have the right to charge a reasonable transfer fee payable to the Association on the date of transfer of title to the Unit.

ARTICLE IV

RIGHTS IN THE COMMON AND OPEN-SPACED AREAS

4.1 Undivided Interests. The undivided, fractional interests a unit owner has in the Property's common areas, in the building in which the unit is enclosed, and that portion of the real property on which the building containing the unit is located, as described and defined in Article I, Sections 1.11 and 1.13 of this Declaration, are established and are to be conveyed with the unit, and cannot be changed. A unit owner's undivided interests and the fee title to a unit shall not be separated or separately conveyed, and those interests shall be deemed to be conveyed or encumbered with the unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the unit.

4.2 Member's Easements of Use and Enjoyment. Each member shall, and the Association grants, a right and non-exclusive use of and enjoyment in and to the common areas, and an exclusive easement for the use and enjoyment of any Limited Common Areas appurtenant to the member's unit. Each member's easements of use and enjoyment shall be appurtenant to and shall pass with the title to every assessed condominium, subject to:

4.2.1 The right of the Association to establish, adopt, amend, and enforce uniform rules and regulations pertaining to the use of the common areas and limited common areas, including an assignment by the Association of a garage to each unit.

4.2.2 The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common areas and their facilities.

4.3 Delegation of Use. In accordance with the Bylaws and subject to the provisions of this Declaration and any applicable Rules and Regulations, any unit owner may extend and delegate his/her rights of use and enjoyment in the Common

Areas and their facilities to that owner's guests and invitees. If an owner has rented the entirety of that owner's unit to a tenant or tenants, then the owner and the owner's family members, guests, and invitees shall not be entitled to use and enjoy the recreational facilities of the Common Areas while the owner's Unit is occupied by such tenant(s). Instead, the tenant(s), while occupying such unit and during the period of occupancy, shall be entitled to use and enjoy the Common Areas and facilities and is permitted to extend to other persons the rights of use and enjoyment in the same manner as if such tenant(s) were an owner. Each owner shall at all times be responsible for any and all activities of that owner's tenants, guests, and invitees using the Common Areas.

4.4 **Waiver of Use.** No member may exempt himself from personal liability for assessments duly levied by the Association, or release his unit from the liens and charges against it, by waiver of his use and enjoyment of the common areas and their facilities or by abandonment of his unit.

4.5 **Additional Provisions Relating to Common Areas.** The Association and all unit owners, by acceptance of their respective deeds, covenant and agree as follows:

4.5.1 In order to preserve the rights of the owners with respect to the operation and management of the project, the common areas shall remain undivided; no owner shall bring any action for partition, except as provided in Article XI of this Declaration.

4.5.2 In the event any improvement on the Property and within the project is partially or totally destroyed and then rebuilt, the units' owners agree that minor encroachments of parts of the common areas due to construction shall be permitted and that valid easements for those encroachments and the maintenance thereof shall exist.

4.5.3 A non-exclusive easement for ingress, egress, and support through the common areas is appurtenant to each unit, and the common areas are subject to such easements.

4.5.4 The Association shall have the responsibility to manage, control, and maintain all of the common areas and limited common areas including but not limited to the common stairways, the common walkways, the parking area, the private driveways, and the exterior of the building, and such maintenance shall be of a high quality so as to keep the entire project in first-class condition and a good state of

repair. The Association shall have a perpetual non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

ARTICLE V

ASSOCIATION BOARD OF DIRECTORS; VOTING AND ELECTIONS

5.1 Board of Directors. The members of the Association shall elect a seven (7) member Board of Directors for two-year terms. Board of Directors members' terms shall be staggered such that no more than four expire in any year. At each annual meeting, the members shall elect, for a term of two (2) years, the number of Directors whose terms shall ordinarily expire at said annual meeting. All members of the Board of Directors shall be members of the Association.

5.2 Voting. Subject to the suspension of any voting rights of any units' owners as provided in this Declaration, each member of the Association shall be entitled to one (1) vote for each unit owned by that member. In the event a unit is owned by two (2) or more persons or entities, the voting power shall be exercised by only one of them.

5.3 Elections.

5.3.1 Eligibility. Not less than 30 days before the preparation of a ballot for the election of members of the Board of Directors, the secretary or other officer specified in the bylaws of the Association shall cause notice to be given to each unit's owner of his eligibility to serve as a member of the Board of Directors. Each unit's owner who is qualified, subject to the limitations stated in NRS 116.31034(6), to serve as a member of the Board of Directors may have his name placed on the ballot along with the names of the nominees selected by the members of the Board of Directors or a nominating committee established by the Association. Each person whose name is placed on the ballot as a candidate for a member of the Board of Directors must make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the Board. The candidate must make the disclosure, in writing, to each member of the association in the manner established in the bylaws.

5.3.2 Secret Ballot. Pursuant to NRS 116.31034, the election of any member of the Board of Directors must be conducted by secret written ballot, as follows:

5.3.2.1 The secretary or other officer specified in the bylaws of the Association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the McCloud community, or to any other mailing address designated in writing by the unit's owner.

5.3.2.2 Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the Association.

5.3.2.3 A quorum is not required for the election of any member of the Board.

5.3.2.4 Only the secret-written ballots that are returned to the association may be counted to determine the outcome of the election.

5.3.2.5 The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

5.3.2.6 The incumbent members of the Board and each person whose name is placed on the ballot as a candidate for a member of the Board may not possess, be given access to, or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

5.4 Certification of Board Members. Each member of the Board shall, within 90 days after his appointment or election, certify in writing to the Association, on a form prescribed by the Nevada Real Estate Administrator, that he has read and understands the governing documents of the Association and the provisions of the Act to the best of his ability.

5.5 Election of Association Officers. The Board of Directors shall also elect from among them a president, two vice-presidents, a secretary, and a treasurer of the Association. The general powers and duties of the Board shall be as set forth in this Declaration, but may be more particularly defined by the Bylaws; provided, however, that this Declaration may not be amended directly or indirectly in any particular

manner by the enactment of any Bylaw or regulation, but only in the manner provided in this Declaration.

5.6 Vacancies. Vacancies on the Board of Directors caused by any reason other than removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

ARTICLE VI

DUTIES AND POWERS OF THE ASSOCIATION AND ITS MEMBERS

6.1 Powers of the Association. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Nevada and the powers conferred upon it pursuant to NRS 116.3102 and NRS Chapter 82, subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws, and this Declaration. The Association, acting by and through the Board as authorized by NRS 116.3103, shall have the power to do take any lawful action that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles, and the Bylaws, to conduct all business affairs of common interest to all owners, and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, the following:

6.1.1 Assessments. The Association shall have the power to establish, fix, and levy assessments as provided in this Declaration, and to enforce payment of assessments in accordance with the provisions of this Declaration.

6.1.2 Rules and Regulations. The Association shall have the power to adopt, amend, and repeal the rules and regulations governing the Common Area and its use, and for such other purposes as are expressly allowed by this Declaration or allowed pursuant to the Act. The Association shall also have the power to adopt, enact, and enforce the Rules and Regulations relative to the prohibitive and mandatory use restrictions set forth in Article XII in order to protect and enhance the value of the Property and the orderly functioning of the Community, and to adopt and respond to changing circumstances and times. A copy of any Rules and Regulations as adopted,

amended, or repealed shall be mailed or otherwise delivered to each member of the Association. In the case of any conflict between any provision of the Rules and Regulations and any provision(s) of this Declaration, the Articles, or Bylaws, the conflicting provision of the Rules and Regulations shall be superseded by the provisions of this Declaration, the Articles, or the Bylaws.

6.1.3 Enforcement. The Association, in its own name and on its own behalf or on behalf of the owners of two (2) or more units who consent, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, resolutions of the Board, or any amendments thereto, and to intervene in litigation or administrative proceedings on matters affecting the community; provided, however, that the Association shall have the exclusive right to enforce assessment liens. The Court in any such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorneys' fees. Any failure by the Association or by any owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so at any time thereafter.

6.1.4 Imposition of Penalties for Violation or Failure to Pay Assessments. If a unit's owner or a tenant or guest of a unit's owner violates any provision of the governing documents of the Association, including the obligation to pay assessments, the Association, acting by and through its Board, in accordance with the notice and hearing requirements of this Declaration, and in the manner provided in the Act, may:

6.1.4.1 Suspend the voting rights of that unit's owner for a reasonable time not to exceed thirty (30) days for any single violation, or for any period during which any assessment against the unit's owner remains unpaid and delinquent, after notice and hearing is given and held in accordance with the Bylaws of the Association and NRS 116.31031.

6.1.4.2 Impose a fine against the unit's owner or the tenant or guest of the unit's owner for each violation. The fine must be commensurate with the severity of the violation as determined by the Board, but must not exceed the maximum permitted by NRS Chapter 116. The limitations on the amount of the fine do not apply to any interest, charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

If a fine is imposed pursuant to this section and the violation is not cured

within 14 days, the violation shall be deemed a continuing violation. Thereafter, the Association, acting by and through its Board, may impose an additional fine for the violation for each 7-day period, or portion thereof, that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard. All past due fines: (1) bear interest at the legal rate per annum; (2) will include any costs of collecting the past due fine, subject to the limitations stated in NRS 116.31031(8); and (3) will include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

6.1.5 Delegation of Powers and Duties. The Association can delegate its powers, duties, and responsibilities to any committees, officers, employees, agents, and independent contractors of the Association, including a professional managing agent.

6.1.6 Services. The Association may obtain and pay for legal, accounting, and other services necessary and desirable in connection with the operation of the McCloud community and the enforcement of this Declaration.

6.1.7 Personal Property. The Association may purchase, acquire, and hold for the benefit of all the Owners and for the common areas necessary supplies and tangible and intangible personal property, and may dispose of the same by sale or otherwise.

6.1.8 Contracts. The Association may enter into a contract for a period not to exceed one (1) year.

6.2 Right of Action by Members of the Association. In addition to the rights of enforcement granted to the Association pursuant to section 6.1.3 of this Declaration, and subject to the provisions of NRS 116.745 – 116.795, any member of the Association shall have the right (but not the duty) to enforce any and all of the covenants, conditions, and restrictions now or hereafter imposed by this Declaration or the Act upon the Owners or upon any of the Property.

6.3 Duties of the Association. In addition to any other duties delegated to it by this Declaration, the Articles, or the Bylaws, the Association, acting by and through the Board, or other persons or entities described in Section 6.1.5, has the obligation to conduct all business affairs of common interest to all members and to perform each of the following duties:

6.3.1 Management. The Association shall engage the services of a

professional manager to manage the Community, as provided in NRS 116.700.

6.3.2 Notice and Hearing for Imposition of Penalty. Pursuant to NRS 116.31031, the Association may not impose any penalty provided in section 6.1.4 of this Declaration unless:

6.3.2.1 Not less than thirty (30) days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and

6.3.2.2 Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with written notice specifying the details of the violation and the penalty to be imposed, the amount of the fine, if any, the date, time and location for a hearing before the Board on the violation, and a reasonable opportunity to contest the violation at the hearing. The hearing shall be conducted before three (3) members of the Board of Directors, a majority of whom must concur in the determination of whether a violation has been committed and whether a penalty should be imposed. A penalty may be imposed without a hearing only when the person against whom the penalty is proposed: (1) pays any proposed fine prior to the hearing; (2) executes a written waiver of the right to the hearing; or (3) fails to appear at the hearing after being provided with proper notice of the hearing.

6.3.3 Taxes and Special Assessments. The Association shall pay taxes and special assessments that are, or would become, a lien on the Property or common areas if, for any reason, the units and common areas are not separately assessed.

6.3.4 Insurance. The Association shall obtain and maintain, from reputable insurance companies, the insurance described in Article X.

6.3.5 Enforcement of Restrictions and Rules. The Association shall perform such other acts, whether or not expressly authorized by this Declaration, that may be reasonably necessary to enforce any of the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, or Board resolutions. By this provision and Declaration, the Association shall have reserved to it such easements as are necessary to perform its duties and obligations or to exercise its rights as set forth in this Declaration, the Bylaws, Articles, or the Architectural Control Committee Rules.

6.3.6 Association Property. The Association shall accept and exercise

jurisdiction over all property, real and personal, conveyed to the Association for which the Association has duties and obligations imposed upon it pursuant to this Declaration, including all common areas, easements for operation and maintenance purposes over any of the Property within the community, and easements for the benefit of Association members within the common areas.

6.3.7 Utilities. The Association shall acquire, provide, and pay for water, sewer, garbage disposal, refuse and other necessary utility services for the common areas.

6.3.8 Collection. The Association shall collect the monthly maintenance charge from all unit owners.

6.3.9 Fidelity Bonds. The Association shall purchase and pay for fidelity bonds for its officers and employees, the required sum of which shall not be less than \$10,000 per covered officer or employee.

6.3.10 Reserve. The Association shall establish a reserve for replacements for the various components and elements of the common areas.

6.3.11 Garages. The Association shall assign one (1) garage to each unit, including the power and authority to reassign and transfer such garages among the various owners as their particular needs and circumstances reasonably warrant.

6.3.12 Title to Property Upon Dissolution. Upon dissolution of the Association, the Association shall convey the assets of the Association to an appropriate public agency or agencies or to a nonprofit corporation, association, trust or other organization organized and operating for purposes similar to those for which the Association was created, or in such other manner as may be proper for the Association so to do under applicable State of Nevada and Federal law.

6.4 Prohibited Actions. The Association and the Board shall have no authority to do the following:

6.4.1 Except by vote or written consent of a majority of the members of the Association, the Board shall be prohibited from entering into a contract with any third person by which the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year, with the following exceptions: (1) a community management contract; (2) a contract with a public utility company if the rates charged for the materials or services are regulated by a Public

Utilities Commission, provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; and (3) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

6.4.2 Except by vote or written consent of a majority of the members of the association, the Board shall have no authority to acquire and pay anything out of common expenses, capital additions, or structural alterations (other than for purposes of replacing portions of common area or Association property, subject to the provisions of this Declaration) that has a cost, which, in the aggregate, exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

6.4.3 Except as otherwise provided in this Declaration, the Board shall have no authority to act on matters that are reserved exclusively for action by the members of the Association, as follows:

6.4.3.1 Amend or repeal this Declaration, the Bylaws, or any Rules and Regulations of the Association;

6.4.3.2 Recall any officer or member of the Board;

6.4.3.3 Determine not to rebuild improvements after partial or total destruction.

6.4.4 Except as otherwise permitted under the Act or by this Declaration, the Board may not commence a civil suit or arbitration on behalf of the Association. In the event the Act permits commencement of a civil suit or arbitration without the assent of a majority of the members of the Association, the Association may not maintain such an action and shall be required to dismiss the action within one hundred twenty (120) days after its commencement if the action is not ratified by a majority of the members of the Association within ninety (90) days after the commencement of the action (unless the action is to enforce the payment of an assessment, to enforce this Declaration, or to proceed with a counterclaim).

6.4.5 The Board shall not pay compensation of any kind to members of the Board or to officers of the Association for providing goods or services to the Association. However, the Board may cause a member of the Board or an officer to be reimbursed for actual and paid expenses incurred in carrying on the business of the Association; provided such expenses are pre-authorized by the Board.

6.4.6 No member of the Board, or of any committee of the Association or any officer of the Association, or any Manager, shall be personally liable to any Member, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

6.5 Maintenance of the Property. The Property shall be maintained as follows:

6.5.1 Condominium Exteriors. The Association shall maintain and manage the exterior of each condominium, as follows: paint, maintain, and repair and replace (if required because of normal wear and tear or deterioration) roofs, down spouts, balcony railings, exterior door surfaces, and exterior building surfaces. Condominium exteriors for which the Association is responsible for management and maintenance shall not include glass surfaces; landscaping within a private balcony, deck, or entry areas of the condominiums; patio covers or other additions built or maintained within an entry, deck or balcony areas by an owner; repairs or replacements arising out of or caused by the willful or negligent act of the owner, his family, guests, or invitees, or caused by earthquake or other acts of God to the extent they are not covered by insurance. Such excluded items shall be the responsibility of each condominium owner; provided, however, that if an owner shall fail to maintain or make repairs or replacements which are the responsibility of such owner, as provided above, then, upon a vote of a majority of the Board of Directors, and after not less than thirty (30) days notice to the owner, the Association shall have the right (but not the obligation) to enter the condominium and provide such maintenance or make such repairs or replacements, and the cost thereof shall be added to the assessments chargeable to such condominium and shall be payable to the Association by the owner of such condominium.

6.5.2 Common Areas. The Association shall operate, manage and control, or provide for the operation, management, and control of all common areas, common area facilities, limited common areas, and personal property belonging to the Association. The common areas include, but are not limited to:

6.5.2.1 Landscaping (including the trees, shrubs, grass and sidewalks on common area), garages, parking areas, driveways, private streets, and all other land included in the description of the project in Exhibit "A" attached to the 1982 Declaration or otherwise acquired by the Association, except the land under the

buildings containing the units;

6.5.2.2 The water supply system and the sewage disposal system located in the project, including pipes, sewage lines, and other facilities;

6.5.2.3 The foundations, columns, girders, beams, and supports of the buildings on the Property, the perimeter walls around each unit to its interior surfaces and other walls not within a unit;

6.5.2.4 The roofs, stairs, stairways, stairway landings, walkways, and corridors that are not within the unit, including the deck or porch leading to the main entrance of the unit but excluding balconies and other decks appurtenant to the unit;

6.5.2.5 The pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets;

6.5.2.6 All installations of power, lights, gas, water, and heating existing for common use; and

6.5.2.7 All other parts of the project, including personal property, necessary or convenient to its existence, maintenance, and safety, or normally in common use.

The Association property shall be maintained in a good state of repair. The Association shall have the authority to obtain and pay for water service for the entire Project. The Association shall have the authority to obtain and pay for electric service, lighting facilities, fire extinguishers, and gardening and janitorial service for the common areas, and may grant easements where necessary for utilities and sewer facilities over the common areas to serve the common and open areas of the condominiums. The Association shall maintain any and all settling basins, percolation trenches and skimmer chambers as may be required by government regulatory agencies having jurisdiction over the property. The Association shall further provide for regular sweeping of drives and parking areas.

6.5.3 Owner Maintenance. If required, it shall be the obligation of each unit owner:

6.5.3.1 To maintain, repair, and replace, at his own expense, all internal installations and components of his unit, including but not limited to:

showers, baths, tiling, plumbing, sinks, toilets, electrical sockets, switches and wiring, heating units, outlets, apparatus, fans, windows (interior and exterior), sliding glass doors (interior and exterior) balcony decks, ceiling plaster, interior wall surfaces, interior floor surfaces, lighting installations, electrical appliances, and telephone equipment;

6.5.3.2 To remove snow, leaves and debris from all patios and balconies that are limited common areas appurtenant to the owner's unit. If any such limited common areas are appurtenant to two or more units, the owners of those units shall be jointly responsible for such removal;

6.5.3.3 To pay for his own electricity, gas, cable television, and telephone service; and

6.5.3.4 To reimburse the Association for any expenditures incurred in repairing or replacing any part of or property on the common area belonging to the Association that the Association determines has been damaged through the fault of that owner.

A unit owner shall not be responsible for repairs to his unit that originate from a malfunction within the common area.

6.5.4 Right of Entry. Each owner shall grant the right of entry to the management agent or to any other person authorized by the Board in case of any emergency originating in or threatening his unit or garage, whether the owner is present at the time or not. Each owner shall permit the Association or its representatives, when so required, to enter his unit or garage for the purpose of performing installations, alterations, or repairs to the mechanical, plumbing, or electrical services, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner. In case of an emergency, such right to entry shall be immediate.

6.6 Audit. Financial statements for the Association shall be regularly prepared and distributed by the Association to all members as follows:

6.6.1 A pro forma operating statement (budget) for each fiscal year shall be distributed not less than sixty (60) days before the beginning of the fiscal year.

6.6.2 An annual report shall be distributed within one hundred twenty (120) days after the close of the fiscal year. The annual report shall consist of:

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- 6.6.2.1 A balance sheet as of the end of the fiscal year;
 - 6.6.2.2 An operating (income statement) for the fiscal year;
 - 6.6.2.3 A statement of changes in financial position for the fiscal year; and
 - 6.6.2.4 Any information relating to any transaction or indemnification between the Association and any of its officers, directors or members which in the aggregate exceed forty thousand dollars (\$40,000).

The annual report shall be prepared by an independent accountant for any fiscal year in which the gross income to the Association exceeds Seventy Five Thousand Dollars (\$75,000). If the annual report is not prepared by an independent accountant, it shall be accompanied by a certificate of the treasurer of the Association that the statement was prepared without audit from the books and records of the Association.

6.7 Accounting and Collections. The Association, acting by and through its Board of Directors, may delegate to a bank or other qualified financial or accounting firm the collection and disbursement of maintenance charges and the preparation of annual financial statements. In such event, the Board of Directors shall be responsible to the owners for the accurate handling and accounting of such funds. Vouchers authorizing the payment of expenses from maintenance funds in excess of \$2000 shall be approved in advance by a member of the Board of Directors. The \$2000 limitation shall not apply to routine expenses, such as utilities and trash pickup, which are contained in the budget and paid using a bank auto-pay system.

6.8 Right of Inspection of Association Books and Records. The Association shall make available for inspection to any member of the Association or his duly appointment representative, or any mortgagee, the following:

6.8.1 All membership registers, accounting records, and minutes of meetings of the members of the Association, the Board, and committees of the Board, and all other books, documents and records of the Association, and the physical properties of the Association.

6.8.2 The financial statements and budgets of the Association.

6.8.3 The study of the reserves of the Association required to be

conducted pursuant to NRS 116.31152.

The right of inspection shall include the right to make copies of documents, and shall occur during regular working hours of the Association at the office of the Association or such other place as prescribed by the Board. The Board shall establish by resolution reasonable rules with respect to (a) notice to be given to the custodian of the records of the Association by the Member representative, or mortgagee desiring to make an inspection, and (b) payment of the actual cost (not to exceed .25 cents per page or such higher amount as allowed pursuant to the Act) of reproducing copies of documents requested by a Member or by a representative or mortgagee. The provisions of this paragraph do not apply to the personnel records of the Association or the records of the Association relating to another owner. The Board shall cause a copy of any of the records required to be maintained pursuant to subsections 6.7.2 and 6.7.3 to be provided to an Owner within, fourteen (14) days after receiving a written request for those records.

6.9 Notices. For the purpose of this Article, services of all notices and decisions shall be made by depositing in the United States mail, by certified mail, return receipt requested, the notices and/or decisions addressed to the owner at his address as shown on the official records of the McCloud Condominium Association.

6.10 Documentation. Any action to be taken by the Board of Directors as required or permitted by this Declaration that must be evidenced by a written document shall be executed by the President and one (1) other member of the Board of Directors.

6.11 Acquisition of Personal Property. The Board may acquire and hold, for the benefit of the owners, tangible and intangible personal property, and may dispose of the same by sale or otherwise. Title to such personal property shall be taken in the name of the Association, to wit: "McCloud Condominium Homeowners." The beneficial interest in such personal property shall not be transferable by an owner except in connection with the sale of his condominium, or where such property is being disposed of for the benefit of the condominium owners. The sale of a condominium, as provided in this Declaration, shall transfer to the purchaser ownership of the transferor's beneficial interest in such personal property.

6.12 Release of Liability and Indemnity. Except as otherwise provided below, and except in instances of willful misconduct or bad faith by any Board member(s), the members of the Board shall not be liable to the owners for any mistake of judgment, negligence, or otherwise. Unless any contracts made by the Board shall have been

made in bad faith or contrary to the provisions of this Declaration, the Articles, Bylaws, or the Act, the unit owners shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board on behalf of the Association. The liability of any owner arising out of any contract made by the Board or of the indemnity in favor of the members of the Board shall be limited to such proportion of the total liability as the unit owner's interest in the Association bears to the interest of all the owners of the membership in the Association. The provisions of this paragraph do not apply to and shall not preclude claims for property damage and bodily injury by owners against the Board or any other insured of the liability insurance required by this Declaration.

ARTICLE VII

MEETINGS

7.1 Quorum. At all meetings of the members entitled to vote, a majority of such members, or their proxies, shall be necessary to constitute a quorum. If any meeting cannot be held because a quorum is not present, the owners present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours and not more than thirty (30) days from the time the original meeting was called, at which time the quorum requirement shall be reduced to forty percent (40%) of the members entitled to vote. Except as provided below, if there is a quorum, a majority vote of the members present either in person or by proxy and entitled to vote shall be sufficient for the passage of any motion or the adoption of any resolution.

The following matters shall require a vote of at least a majority of members of the association entitled to vote, unless it is specifically indicated that a three-quarters (3/4) vote of the members is required:

7.1.1 The recall of any officer or member of the Board.

7.1.2 The levy of special assessments to defray the costs of any action or undertaking on behalf of the Association, which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

7.1.3 To amend or repeal this Declaration, the Articles, or the Bylaws.

7.2 Annual Meetings. Annual meetings of the condominium owners shall be held at such time as shall be determined by action of the Association's Board of

Directors. Meetings of members shall be held within the project or at a meeting place as close to the Property as possible. Unless unusual conditions exist, members' meetings shall not be held outside Washoe County. Written notice of annual meetings shall be mailed to members of the Association by the Board not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice shall: (1) specify the place, day and hour of the meeting; (2) include a copy of the agenda for the meeting, containing all information required by NRS 116.3108; and (3) provide notification of the right of a unit's owner to have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and payment of any associated costs, and to speak to the Association or the Board, unless the Board is meeting in executive session.

7.3 Special Meetings. Special meetings may be called by the vote of a majority of a quorum of the Board or by any five percent (5%) of the total voting power of the Association that desire to meet, by written notice signed by those desiring to meet and sent by them to the Association members at least ten (10) days and not more than sixty (60) days before the meeting. Notice of any special meetings shall contain the same information required for annual meetings, as prescribed by NRS 116.3108, including the place, date and hour of the meeting, the general nature of the business to be transacted, and the notification to the members of their rights to a copy or summary of the minutes of the meeting and to speak to the Association.

7.4 Board Meetings. Meetings of the Board of Directors shall be held at least once every ninety (90) days, as required by NRS 116.31083. The Board shall mail written notice of any Board meetings to the Association members not less than ten (10) days prior to the date of the meeting of the Board of Directors. Notice of any meetings of the Board of Directors shall comply with NRS 116.31083, and include the place, date, and hour of the meeting, include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be obtained by the members of the Association, and the rights of an Association member to a copy or summary of the minutes of the meeting and to speak to the Association. The meetings of the Board of Directors shall review: (1) a current reconciliation of the operating account of the Association; (2) a current reconciliation of the reserve account of the Association; (3) the actual revenues and expenses for the reserve account, compared to the budget for that account for the current year; (4) the latest account statements prepared by the financial institutions in which the accounts of the association are maintained; (5) an income and expense statement, prepared on at least a quarterly basis, for the operating and reserve accounts of the association; and (6) the current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

ARTICLE VIII

COMMON EXPENSES AND ASSESSMENTS

8.1 **Fiscal Year.** The fiscal year of the Association shall be a twelve (12) month period running from October 1 to September 30 of each year.

8.2 **Purpose of Assessments.** Assessments levied by the Association shall be the amount estimated to be required, and shall be used exclusively to maintain, protect and enhance the welfare of members of the Association, for the performance of the duties of the Association as set forth in this Declaration, and for the repair, maintenance and upkeep of the common areas and any other Association Property.

8.3 **Annual Assessments/Projected Common Expenses.** On or prior to August 1 of each year, the Board shall meet for the purpose of estimating the common expenses to be required during and preparing the proposed budget for the subsequent twelve (12) month period, commencing with the following October 1. The projected common expenses, which are the Association's annual assessments, shall include:

8.3.1 The estimated annual revenue and expenditures of the Association;

8.3.2 A reasonable provision for contribution to a reserve for contingencies and replacements, plus any surplus in the common expense fund from the fiscal year just ended;

8.3.3 Any amounts necessary to make up any deficit from the fiscal year just ended;

8.3.4 Any amounts required by an excess of repair and restoration costs over insurance proceeds; and

8.3.5 Any other amounts required by the terms of this Declaration, or the Act.

The Association's common expenses are the expenditures made by the Association in the performance of its obligations under the Act and this Declaration, and the financial liabilities of the Association during the fiscal year, including the costs and expenses of the daily operation of the Association and an allocation for

reserves. The common expenses include, but are not limited to, expenditures (1) to operate, manage, maintain and repair the common areas and other Association property, and to administer the operation of the Association; (2) to provide for reasonable reserves consistent with sound business practice for the repair and replacement and restoration of improvements to the common areas and any Association property, and for such other purposes as are consistent with good business practice, and otherwise as required by NRS 116.3115 and this Declaration; (3) to provide for the possibility that some Assessments may not be paid on a current basis; and (4) to provide for the payment of the fee of a professional community manager.

Not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association, the Board shall prepare and distribute to each member of the Association its projected common expenses, which shall be subject to change and approval at any meeting at which the projected common expenses is considered. Except for the common expense of insurance, paint reserve, and roof reserve, which shall be assessed to each owner of a unit in a fraction equal to the square footage floor area of an owner's unit divided by the total square footage floor area of all units, common expenses shall be assessed equally to the owners of all units as of the following October. If the estimated common expenses are inadequate for any reason, including nonpayment of any other owner's assessment, the Board may, at any time, levy further assessment.

8.4 Reserve Requirements. That portion of the projected common expenses specific to the reserve required by NRS 116.3115 must include, without limitation:

8.4.1 The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common areas;

8.4.2 As of the end of the fiscal year for which the projected common expenses is prepared, the current estimate of the amount of cash reserves that are necessary and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common areas;

8.4.3 A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any major component of the common areas or to provide adequate reserves for that purpose; and

8.4.4 A general statement describing the procedures used for the

estimation and accumulation of cash reserves, including, without limitation, the qualifications of the person responsible for the preparation of the study required below in this paragraph.

8.5 Reserve Study. In accordance with the requirements of NRS 116.31152, the Board shall:

8.5.1 Cause to be conducted at least once every five (5) years, a study of the reserves required to repair, replace and restore the major components of the common areas;

8.5.2 Review the results of that study at least annually to determine if those reserves are sufficient; and

8.5.3 Make any adjustments it deems necessary to maintain the required reserves.

The reserve study must be conducted by a person qualified by training and experience to conduct such a study, and may be a member of the Board, an owner, or the Association manager who is so qualified. The study must include: (1) a summary of an inspection of the major components of the common areas the Association is obligated to repair, replace or restore; (2) an identification of the major components of the common areas that the Association is obligated to repair, replace or restore which have a remaining useful life of less than thirty (30) years; (3) an estimate of the remaining useful life of each major component; (4) An estimate of the cost of repair, replacement or restoration of each major component during and at the end of its useful life; and (5) an estimate of the total annual assessments that may be required to cover the cost of repairing, replacement or restoration the major components after subtracting the reserves of the Association as of the date of the study.

Money in the reserve account required by provision may not be withdrawn without the signatures of at least two (2) members of the Board. The reserve account may be used *only* for Common Expenses that involve repairs, replacement or restoration of the major components of the common areas, including, without limitation, repairing and replacing roofs, roads and sidewalks, and must not be used for daily maintenance.

8.6 Assessments. Assessments are obligations of the Association members, as follows:

8.6.1 Each unit's owner covenants and agrees to pay to the Association any Assessments made pursuant to this Declaration. Payments for assessments shall be due in equal monthly installments on or before the first day of each month during the twelve (12) month period commencing with October 1; or in such other reasonable manner as the Board shall designate. Each assessment or installment thereof, together with any late charges, interest, collection costs, and reasonable attorneys' fees, shall be the personal obligation of the person or entity who owns the unit against which the assessments were made at the time the assessment (or installment) became due and payable. If more than one person or entity owns that unit, the personal obligation to pay the assessment (or installment) for that unit shall be joint and several. Unless otherwise provided in this Declaration, the purchaser of a unit shall be jointly and severally liable with the seller for all unpaid assessments against the unit, up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for any such assessments. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiver of the lien securing the same. No Owner may avoid or diminish such personal obligation by non-use or abandonment of his Unit. In the event a condominium is rendered uninhabitable by fire or other casualty, the Board, in its discretion, may abate all or a portion of the common expenses assessed against the owner of that condominium while it remains uninhabitable.

8.6.2 The failure of the Board to fix the assessments for a twelve (12) month period prior to the commencement of that period shall not be deemed a waiver or modification in any respect of its right to do so or of the provisions of this Declaration, or a release of the owners from the obligation to pay the assessments, or any installment thereof for such that period. The assessment fixed for the preceding twelve (12) month period shall continue until a new assessment is fixed. No owner may exempt himself from liability for his assessment of any of the common area by waiver of his use and enjoyment of the common areas and their facilities or by abandonment of his unit.

8.7 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the common expenses for a given fiscal year is or will become inadequate to meet the common expenses for any reason, including, but not limited to, delinquencies in the payment of Assessments, or in the event the Association has insufficient reserves to perform its obligations under this Declaration, then the Board shall determine the approximate amount of such shortfall, shall provide a summary thereof to all of the members of the Association

along with the Board's recommendation for a special assessment to meet such shortfall, and shall set a date for a meeting of the Owners which is not less than fourteen (14) nor more than thirty (30) days after the mailing of the summary. Unless at that meeting a majority of all members of the Association votes to reject the proposed special assessment, the proposed special assessment shall be deemed ratified by the members of the Association, whether or not a quorum is present at such meeting, and shall become a special assessment against, and allocated equally to, the owners of the units. The Board may, in its discretion, provide for payment of any special assessment in any number of installments or provide that it is payable in one (1) installment within such time period as the Board deems reasonable.

8.8 Liens for Assessments. Each owner shall pay all common expenses assessed against him and all other assessments made against him by the Board in accordance with the terms of this Declaration. Each assessment shall be separate and distinct of personal debts and obligations of the owner against whom the same are assessed.

8.8.1 Unpaid Fines and Assessments Constitute a Lien on Unit. The amount of any assessment to any unit, whether regular or special, plus interest at the maximum rate allowed by law, plus costs and a reasonable attorney's fees, plus any fines imposed by the Association against that unit, shall be secured by a lien on that unit in favor of the Association from the date the Assessment or fine becomes due. If an Assessment or fine is payable in installments, the full amount of the Assessment or fine is a lien from the time the first installment becomes due. Notice of any lien imposed against a unit under this provision shall be recorded in accordance with the Act, and may be enforced as provided in the Act for enforcement of such liens. Any lien imposed against a unit under this provision shall be prior to all other liens and encumbrances on that unit, except for: (a) valid tax and special assessment liens in favor of any governmental assessing authority; (b) liens and encumbrances recorded before the recordation of the Declaration; and (c) a First Deed of Trust recorded before the date on which the Assessment or fine sought to be enforced became delinquent. The lien created by this Declaration for unpaid Annual Assessments is also prior to a First Deed of Trust to the extent of the amount of such Annual Assessments which would have become due during the six (6) month period immediately preceding institution of an action to enforce the lien.

8.8.2 Release of Lien. Upon the timely curing of any default for which a notice of lien was filed or recorded by the Association, the Board shall file or record, or cause to be filed or recorded, an appropriate release of such notice or release of lien, upon payment by the defaulting owner of a fee, to be determined by the Board,

but not to exceed \$100 to cover the costs of preparing the filing or recording such release.

8.8.3 Non-Exclusive Remedy. The assessment lien, and the rights to foreclose on and sale under an assessment lien, shall be in addition to and not in substitution of all other rights and remedies that the Association and its assigns may have under this Declaration and the Act, and according to law, including a suit to recover money judgment for any unpaid assessments.

8.9 Vesting of Voting Rights. Notwithstanding anything contained in this Declaration, voting rights attributable to condominiums shall not vest until assessments against those condominiums have been levied by the Association.

8.10 Increase in Annual Assessments. Notwithstanding any other provisions of this Declaration, the Board may not, without the vote or written consent of a majority of the members of the Association, impose a regular annual assessment per unit which is more than twenty percent (20%) greater than the regular assessment for the immediately preceding fiscal year.

ARTICLE IX

UTILITIES

9.1 Easement Granted to Units' Owners. Whenever any connection, or portion of any connection, for sanitary sewer, water, electricity, gas, cable TV, or telephone lines installed within the project lie in or upon any unit served by those connections, the owner of the unit served by those connections shall have the right, and are hereby granted an easement to the full extent necessary, to have utility companies, with proper notice and agreed scheduling, enter upon the unit in or upon which said connections, or any portion thereof, lie, to repair, replace, and generally maintain said connections as and when the same may be necessary.

9.2 Use and Enjoyment. Whenever sanitary sewer, water, electricity, gas, cable TV, or telephone lines are installed within the project, which connections serve more than one unit, the owner of each unit served by said connections shall be entitled to the full use and enjoyment of such portions of those connections that service his condominium.

9.3 Dispute Resolution. In the event of a dispute between unit owners with

respect to the repair or rebuilding of any utility connections, or with respect to the sharing of the costs thereof, upon written request by one of such owners addressed to the Association, the matter shall be submitted to the Board of Directors, which shall decide the dispute. The decision of the Board shall be final and conclusive on the parties. If any disputing owner is a member of the Board of Directors, he shall not be entitled to vote on the disputed issue. The remaining non-disputing Board members shall temporarily appoint another owner to serve on the Board solely for the purpose of voting on such dispute.

ARTICLE X

INSURANCE

10.1 Association Insurance. The Association shall obtain and maintain in full force and effect at all times and for the benefit of the condominium owners, the following: (a) adequate public liability insurance; (b) officers and directors liability insurance; (c) workers' compensation insurance; (d) fire and property damage insurance covering the entire project (except the personal property of the owners located within the project) and the encumbrances upon the project or any part thereof as their interests may appear. All insurance obtained by the Association shall meet the requirements of NRS 116.3113.

10.1.1 Adequate fire insurance shall mean coverage in an amount equal to full replacement value (exclusive of land, foundation, excavation and other items normally excluded from coverage), with an "agreed amount" endorsement or its equivalent, if available, or an "inflation guard" endorsement, payable to the Association, subject to the least deductible the insurer will permit or any other deductible the Board deems reasonable.

10.1.2 Insurance obtained by the Association pursuant to this provision shall comply as to form, content, and insurer with the requirements of the encumbrancers. The premiums for said insurance are to be paid out of the maintenance fund, with each condominium unit bearing an equal share of the cost thereof.

10.1.3 All insurance obtained by the Association shall be provided by companies duly authorized to do business in Nevada, and as required by any state or federal entities with which the Community has been qualified.

10.2 Owner Insurance. Each owner should provide adequate insurance, as follows:

10.2.1 Insurance, including insurance for loss of theft, on all personal property located on and within the owner's unit or stored by the owner in or on the common areas and any other portion of the Property.

10.2.2 Insurance for casualty and public liability coverage within each Unit to the extent not covered by the Association's insurance.

10.2.3 Insurance coverage for activities of the owner, not acting for the Association, with respect to the common areas.

10.2.4 Insurance against loss from theft on all personal property.

10.3 Authority to Negotiate Loss Settlements. The Board of Directors is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers with respect to loss or damage occurring on or to the common areas. Any two (2) members of the Board may sign a loss claim relating to Association insurance, and such signatures shall be binding on all the owners.

ARTICLE XI

NON-SEVERABILITY OF CONDOMINIUM INTEREST AND SUSPENSION OF PARTITION

11.1 Suspension of Right of Severability. No owner shall be entitled to sever, or bring any such action for partition of: (1) his unit from his pro-rated undivided interest in the building in which the owner's unit is located; (2) his interest in the real property under the building in which his unit is located; or (3) his interest in the Association. No such component interest may be severally sold, conveyed, transferred, encumbered, hypothecated, bequeathed, or otherwise dealt with, and any attempt to do so in violation of this provision shall be void and of no effect. The suspension of this right of severability shall in no event extend beyond the period in which the right to partition is suspended under NRS 117.050.

11.2 Suspension of Right of Partition. The right of partition of the common areas is suspended. The project may only be partitioned and sold as a whole upon a showing of the occurrence of any one of the events provided in NRS 117.050.

Additionally, partition may be available upon a showing that six (6) months from the date of any partial or total destruction of the project, a certificate or resolution to rebuild has not been filed of record, or if reconstruction has not actually commenced within said six (6) months. The suspension of the right of partition shall in no event extend beyond the period in which the right to partition is suspended under NRS 117.050. Nothing in this provision shall prevent the partition or division of interests between joint or common owners of one condominium unit.

11.3 **Presumption of Entire Condominium Conveyance.** Each unit and its appurtenant undivided interest in the Common Areas shall always be conveyed, transferred, devised, encumbered, bequeathed, and otherwise affected only as the entire Condominium.

ARTICLE XII

USE RESTRICTIONS

In addition to all other covenants contained in this Declaration, the use of the Property, each of its condominium units, and the common areas are subject to the following:

12.1 **Residential Use Only.** All condominiums on the Property shall be used for residential purposes only.

12.2 **Business Usage Prohibited.** No condominium or any part of the project shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly for any business, commercial, manufacturing, mercantile, storage, vending, or other such non-residential purposes; provided, however, that this provision shall not prohibit an owner from leasing or renting his unit or permitting its use by his guests.

12.3 **Billboards and Signs Prohibited.** Except for signs approved by the Board of Directors for the benefit of the entire project, and except for one (1) professional sign not exceeding 12 inches by 18 inches in size advertising a unit for sale or lease, no signs of any kind shall be displayed in the public view on or about the exterior of any unit.

12.4 **Owner Structural Changes.** No structural alterations to the interior of any Unit shall be made, and no plumbing or electrical work within any bearing or

party walls shall be made by an individual owner without the prior written consent of the Architectural Committee as provided in Article XIII of this Declaration.

12.5 Association Maintenance and Decoration Authority. The Board of Directors, or its duly appointed agent, including the manager, if any, shall have the exclusive right to paint, decorate, repair, maintain and alter or modify the exterior walls, balconies, railings, exterior door surfaces, roof, and all installations and improvements in the common area, and no owner of a condominium shall be permitted to do, or have done, any such work. The approval of the Board of Directors shall be required in writing for the installation of any awnings, sunshades, or screen doors, or any antennae or structures on the roof of any condominium building.

12.6 Children. All unit owners shall be accountable to the remaining owners, their families, visitors, guests, and invitees for the conduct and behavior of their children and any visiting children temporarily residing in or visiting their units.

12.7 Pets. Pets shall be permitted, subject to the Rules and Regulations adopted by the Board.

12.8 Offensive Activities. No owner shall permit or suffer anything to be done or kept upon or in his unit or the common areas that will increase the rate of insurance on the Property. No owner shall obstruct or interfere with the rights of other owners, their families, guests, and invitees, or in any way interfere with the quiet enjoyment by any other owner of his unit by: (1) annoying any other owner with unreasonable noises or otherwise; (2) committing or permitting any nuisance, noxious or offensive activity; or (3) committing any immoral or illegal act. Each owner shall comply with all of the requirements of the Local and State Boards of Health, and with all other governmental authorities with respect to the occupancy and use of the Property.

12.9 Owner Liability. Each owner shall be liable to the Association for any damage to the Association-owned areas or any equipment thereon which may be sustained by reason of the negligence of that owner, his family, guests, or invitees, to the extent that any such damage shall not be covered by insurance.

12.10 Garages. The garages are to be used for the parking of car. They are not to be converted to any type of living space or used for recreational or business activities.

12.11 Rubbish. Each owner shall remove all rubbish, trash, and garbage from his unit. Rubbish, trash, and garbage shall not be allowed to accumulate on or within

any unit or the Property. All clothes lines, refuse containers, wood piles, storage areas, and machinery and equipment shall be prohibited upon or in any condominium, unless approved, in writing, by the Architectural Committee.

12.12 Snow and Ice. Snow and ice shall be removed from the Property without the use of any soluble toxic materials, and provisions must be made for maintenance of the siltation trenches and skimmer chambers in the drainage system.

12.13 Prohibited Restrictions. No condominium owner shall execute or file for record any instrument which imposes restrictions upon the sale, leasing, or occupancy of his condominium on the basis of race, color, creed, religion or sex.

12.14 Interval Ownership Prohibited. Legal title to any one condominium may not be held by any more than ten (10) unrelated persons at any one time. As used herein, a husband and wife shall be considered one "person", and "unrelated persons" shall mean persons not related within the third degree of consanguinity. Time-sharing, as defined by any applicable state or local ordinances, is prohibited.

12.15 Rules. The Board, from time to time, may adopt reasonable Rules and Regulations in furtherance of this Declaration, the Articles and Bylaws of the Association. These rules may be enforced as provided in this Declaration.

ARTICLE XIII

ARCHITECTURAL CONTROL COMMITTEE

13.1 Organization. There shall be an Architectural Control Committee comprised of the Board of Directors; provided, however, that the Board may appoint an Architectural Control Committee of three (3) or more members, none of whom need be members of the Board.

13.2 Duties. It shall be the duty of the Architectural Control Committee to consider and act upon any proposals or plans submitted to it pursuant to the terms of this Article, to adopt Architectural Control Committee Rules if it so chooses, to perform other duties delegated to it by the Association, and to carry out all other duties imposed upon it by this Declaration.

13.3 Meetings. The Architectural Control Committee shall meet from time to time as necessary to perform its duties as stated in this Article. The vote or

written consent of any two (2) members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Architectural Control Committee may charge a filing fee to be used to pay an architect, who may or may not be a member of the Architectural Control Committee, to review any submitted plans and specifications. The Board may reimburse members for reasonable expenses incurred by them in the performance of any Architectural Committee function.

13.4 Architectural Control Committee Rules. The Architectural Control Committee may prepare and promulgate "Architectural Control Committee Rules" containing guidelines and review procedures on behalf of the Association. The Architectural Control Committee Rules shall be those of the Association, and the Architectural Control Committee shall have sole and full authority to prepare and to amend the Architectural Control Committee Rules, provided the Architectural Control Committee Rules are otherwise in compliance with the Articles, the Bylaws and this Declaration. The Architectural Control Committee shall make any Architectural Committee Rules available to Owners.

13.5 Approval by the Architectural Control Committee. No owner may make or commence any structural addition, structural alteration, or improvement on the Property or in his unit, including, without limitation, the alteration or construction of a building, fence, wall, or structure, or the placement, erection, or alteration of any Limited Common Areas, without the prior written consent of the Architectural Control Committee. The Architectural Control Committee and any of its members may consult with knowledgeable outsiders with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Control Committee.

13.6 Requests for Approval. Any request by a unit owner for approval by the Architectural Control Committee for any improvements or work that requires Architectural Control Committee approval must be submitted in writing to the Architectural Control Committee. Any such submittal shall contain and set forth such information and in such detail as required by the Architectural Control Committee to reasonably inform the Architectural Control Committee of the proposed work of improvement for the purpose of determining its compliance with the terms and provisions of this Article and the propriety of granting or denying any such application. All improvements or modifications, if approved by the Architectural Control Committee, shall be undertaken, prosecuted and completed in full and timely compliance with all applicable zoning laws, building codes, and all other applicable laws, ordinances and regulations relating to the construction, use and occupancy of

the Improvements.

13.7 The Architectural Control Committee shall answer any written request for approval within sixty (60) days after receipt of the request. Any consent or approval by the Board or Architectural Control Committee shall be in writing. The failure of the Architectural Control Committee to answer the request within this time shall not constitute consent or approval by the Architectural Control Committee to the proposed action. Any such request shall be reviewed in accordance with any Architectural Committee rules then in effect.

13.8 Limitations on Improvements. Subject to the provisions of this Article, an owner:

13.8.1 May make any improvements or alterations to the interior of his unit that do not impair or lessen the structural integrity, mechanical systems, or support of any portion of the Property or Community, or otherwise alter, in any way, the condition of any component contained within the framing of the structure, provided that any such improvements or alterations to the interior of the unit do not result in a violation, in and of itself or as a result of the use thereof, of any other term or provision of this Declaration.

13.8.2 May not change the appearance of the Common Areas, the exterior appearance of a unit, any component that may be seen from the exterior of the building, or any other portion of the Project, or make any change or modification to that Owner's Unit, such as replacing carpeting with hardwood floors, without permission of the Board or the Architectural Control Committee, as applicable.

13.8.3 After acquiring an adjoining Unit, may not remove or alter any intervening partition or create apertures therein.

13.9 Right of Inspection. Any member or authorized consultant of the Board or the Architectural Control Committee, or any authorized officer, manager, employee or other agent of the Association, may enter upon any unit, as provided in paragraph 6.5.4, without being deemed guilty of trespass, in order to inspect any structural addition, alteration or improvement constructed or under construction in the Unit to determine whether the work has been or is being completed in compliance with the plans and specifications approved by the Board or the Architectural Control Committee. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

13.10 **Effect on Insurance.** Any additions, alterations, and improvements to the units and common areas shall not, except by prior approval of the Board, cause any increase in the premiums of any insurance policies carried by the Association or by the owners of any units other than those affected by the change.

13.11 **Limitation on Liability of Architectural Control Committee.** Provided that the Architectural Control Committee, or a particular member of the Architectural Control Committee, has acted in good faith on the basis of information as the Architectural Control Committee or the member, as the case may be, may possess, then neither the Architectural Control Committee nor any of its members shall be liable to the Association, to any Owner, or any other person for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings, and specifications, whether defective or not; or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications.

13.12 **Discretion of the Board of Directors and Architectural Control Committee.** Except as may be expressly provided in this Declaration, any consent or approval of the Architectural Control Committee that is required under the provisions of this Article may be granted or withheld in the sole and absolute discretion of the Architectural Control Committee. In that regard, the granting or withholding of such consent or approval shall not be subject to any objective standards of "reasonableness" or otherwise. The approval or consent to any matter shall not be deemed to be a waiver of the right to disapprove the same or similar matters in subsequent requests for consents or approvals from the same or other parties.

ARTICLE XIV

DESTRUCTION OF THE PROJECT OR ITS ELEMENTS

14.1 **Partial Destruction of Common Areas.** In the event of partial destruction of the common areas, the Association shall restore and repair the affected area to its former condition as promptly as practicable and in a lawful and workman-like manner.

14.1.1 Partial destruction shall mean any destruction that is less than that defined as total destruction in this Article.

14.1.2 The proceeds of any insurance shall be made available for such purpose subject to prior rights of beneficiaries of deeds of trust or mortgagees whose interests may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such partial reconstruction shall be inadequate by more than the policy's deductible, the condominium owners shall proceed with such partial reconstruction unless by a three-fourths (3/4) vote of all the Owners, the Owners vote not to proceed with partial reconstruction. In the absence of a three-fourths (3/4) vote, a special assessment shall be levied against the owners of the common area partially destroyed upon the basis of the ratio of the square footage of the floor area of the unit to be assessed to the total square footage of floor area of all units which are to be assessed. In the event of the three-fourths (3/4) determination by the owners that it would not be in their best interests to proceed with the same, the owners may, in their discretion proceed as provided in this Article.

14.2 Total Destruction of Common Areas. In the event of the total destruction of the common areas ("total") being defined as sixty percent (60%) of the units, or a lesser percentage if the condominium owners, by a three-fourths (3/4) vote, have so agreed prior to the destruction, the owners shall have authority to determine whether said improvements shall be rebuilt, or whether said project shall be sold. Unless there is a determination by a three-fourths (3/4) vote not to rebuild, the necessary funds shall be raised as provided in this Article and the Association shall prepare the necessary documents to effect such reconstruction as promptly as practicable, in a lawful and workmanlike manner.

14.3 Destruction of Individual Unit. In the event of total or partial destruction of any individual unit not affecting any other unit or any portion of the common areas, it shall be the responsibility of that unit's owner to rebuild the unit using any insurance proceeds available and allocable for said purposes, and the same shall be done as promptly as practicable in a lawful and workmanlike manner. This section shall likewise apply unless there is a determination not to rebuild after partial or total destruction as defined in this Article.

14.4 Lapse of Covenant Against Partition. If, after eighteen months from the date of any partial or total destruction as defined in this Article, reconstruction be not actually commenced, the covenant against partition set forth in this Declaration shall terminate and be of no further force and effect.

14.5 Determination Not to Rebuild. In the event of a determination not to rebuild after partial or total destruction as defined in this Article, the Association

may: (1) bring an action for partition of the entire Project as provided in NRS 117.050; or (2) if, by a two-thirds (2/3) vote of members entitled to vote in person or by proxy the Association agrees, it may proceed to sell the entire project for the benefit of all the owners at public or private sale for the highest and best price obtainable, either in its damaged condition, or after the damaged structure has been razed. For the purpose of implementing this section, every owner of a condominium within the project shall be deemed to have consented to, authorized, and granted to the Association his, her, or its respective irrevocable power of attorney upon the delivery to such owner of his instrument of title.

14.5.1 Distribution of Proceeds. The net proceeds of any sale ordered by decree of court or by decision of the Association and the proceeds, if any, of insurance carried by the Association as a whole on the Property, plus any reserves, interest, and other funds, shall be divided among the owners of the affected units according to the respective fair market values of the units at the time of the destruction as determined by an independent appraisal to be conducted by an M.A.I. Appraiser selected by the Board, whose appraisal shall be final. The balance then due on any individual encumbrance executed in good faith and for value shall first be paid before the distribution of any proceeds to the owner whose condominium is still encumbered.

14.5.2 If the Project is destroyed or razed, it may be rebuilt only in conformity with the original recorded plans; otherwise, a new tract map and condominium plan shall be filed, approved and recorded. A new tract map and condominium plan may be filed and recorded only upon prior written approval of three-fourths (3/4) of the members entitled to vote.

ARTICLE XV

AMENDMENTS

Except as otherwise provided in NRS 116.2117 and in this Declaration, each provision and all of the provisions of this Declaration may be modified, amended, added to, or deleted from by a further Declaration or Agreement, in writing, properly executed and acknowledged by a fifty-one per cent vote of the members of the Association, and by appropriate governmental authority if such amendment would affect the obligation to maintain the common areas. Any such amendments shall be effective only upon recordation in the office of the Recorder of Washoe County. The prohibition against interval ownership cannot be amended deleted by the owners without the prior approval of Washoe County.

ARTICLE XVI

TERM OF DECLARATION: COMPLIANCE WITH THE RULES AGAINST PERPETUITIES AND WITH THE RULE AGAINST RESTRAINT OF ALIENATION

The covenants contained in this Declaration shall run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2020, after which time the covenants shall be automatically extended for successive periods of twenty-one (21) years, unless an instrument executed by not less than three-fourths (3/4) of the members of the Association entitled to vote shall be recorded canceling and terminating this Declaration on or after January 2, 2020.

ARTICLE XVII

CONDEMNATION

In the event of a taking by condemnation or by eminent domain of all or any part of the Community, the award made for such taking and the disbursement of the proceeds of that award shall be undertaken in accordance with NRS 116.1107. The Association is designated to represent the Owners in all proceedings (including negotiations and settlements) related to any condemnation, and each Owner appoints the Association as attorney-in-fact for this purpose. The proceeds of any settlement related to any condemnation of the Project shall be paid to the Association for the benefit of the Owners, as their interests may appear.

ARTICLE XVIII

MISCELLANEOUS PROVISIONS

18.1 **Liberal Construction.** All of the provisions of this Declaration shall be liberally construed to effectuate and promote the purpose of creating a uniform plan for the operation of McCloud Condominiums. No breach of any provision of this Declaration nor the enforcement of any assessment lien as provided in this Declaration shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of the provisions shall be binding upon and shall be effective against any owner whose title is derived through foreclosure or trustee's sale or otherwise.

18.2 **Independent and Severable Provisions.** The provisions of this

Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any of this Declaration's provisions shall not affect the validity of the remaining provisions.

18.3 Notice of Transfer. Immediately after any transfer of title to any condominium, the transferring owner shall so advise the Board, giving the name and address of the new owner, and the effective date of the transfer.

18.4 Amendments to the Articles and Bylaws. The owners shall have the right to adopt reasonable amendments to the Articles and Bylaws. The Articles shall be amended by the vote or written assent of a majority of the Board and a majority of the Association members. The Bylaws shall be amended by the vote or written assent of a majority of the members of the Association. To the extent that any provision of the Articles or Bylaws that are or may be adopted by the owners shall conflict with the provisions of this Declaration, the provisions of this Declaration shall control.

18.5 Violations and Nuisance. Every act or omission by which a covenant, condition, or restriction of this Declaration is violated in whole or in part is considered a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action.

18.6 Violation of Law. Any violation of any state, municipal, or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any portion of the Property is a violation of this Declaration and subject to any or all of the enforcement procedures provided in this Declaration.

18.7 Cumulative Remedies. Each remedy provided in this Declaration is cumulative and not exclusive.

18.8 Nonwaiver. The failure to enforce the provisions of any covenant, condition, or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

18.9 Notices. Unless this Declaration provides otherwise, all notices required under the provisions of this Declaration shall be as follows:

18.9.1 All notices to the Association or to the Board shall be sent by regular mail, registered mail, or certified mail, return receipt requested, addressed to the Board at the address of the Manager, or to such other place as the Board may designate from time to time by notice in writing to the Owners of all of the Units.

Until the Owners are notified otherwise, all notices to the Association or to the Board shall be addressed to:

McCloud Condominium Homeowners' Association
c/o Associated Management, Inc. 931 Tahoe Blvd., Ste 2, Incline Village NV 89451

18.9.2 All notices by the Association or the Board to any Owner shall be sent by regular mail, by registered mail, or certified mail, return receipt requested, to such Owner's Unit address or to such other address as may be designated by such Owner from time to time, in writing, to the Board.

18.9.3 All notices shall be deemed to have been received within seventy-two (72) hours after the mailing thereof, except notices of changes of address, which shall be deemed to have been given when actually received.

18.10 Termination of Former Owner's Liability for Assessments Upon the conveyance, sale, assignment, or other transfer of a Unit to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Unit after notification to the Association of such transfer and payment of any transfer fee that may be required. No person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration.

18.11 Singular Includes Plural. Unless the context requires otherwise, the use of the singular in this Declaration shall include the plural, and the use of the plural shall include the singular.

18.12 Gender. Unless the context requires otherwise, the exclusive use of and reference to the masculine, feminine, or neuter in this Declaration is for convenience only, and shall each include the masculine, feminine, and neuter.

18.13 Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions or of any paragraph.

18.14 This Declaration Supersedes Prior Declaration. This Declaration supersedes that certain Condominium Declaration of McCloud Condominiums, dated April 29, 1982. In the event of any conflict between the 1982 Declaration and this Declaration, the provisions of this Declaration shall control.

Certification

We, the undersigned officers of McCloud Condominium Homeowners' Association, hereby certify, under penalty of perjury, that the Declaration of Covenants, Conditions and Restrictions set forth herein was duly adopted with the vote or written consent of Members constituting at least seventy-five percent (75%) of the total voting power held by the membership of the Association.

McCLOUD CONDOMINIUM HOMEOWNERS' ASSOCIATION

Dated: Nov 17, 2007 By: [Signature]
Print Name: Richard Edward Byfield
Its: President

Dated: Nov 17, 2007 By: [Signature]
Print Name: KAREN D. [Signature]
Its: Secretary

*Subscribed and sworn to before me
this 17 day of November, 2007.*

[Signature]
NOTARY

SEAL:

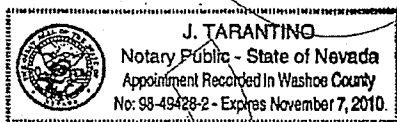


EXHIBIT “2”

EXHIBIT “2”

KERN & ASSOCIATES, LTD.
ATTORNEYS AT LAW

GAYLE A. KERN, ESQ.
gaylakern@kernltd.com

KAREN M. AYARBE, ESQ.
karenayarbe@kernltd.com

5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511

TELEPHONE: (775) 324-5930
FACSIMILE: (775) 324-6173

April 4, 2013

Via email [djdezzani@yahoo.com] and first class mail

David and Rochelle Dezzani
David J Dezzani Trust
13 Calle Altea
San Clemente, CA 92673

Re: *McCloud Condominium Association*
939 Incline Way

Dear Mr. and Mrs. Dezzani:

I represent McCloud Condominium Homeowners Association. The Board requested I respond to your email request to review communications and/or information related to another unit and Board minutes. First, it is my understanding you have been provided the requested minutes. If there are additional minutes you are requesting, please advise.

Further, with respect to your request for owner names, information or communications, the information Ms. Conway provided in her March 21, 2013 email to you is correct. All information related to another unit's owner is confidential pursuant to Chapter 116 of the Nevada Revised Statutes. *See* NRS 116.31175. The statute prohibits the Association from disclosing information relating to another unit, regardless of the reason for which it is requested. *Id.*

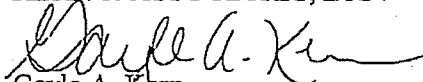
The Board understands your frustration and appreciates you are addressing the matter of the unapproved deck extension that wrongfully encroaches in the common area. There is no question the extension exists in the common area, as do the other extensions. The common area is owned in common by *all* owners of the community. While it is unfortunate the issue of deck extensions and the wrongful taking of common area was not addressed earlier, the Association has properly taken action to protect the integrity of the common area. There is no question common area is not permitted to be given to any one owner for his/her exclusive use and enjoyment, thereby reducing the common area for the other homeowners. It is the wrongful conversion of common area that is the problem. Simply put, there is no lawful transfer of common area to individual owners absent a vote of the membership. *See* NRS 116.3112.

Mr. and Mrs. Dezzani
April 4, 2013
Page Two

My client has deliberated over this issue at length. It was done at meetings with frequent homeowner involvement. The Board feels the solution and options provided are fair and equitable and appropriately address the preservation of the common area.

Very truly yours,

KERN & ASSOCIATES, LTD.


Gayle A. Kern

c: Client

EXHIBIT “3”

EXHIBIT “3”



GAYLE A. KERN, ESQ.
gaylekern@kernltd.com

KAREN M. AYARBE, ESQ.
karenayarbe@kernltd.com

May 10, 2013

Via email only djdczzani@yahoo.com

David and Rochelle Dezzani
13 Calle Altea
San Clemente, CA 92673

Re: *McCloud Condominium Association*
Unit #211

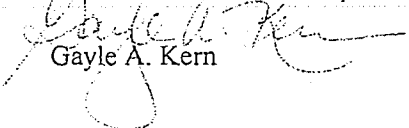
Dear Mr. and Mrs. Dezzani:

The Board of Directors requested I respond to your various communications. First, the Board has granted your request to have the hearing re-scheduled. The next meeting is August 23, 2013. Therefore, the hearing will be continued to August 23, 2013 at 1:00 p.m. With respect to the upcoming hearing on the alleged violation of the governing documents and encroachment of the common area, this will acknowledge receipt of a certified letter received May 9, 2013. This communication will be placed in your file and will be considered by the Board when it deliberates following the hearing to be conducted on August 23, 2013. We acknowledge your request that the hearing conducted on August 23, 2013 be an open hearing rather than one in executive session as allowed by NRS 116.31085(4). Finally, this will acknowledge your May 6, 2013 request for documents of the Association pursuant to NRS 116.31175. We are assembling such documents responsive to your requests, if any there be and to the extent available for review by another unit's owner.

If you have any further communications, the Board requests that you communicate with me. We appreciate your anticipated cooperation. If I have failed to address any of your communications, please advise me.

Very truly yours,

KERN & ASSOCIATES, LTD.


Gayle A. Kern

c: Client

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2015-12-21 16:51:00.038.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

12-21-2015:14:43:19

Clerk Accepted:

12-21-2015:16:49:08

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Request

Filed By:

Gayle Kern

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN,
KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2015-12-22 08:39:20.649.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

12-21-2015:16:41:50

Clerk Accepted:

12-22-2015:08:38:50

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Reply to/in Opposition

- **Continuation
- **Continuation
- **Continuation

Filed By:

Gayle Kern

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN,
KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI

1 4105

GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane Suite 200
Reno, Nevada 89511
Telephone: (775) 324-5930
Telefax: (775) 324-6173
E-mail: gaylekern@kernltd.com

Attorneys for Kern & Associates, Ltd.
and Gayle Kern

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE CASE NO.: CV15-00826
DEZZANI,

DEPT. NO.: 10

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN;
KAREN HIGGINS; JOHN DOES 1-10; JANE
DOES 1-10; DOE BUSINESSES 1-5,

**SUPPLEMENTAL AFFIDAVIT OF GAYLE
A. KERN, ESQ. IN SUPPORT OF REPLY TO
MEMORANDUM OF ANSWERING POINTS
AND AUTHORITIES IN OPPOSITION TO
MOTION FOR ATTORNEY'S FEES &
COSTS; COUNTER-AFFICAVIT [SIC] AND
PLAINTIFF ROCHELLE DEZZANI'S
JOINDER THERETO**

Defendants.

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

I, Gayle A. Kern, being first duly sworn do hereby swear under penalty of perjury as follows:

1. The fees and costs billed in this matter for preparing the Reply to Memorandum of Answering Points and Authorities in Opposition to Motion for Attorney's Fees & Costs; Counter-Afficavit [Sic] and Plaintiff Rochelle Dezzani's Joinder Thereto are reasonable and appropriate. The time billed from November 26, 2015 through December 21, 2015, was 10.3 hours, with hourly rates of \$300.00 for my services and \$250.00 for Ms. Carter's services, totaling \$2,590.00. Costs through November 30, 2015, are itemized in the amount of \$28.40, for an amount totaling \$2,618.40.

2. These additional fees are reasonable and should be awarded. My hourly rate is reasonable given my experience practicing law in general.

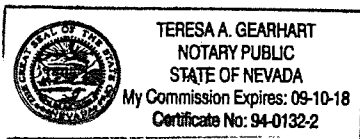
1 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document filed
2 in the above-entitled case does not contain the social security number of any person.

3 DATED this 22nd day of December, 2015.

4 
5 GAYLE A. KERN

6 SUBSCRIBED AND SWORN to before me
7 this 22nd day of December, 2015.

8 
9 NOTARY PUBLIC



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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

**SUPPLEMENTAL AFFIDAVIT OF GAYLE A. KERN, ESQ. IN SUPPORT OF REPLY TO
MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO
MOTION FOR ATTORNEY'S FEES & COSTS; COUNTER-AFFICAVIT [SIC] AND
PLAINTIFF ROCHELLE DEZZANI'S JOINDER THERETO**

On the party(s) set forth below by:

- ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- ☐ Personal delivery.
- ☐ Facsimile (FAX).
- ☐ Federal Express or other overnight delivery.
- ☐ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 22nd day of December, 2015.


TERESA A. GEARHART

12/22/2015
9:03 AMGayle A. Kern, Ltd.
Pre-bill Worksheet

Page 1

Selection Criteria

Clie.Selection Include: Kern/McCloud/Dezzani
 Slip.Transaction Dat 11/26/2015 - 12/21/2015

Nickname Kern/McCloud/Dezzani | Dezzani v.
 Full Name Gayle A. Kern, Ltd. dba Kern & Associates, Ltd.
 Address
 Phone 1 Phone 2
 Phone 3 Phone 4
 In Ref To Dezzani v. Kern & Associates, Ltd./Gayle Kern, et al.
 Case No. CV15-00826
 Fees Arrg. By billing value on each slip
 Expense Arrg. By billing value on each slip
 Tax Profile Exempt
 Last bill
 Last charge 12/21/2015
 Last payment Amount \$0.00

| Date ID | Attorney Task | Rate Markup % | Hours DNB Time | Amount DNB Amt | Total |
|----------------------|--|------------------|-------------------|-------------------|----------|
| 12/15/2015 148904 | VAC Services Reviewed Dezzani opposition to motion for attorneys fees and costs; read Kay v. Ehrler, US Supreme Court case cited; conducted research on pro per party recovery of attorneys fees and attorney recovery of attorneys fees and costs. | 250.00 | 2.50 | 625.00 | Billable |
| 12/17/2015 149015 | VAC Services Continued research of pro se litigants and attorney's fees and costs; reviewed cases re: availability of award for attorney representing law firm. | 250.00 | 1.50 | 375.00 | Billable |
| 12/18/2015 148974 | GAK Services Review Case Appeal Statement, Certificate of Clerk and Transmittal - Notice of Appeal, and Plaintiff Rochelle Dezzani's Joinder on Opposition; prepare Request for Correction to Case Appeal Statement. | 300.00 | 0.30 | 90.00 | Billable |
| 12/21/2015 149016 | VAC Services Continued research of award of attorney's fees and costs; researched pro se attorney award of fees and costs in NV cases; researched inherent authority of court to impose attorneys fees as sanctions; drafted reply to opposition to motion for attorneys fees and costs. | 250.00 | 6.00 | 1,500.00 | Billable |

12/22/2015
9:03 AMGayle A. Kern, Ltd.
Pre-bill Worksheet

Page 2

Kern/McCloud/Dezzani:Gayle A. Kern, Ltd. dba Kern & Associates, Ltd. (continued)

| | | | Amount | Total |
|-------|---------------|-------|--------|-------------------|
| TOTAL | Billable Fees | 10.30 | | <u>\$2,590.00</u> |

| Date ID | Attorney Expense | Price Markup % | Quantity | Amount | Total |
|------------|----------------------------------|-------------------|----------|--------|----------|
| 11/30/2015 | TAG | 0.20 | 142.000 | 28.40 | Billable |
| 148361 | Photocopies Photocopy Charges | | | | |

| | | | | |
|-------|----------------|--|--|----------------|
| TOTAL | Billable Costs | | | <u>\$28.40</u> |
|-------|----------------|--|--|----------------|

Calculation of Fees and Costs

| | Amount | Total |
|--|------------|-------------------|
| Fees Bill Arrangement: Slips By billing value on each slip. | | |
| Total of billable time slips | \$2,590.00 | |
| Total of Fees (Time Charges) | | \$2,590.00 |
| Costs Bill Arrangement: Slips By billing value on each slip. | | |
| Total of billable expense slips | \$28.40 | |
| Total of Costs (Expense Charges) | | \$28.40 |
| Total new charges | | <u>\$2,618.40</u> |
| New Balance Current | \$2,618.40 | |
| Total New Balance | | <u>\$2,618.40</u> |

1 **3860**

2 GAYLE A. KERN, ESQ.
3 Nevada Bar No. 1620
4 KERN & ASSOCIATES, LTD.
5 5421 Kietzke Lane Suite 200
6 Reno, Nevada 89511
7 Telephone: (775) 324-5930
8 Telefax: (775) 324-6173
9 E-mail: gaylekern@kernltd.com

10 *Attorneys for Kern & Associates, Ltd.*
11 *and Gayle Kern*

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

13 IN AND FOR THE COUNTY OF WASHOE

14 DAVID DEZZANI and ROCHELLE CASE NO.: CV15-00826
15 DEZZANI,

16 Plaintiffs,

17 DEPT. NO.: 10

18 REQUEST FOR SUBMISSION

19 vs.

20 KERN & ASSOCIATES, LTD; GAYLE KERN;
21 KAREN HIGGINS; JOHN DOES 1-10; JANE
22 DOES 1-10; DOE BUSINESSES 1-5,

23 Defendants.
24 _____/

25 Defendants, Kern & Associates, Ltd. and Gayle Kern, filed their Motion for Attorney's Fees &
26 Costs ("Motion") on December 2, 2015. Plaintiff, David Dezzani, filed a Memorandum of Answering
27 Points and Authorities in Opposition to Motion for Attorney's Fees and Costs; Counter-Affidavit [sic] on
28 December 14, 2015. Defendant, Rochelle Dezzani, filed her Joinder in the Memorandum of Answering
Points and Authorities in Opposition to Motion for Attorney's Fees and Costs; Counter-Affidavit [sic] on
December 14, 2015. Defendants, Kern & Associates, Ltd. and Gayle Kern filed their Reply to
Memorandum of Answering Points and Authorities in Opposition to Motion for Attorney's Fees and Costs;
Counter-Affidavit [sic] on December 21, 2015, and the Supplemental Affidavit of Gayle A. Kern, Esq. In
Support of Reply to Memorandum of Answering Points and Authorities in Opposition to Motion for
Attorney's Fees & Costs; Counter-Affidavit [Sic] and Plaintiff Rochelle Dezzani's Joinder Thereto
simultaneously with this Request for Submission.

1 It is requested that the Motion be submitted to the Court for decision.

2 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document filed
3 in the above-entitled case does not contain the social security number of any person.

4 DATED this 22nd day of December, 2015.

5 KERN & ASSOCIATES, LTD.

6 By 
7 GAYLE A. KERN, ESQ.
8 *Attorneys for Kern & Associates, Ltd.*
9 *and Gayle Kern*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

REQUEST FOR SUBMISSION

On the party(s) set forth below by:

- ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- ☐ Personal delivery.
- ☐ Facsimile (FAX).
- ☐ Federal Express or other overnight delivery.
- ☐ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 22nd day of December, 2015.


TERESA A. GEARHART

Return Of NEF**Recipients****GAYLE KERN, ESQ.** - Notification received on 2015-12-22 14:36:06.575.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

12-22-2015:14:31:26

Clerk Accepted:

12-22-2015:14:35:33

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Supplemental ...
Request for Submission

Filed By:

Gayle Kern

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN,
KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS
ROCHELLE DEZZANI
DAVID DEZZANI

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

DAVID DEZZANI; AND ROCHELLE DEZZANI,
Appellants,
vs.
KERN & ASSOCIATES, LTD.; AND GAYLE A.
KERN,
Respondents.

Supreme Court No. 69410
District Court Case No. CV1500826

DID

RECEIPT FOR DOCUMENTS

TO: David Dezzani
Rochelle Dezzani
Kern & Associates, Ltd. \ Gayle A. Kern
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

| | |
|------------|---|
| 12/18/2015 | Filing Fee Paid. \$250.00 from David and Rochelle Dezzani. Money Order no. 23442974561. |
| 12/18/2015 | Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day. |

DATE: December 18, 2015

Tracie Lindeman, Clerk of Court
lh

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2015-12-22 14:47:31.761.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

12-22-2015:14:46:24

Clerk Accepted:

12-22-2015:14:47:02

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN,
KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI

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

DAVID DEZZANI and ROCHELLE
DEZZANI,

Plaintiffs,

vs.

Case No.: CV15-00826

Dept. No: 10

KERN & ASSOCIATES, LTD; GAYLE KERN;
KAREN HIGGINS; JOHN DOES 1-10; JANE
DOES 1-10; DOE BUSINESSES 1-5;
Defendants.

ORDER

Presently before the Court is a MOTION FOR ATTORNEY'S FEES & COSTS ("the Motion") filed by Defendants KERN & ASSOCIATES, LTD., and GAYLE KERN ("Kern") on December 2, 2015. Plaintiffs DAVID DEZZANI and ROCHELLE DEZZANI (collectively "the Plaintiffs") filed a MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS; COUNTER-AFFICAVIT [SIC] AND AFFIRMATION ("the Opposition") on December 14, 2015. Plaintiff Rochelle Dezzani filed PLAINTIFF ROCHELLE DEZZANI'S [SIC] JOINDER IN MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS; COUNTER-AFFICAVIT [SIC] AND AFFIRMATION ("the Joinder") on December 14, 2015. Kern filed a REPLY TO MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES &

1 COSTS; COUNTER-AFFICAVIT [SIC] AND PLAINTIFF ROCHELLE DEZZANI'S JOINDER
2 THERETO ("the Reply") on December 21, 2015. Kern filed a SUPPLEMENTAL AFFIDAVIT
3 OF GAYLE A. KERN, ESQ. IN SUPPORT OF REPLY TO MEMORANDUM OF
4 ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR
5 ATTORNEY'S FEES & COSTS; COUNTER-AFFICAVIT [SIC] AND PLAINTIFF ROCHELLE
6 DEZZANI'S JOINDER THERETO ("the Supplement") on December 22, 2015. Kern submitted
7 the matter for the Court's consideration on December 22, 2015.

8 The Plaintiffs filed a COMPLAINT ("the Complaint") on May 4, 2015. The Complaint
9 alleged four causes of action for various violations of Chapter 116 of the Nevada Revised Statutes.
10 The Complaint alleges Kern engaged in retaliatory action against the Plaintiffs. This case arises
11 out of a dispute between the Plaintiffs and the McCloud Condominium Homeowner's Association
12 ("the HOA"). Kern engaged in correspondence between the Plaintiffs and the HOA as the HOA's
13 counsel. Kern's September 9, 2015, letter ("the September Letter"), clearly gave notice and an
14 opportunity to respond to the allegations of the Complaint's deficiencies in compliance with
15 NRCF 11(c). The September Letter gave a thorough and detailed analysis of the deficiencies of
16 the Plaintiffs' claims, namely the inability to institute litigation against the HOA's counsel, Kern.
17 The September Letter went so far as to direct the Plaintiffs to a local case where a plaintiff raised
18 identical issues and a judge found the issues untenable. Though not binding, this case was certainly
19 persuasive.

20 The Court granted DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE
21 KERN'S MOTION TO DISMISS COMPLAINT in its November 19, 2015, ORDER ("November
22 Order"). The Court found NRS 116.3118 does not permit attorneys to be personally liable for
23 actions taken on behalf of an association.

24 The Motion argues the Plaintiffs are liable for attorneys' fees pursuant to NRS
25 18.010(2)(b). "The decision to award attorney's fees is within the sound discretion of the trial
26 court." *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993). A district court's
27 award of attorney's fees will not be disturbed absent a manifest abuse of discretion. *Nelson v.*
28 *Peckham Plaza Partnerships*, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994). An action may

1 constitute an abuse of discretion where a district court disregards the applicable legal principles.
2 *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995, 860 P.2d 720, 724 (1993). A district court assesses
3 a motion for attorney's fees under NRS 18.010(2)(b) by determining whether the plaintiff had
4 reasonable grounds for its claims. *Bergmann*, 109 Nev. at 675, 856 P.2d at 563. This analysis is
5 dependent on the actual circumstances of the plaintiff's claim not hypothetical facts. *Id.*

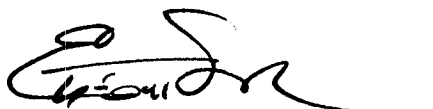
6 The Motion contends the Plaintiffs maintained the above-captioned lawsuit without
7 reasonable grounds. The Opposition argues the Plaintiffs' lawsuit was not rendered groundless
8 solely as a result of the Court's finding that NRS 116.3118 did not support the Complaint. The
9 Court notes the mere granting of a motion to dismiss is not *ipso facto* a finding that attorney's fees
10 are mandated. The Reply asserts the Plaintiffs were informed of the inappropriate application of
11 NRS 116.3118 to this dispute and acted in bad faith by continuing to maintain this lawsuit. The
12 Motion and Reply further argue fees are appropriate as sanctions pursuant to NRCP 11 because
13 there "is no question that Plaintiffs' Complaint was not well grounded in fact or existing law." The
14 Reply 6:2.

15 The Court finds evidence indicating this case was maintained in an effort to harass the
16 Defendants. The Court is unpersuaded by the Opposition's arguments that this suit was
17 maintained with reasonable grounds. Rule 11 sanctions "should be imposed for frivolous actions."
18 *Marshall v. Eighth Judicial Dist. Court In and For County of Clark*, 108 Nev. 459, 465, 836 P.2d
19 47, 52 (1992). "Rule 11 sanctions are not intended to chill an attorney's enthusiasm or creativity
20 in reasonably pursuing factual or legal theories." *Id.* The Court notes Plaintiff David Dezzani
21 ("Mr. Dezzani"), although not licensed to practice in this state, has been an attorney for several
22 years and is aware of the obligation to proceed in good faith in all causes of action. Mr. Dezzani's
23 COUNTER AFFIDAVIT ("Affidavit") attests he filed the Complaint "in good faith, as [the
24 Plaintiffs] believed, that [they] had [been] retaliated against, in violation of Nevada law." The
25 Affidavit ¶ 12. Yet, the Court finds the September Letter clearly placed the Plaintiffs on notice of
26 the absence of legal authority to support the claims against Kern. The September Letter gave a
27 thorough analysis of the issues raised by the Complaint. The September Letter informed the
28 Plaintiffs, should they choose to proceed with litigation, Kern would seek attorney's fees and costs

1 in accordance with NRCP 11(c)(1)(a). Plaintiffs chose to go forward. Mr. Dezzani is an attorney
2 and should have known the consequences of his actions. The Plaintiffs should have done a more
3 thorough job of researching issues and reviewing the applicable law. The fact Mr. Dezzani does
4 not practice in the state of Nevada is not persuasive.

5 IT IS HEREBY ORDERED the MOTION FOR ATTORNEY'S FEES & COSTS is
6 GRANTED. Defendants are hereby entitled to fees and costs in the amount of \$13,550.74.

7 DATED this 8 day of February, 2016.

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10 ELLIOTT A. SATTLER
11 District Judge
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CERTIFICATE OF MAILING


Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 8 day of February, 2016, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 8 day of February, 2016, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gayle Kern, Esq.


Sheila Mansfield
Administrative Assistant

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2016-02-08 16:58:46.09.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

02-08-2016:16:57:47

Clerk Accepted:

02-08-2016:16:58:15

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Ord Granting

Filed By:

Judicial Asst. SMansfield

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN,
KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI

1 2540

2 GAYLE A. KERN, ESQ.
3 Nevada Bar No. 1620
4 KERN & ASSOCIATES, LTD.
5 5421 Kietzke Lane Suite 200
6 Reno, Nevada 89511
7 Telephone: (775) 324-5930
8 Telefax: (775) 324-6173
9 E-mail: gaylekern@kernltd.com

10 *Attorneys for Kern & Associates, Ltd.*
11 *and Gayle Kern*

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

13 IN AND FOR THE COUNTY OF WASHOE

14 DAVID DEZZANI and ROCHELLE CASE NO.: CV15-00826
15 DEZZANI,

16 DEPT. NO.: 10

17 Plaintiffs,

18 **NOTICE OF ENTRY OF ORDER**

19 vs.

20 KERN & ASSOCIATES, LTD; GAYLE KERN;
21 KAREN HIGGINS; JOHN DOES 1-10; JANE
22 DOES 1-10; DOE BUSINESSES 1-5,

23 Defendants.
24 _____/

25 PLEASE TAKE NOTICE that on the 8th day of February, 2016, an Order (granting Motion for
26 Attorney's Fees & Costs) ("Order"), was entered in the above-captioned matter. A copy of the Order is
27 attached hereto.

28 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document filed
in the above-entitled case does not contain the social security number of any person.

DATED this 9th day of February, 2016.

KERN & ASSOCIATES, LTD.

By 
GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd.
and Gayle Kern

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

NOTICE OF ENTRY OF ORDER

On the party(s) set forth below by:

 X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

 Personal delivery.

 Facsimile (FAX).

 Federal Express or other overnight delivery.

 Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 9th day of February, 2016.


TERESA A. GEARHART

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

DAVID DEZZANI and ROCHELLE
DEZZANI,

Plaintiffs,

vs.

Case No.: CV15-00826

Dept. No: 10

KERN & ASSOCIATES, LTD; GAYLE KERN;
KAREN HIGGINS; JOHN DOES 1-10; JANE
DOES 1-10; DOE BUSINESSES 1-5;
Defendants.

ORDER

Presently before the Court is a MOTION FOR ATTORNEY'S FEES & COSTS ("the Motion") filed by Defendants KERN & ASSOCIATES, LTD., and GAYLE KERN ("Kern") on December 2, 2015. Plaintiffs DAVID DEZZANI and ROCHELLE DEZZANI (collectively "the Plaintiffs") filed a MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS; COUNTER-AFFICAVIT [SIC] AND AFFIRMATION ("the Opposition") on December 14, 2015. Plaintiff Rochelle Dezzani filed PLAINTIFF ROCHELLE DEZZANI'S [SIC] JOINDER IN MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS; COUNTER-AFFICAVIT [SIC] AND AFFIRMATION ("the Joinder") on December 14, 2015. Kern filed a REPLY TO MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES &

1 COSTS; COUNTER-AFFICAVIT [SIC] AND PLAINTIFF ROCHELLE DEZZANI'S JOINDER
2 THERETO ("the Reply") on December 21, 2015. Kern filed a SUPPLEMENTAL AFFIDAVIT
3 OF GAYLE A. KERN, ESQ. IN SUPPORT OF REPLY TO MEMORANDUM OF
4 ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR
5 ATTORNEY'S FEES & COSTS; COUNTER-AFFICAVIT [SIC] AND PLAINTIFF ROCHELLE
6 DEZZANI'S JOINDER THERETO ("the Supplement") on December 22, 2015. Kern submitted
7 the matter for the Court's consideration on December 22, 2015.

8 The Plaintiffs filed a COMPLAINT ("the Complaint") on May 4, 2015. The Complaint
9 alleged four causes of action for various violations of Chapter 116 of the Nevada Revised Statutes.
10 The Complaint alleges Kern engaged in retaliatory action against the Plaintiffs. This case arises
11 out of a dispute between the Plaintiffs and the McCloud Condominium Homeowner's Association
12 ("the HOA"). Kern engaged in correspondence between the Plaintiffs and the HOA as the HOA's
13 counsel. Kern's September 9, 2015, letter ("the September Letter"), clearly gave notice and an
14 opportunity to respond to the allegations of the Complaint's deficiencies in compliance with
15 NRCP 11(c). The September Letter gave a thorough and detailed analysis of the deficiencies of
16 the Plaintiffs' claims, namely the inability to institute litigation against the HOA's counsel, Kern.
17 The September Letter went so far as to direct the Plaintiffs to a local case where a plaintiff raised
18 identical issues and a judge found the issues untenable. Though not binding, this case was certainly
19 persuasive.

20 The Court granted DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE
21 KERN'S MOTION TO DISMISS COMPLAINT in its November 19, 2015, ORDER ("November
22 Order"). The Court found NRS 116.3118 does not permit attorneys to be personally liable for
23 actions taken on behalf of an association.

24 The Motion argues the Plaintiffs are liable for attorneys' fees pursuant to NRS
25 18.010(2)(b). "The decision to award attorney's fees is within the sound discretion of the trial
26 court." *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993). A district court's
27 award of attorney's fees will not be disturbed absent a manifest abuse of discretion. *Nelson v.*
28 *Peckham Plaza Partnerships*, 110 Nev. 23, 26, 866 P.2d 1138, 1139-40 (1994). An action may

1 constitute an abuse of discretion where a district court disregards the applicable legal principles.
2 *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995, 860 P.2d 720, 724 (1993). A district court assesses
3 a motion for attorney's fees under NRS 18.010(2)(b) by determining whether the plaintiff had
4 reasonable grounds for its claims. *Bergmann*, 109 Nev. at 675, 856 P.2d at 563. This analysis is
5 dependent on the actual circumstances of the plaintiff's claim not hypothetical facts. *Id.*

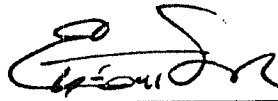
6 The Motion contends the Plaintiffs maintained the above-captioned lawsuit without
7 reasonable grounds. The Opposition argues the Plaintiffs' lawsuit was not rendered groundless
8 solely as a result of the Court's finding that NRS 116.3118 did not support the Complaint. The
9 Court notes the mere granting of a motion to dismiss is not *ipso facto* a finding that attorney's fees
10 are mandated. The Reply asserts the Plaintiffs were informed of the inappropriate application of
11 NRS 116.3118 to this dispute and acted in bad faith by continuing to maintain this lawsuit. The
12 Motion and Reply further argue fees are appropriate as sanctions pursuant to NRCP 11 because
13 there "is no question that Plaintiffs' Complaint was not well grounded in fact or existing law." The
14 Reply 6:2.

15 The Court finds evidence indicating this case was maintained in an effort to harass the
16 Defendants. The Court is unpersuaded by the Opposition's arguments that this suit was
17 maintained with reasonable grounds. Rule 11 sanctions "should be imposed for frivolous actions."
18 *Marshall v. Eighth Judicial Dist. Court In and For County of Clark*, 108 Nev. 459, 465, 836 P.2d
19 47, 52 (1992). "Rule 11 sanctions are not intended to chill an attorney's enthusiasm or creativity
20 in reasonably pursuing factual or legal theories." *Id.* The Court notes Plaintiff David Dezzani
21 ("Mr. Dezzani"), although not licensed to practice in this state, has been an attorney for several
22 years and is aware of the obligation to proceed in good faith in all causes of action. Mr. Dezzani's
23 COUNTER AFFIDAVIT ("Affidavit") attests he filed the Complaint "in good faith, as [the
24 Plaintiffs] believed, that [they] had [been] retaliated against, in violation of Nevada law." The
25 Affidavit ¶ 12. Yet, the Court finds the September Letter clearly placed the Plaintiffs on notice of
26 the absence of legal authority to support the claims against Kern. The September Letter gave a
27 thorough analysis of the issues raised by the Complaint. The September Letter informed the
28 Plaintiffs, should they choose to proceed with litigation, Kern would seek attorney's fees and costs

1 in accordance with NRCP 11(c)(1)(a). Plaintiffs chose to go forward. Mr. Dezzani is an attorney
2 and should have known the consequences of his actions. The Plaintiffs should have done a more
3 thorough job of researching issues and reviewing the applicable law. The fact Mr. Dezzani does
4 not practice in the state of Nevada is not persuasive.

5 IT IS HEREBY ORDERED the MOTION FOR ATTORNEY'S FEES & COSTS is
6 GRANTED. Defendants are hereby entitled to fees and costs in the amount of \$13,550.74.

7 DATED this 8 day of February, 2016.

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10 ELLIOTT A. SATTLER
11 District Judge
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CERTIFICATE OF MAILING


Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 8 day of February, 2016, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 8 day of February, 2016, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gayle Kern, Esq.


Sheila Mansfield
Administrative Assistant

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2016-02-09 11:07:33.956.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

02-09-2016:11:06:30

Clerk Accepted:

02-09-2016:11:07:00

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Notice of Entry of Ord

Filed By:

Gayle Kern

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN,
KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI

David and Rochelle Dezzani
 17 Camino Lienzo
 San Clemente, CA 92673
 (808) 291-2302

FILED

2016 FEB 29 PM 12:24

JACQUELINE DEZANI
 CLERK OF THE COURT
 BY *[Signature]*
 DEPUTY

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

DAVID DEZZANI and
 ROCHELLE DEZZANI,
 Plaintiffs

vs.

Case No. CV15 00826
 Dept. No. 10

KERN & ASSOCIATES, LTD; GAYLE KERN;
 KAREN HIGGINS; JOHN DOES 1-10;
 JANE DOES 1-10; DOE BUSINESSES 1-5

AMENDED
 NOTICE OF APPEAL

Notice is hereby given that David and Rochelle Dezzani, Plaintiffs above named, hereby amend their previously filed NOTICE OF APPEAL in this matter to appeal from both the ORDER by District Judge Elliot Sattler, signed and entered herein on the 19th day of November, 2015 and the ORDER signed and entered on the 8th day of February, 2016, awarding attorney's fees and costs in the amount of \$13,550.74, .

Signed, in San Clemente, California, this 25th day of February, 2016.

[Signature]
 David Dezzani, in proper person

[Signature]
 Rochelle Dezzani, in proper person

CV15-00826
 DAVID DEZZANI ETAL VS. KERN
 District Court
 Washoe County
 02/29/2016 12:24 PM
 1097
 VUTL DATA

CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that I sent a true copy of the preceding document, on the date indicated below, via United States Mail, in a postage prepaid sealed envelope, to Gayle Kern and Kern & Associates, Ltd., at 5421 Kietzke Lane, Suite 200, Reno, Nevada 89511 and I affirm that the preceding document does not contain the social security number of any person.

DATED this 26th day of February, 2016.



David Dezzani, Plaintiff

Code 1350

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

DAVID DEZZANI and ROCHELLE DEZANNI,

Case No. CV15-00826

Plaintiffs,

Dept. No. 10

vs.

**KERN & ASSOCIATES, LTD; GAYLE KERN;
KAREN HIGGINS; JOHN DOES 1-10; JANE
DOES 1-10; DOE BUSINESSES 1-5;,,**

Defendants.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – AMENDED NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 2nd day of March, 2016, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 2nd day of March, 2016

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2016-03-02 09:23:01.485.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

03-02-2016:09:21:53

Clerk Accepted:

03-02-2016:09:22:30

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN,
KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI

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

DAVID DEZZANI; AND ROCHELLE DEZZANI,
Appellants,
vs.
KERN & ASSOCIATES, LTD.; AND GAYLE A.
KERN,
Respondents.

Supreme Court No. 69896
District Court Case No. CV1500826

DIO

RECEIPT FOR DOCUMENTS

TO: David Dezzani
Rochelle Dezzani
Kern & Associates, Ltd. \ Gayle A. Kern
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

03/04/2016 Filing Fee due for Appeal.
03/04/2016 Filed Notice of Appeal/Proper Person. Appeal docketed in the
Supreme Court this day.

DATE: March 04, 2016

Tracie Lindeman, Clerk of Court
lh

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2016-03-14 08:35:22.15.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

03-14-2016:08:34:13

Clerk Accepted:

03-14-2016:08:34:53

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN,
KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI

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

DAVID DEZZANI; AND ROCHELLE DEZZANI,
Appellants,
vs.
KERN & ASSOCIATES, LTD.; AND GAYLE A.
KERN,
Respondents.

Supreme Court No. 69896
District Court Case No. CV1500826

DID

NOTICE TO FILE CASE APPEAL STATEMENT - CIVIL

TO: Jacqueline Bryant, Washoe District Court Clerk ✓

The notice of appeal was filed without the required Case Appeal Statement. NRAP 3(a)(3). Please refer to NRAP 3(f) and file the Case Appeal Statement with the Supreme Court Clerk's Office within 10 days from the date of this notice.

Your failure to file the Case Appeal Statement may result in the imposition of sanctions, including the dismissal of this appeal. NRAP 3(a)(2).

DATE: March 04, 2016

Tracie Lindeman, Clerk of Court

By: Linda Hamilton
Deputy Clerk

Notification List

Electronic
Kern & Associates, Ltd. \ Gayle A. Kern
Jacqueline Bryant, Washoe District Court Clerk

Paper
David Dezzani
Rochelle Dezzani

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2016-03-14 08:38:02.401.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

03-14-2016:08:36:56

Clerk Accepted:

03-14-2016:08:37:31

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Supreme Court Notice

Filed By:

Deputy Clerk ASmith

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KERN & ASSOCIATES, LTD

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DAVID DEZZANI; AND ROCHELLE DEZZANI,
Appellants,
vs.
KERN & ASSOCIATES, LTD.; AND GAYLE A.
KERN,
Respondents.

Supreme Court No. 69896
District Court Case No. CV1500826

DID

RECEIPT FOR DOCUMENTS

TO: David Dezzani
Rochelle Dezzani
Kern & Associates, Ltd. \ Gayle A. Kern
Jacqueline Bryant, Washoe District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

03/11/2016 Filing Fee Paid. \$250.00 (Cash) from David Dezzani.

DATE: March 11, 2016

Tracie Lindeman, Clerk of Court
rw

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2016-03-22 08:46:16.889.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

03-22-2016:08:45:10

Clerk Accepted:

03-22-2016:08:45:45

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN,
KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID DEZZANI; AND ROCHELLE
DEZZANI,

Appellants,

vs.

KERN & ASSOCIATES, LTD.; AND
GAYLE A. KERN,

Respondents.

No. 69896

CV15-00826
DID
FILED
MAR 24 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DIRECTING TRANSMISSION OF RECORD

We have reviewed the documents on file in this proper person appeal and conclude that our review of the complete record is warranted. NRAP 10(a)(1). Accordingly, within 30 days from the date of this order, the clerk of the district court shall transmit to the clerk of this court a certified copy of the trial court record in District Court Case No. CV-15-00826. See NRAP 11(a)(2) (providing that the complete "record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court," as well as "any previously prepared transcripts of the proceedings in the district court"). The record shall not include any exhibits filed in the district court. NRAP 11(a)(1).

It is so ORDERED.

Foran, C.J.

cc: David Dezzani
Rochelle Dezzani
Kern & Associates, Ltd.
Washoe District Court Clerk ✓

Return Of NEF**Recipients**

GAYLE KERN, ESQ. - Notification received on 2016-03-30 09:18:52.127.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

03-30-2016:09:17:48

Clerk Accepted:

03-30-2016:09:18:22

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

DAVID DEZZANI ETAL VS. KERN & ASSOC
(D10)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

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KAREN HIGGINS

DAVID DEZZANI

ROCHELLE DEZZANI