EXHIBIT “7”

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EXHIBIT “7”

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IN THE SECOND JUDICIAL DISTRICTCOURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.

Plaintiff(s),

v.

MEI-GSR HOLDINGS, LLC., a Nevada Limited Liability Company, AM-GSR Holdings, LLC., a Nevada Limited Liability Company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada Nonprofit Corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC., a Nevada Limited Liability Company and DOES I-X inclusive,

Defendant(s).

Case No.: CV-12-02222

Dept. No.: 10

NOTICE OF ENTRY OF JUDGMENT

. . .

PLEASE TAKE NOTICE that a judgment was entered against Plaintiffs by way of the *Order* on the *Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction* on May 9, 2016, a copy of which is attached as Exhibit 1.

.

AFFIRMATION PURSUANT TO NRS §239B.030

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

Dated this 12th day of May, 2016.

COHEN|JOHNSON|PARKER|EDWARDS

/s/ H. Stan Johnson
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of COHEN|JOHNSON|PARKER|EDWARDS, and that on this date I caused to be served a true and correct copy of the foregoing was served on all the parties to this action by the method(s) indicated below:

_X__ by using the Court's CM/ECF Electronic Notification System addressed to:

JONATHAN TEW, ESQ. for CAYENNE TRUST et al
JARRAD MILLER, ESQ. for CAYENNE TRUST et al
G. ROBERTSON, ESQ. for CAYENNE TRUST et al
MARK WRAY, ESQ. for GRAND SIERRA RESORT UNIT-OWNER'S ASSOCIATION et al
H. JOHNSON, ESQ. for GRAND SIERRA RESORT UNIT-OWNER'S ASSOCIATION et al

DATED the 12th day of May, 2016.

/s/ Sarah Gondek
An employee of Cohen|Johnson|Parker|Edwards

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

Case No: CV12-02222

vs.

Dept. No: 10

MEI-GSR HOLDINGS, LLC, a Nevada Limited Liability Company, et al,

Defendants.

_____/

ORDER

Presently before the Court is DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION ("the Motion") filed by the Defendants MEI-GSR HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY, ET AL. ("the Defendants") on December 1, 2015. Plaintiffs ALBERT THOMAS, ET AL., ("the Plaintiffs") filed an OPPOSITION TO MOTION TO DISMISS ("the Opposition") on December 21, 2015. The Defendants filed a REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION ("the Reply") on December 29, 2015. The Court heard argument on the Motion on February 8, 2016, and March 2, 2016. This written ORDER follows.

The COMPLAINT ("Complaint") in this matter was filed on August 27, 2012. The Complaint alleged twelve causes of action: 1) Petition for Appointment of a Receiver as to Defendant Grand Sierra Resort Unit-Owner's Association; 2) Intentional and/or Negligent

Misrepresentation as to Defendant MEI-GSR; 3) Breach of Contract as to Defendant MEI-GSR; 4) Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR; 5) Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR; 6) Consumer Fraud/Nevada Deceptive Trade Practices Act Violations as to Defendant MEI-GSR; 7) Declaratory Relief as to Defendant MEI-GSR; 8) Conversion as to Defendant MEI-GSR; 9) Demand for an Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association; 10) Specific Performance Pursuant to NRS 116.122, Unconscionable Agreement; 11) Unjust Enrichment/Quantum Meruit against Defendant Gage Village Development; and 12) Tortious Interference with Contract and/or Prospective Business Advantage against Defendants MEI-GSR and Gage Development. The Plaintiffs were individuals or other entities who had purchased condominiums in the Grand Sierra Resort ("the GSR"). The Plaintiffs filed the FIRST AMENDED COMPLAINT ("the First Amended Complaint") on September 10, 2012. The First Amended Complaint alleged the same causes of action as the Complaint.

The Defendants filed an ANSWER AND COUNTER CLAIM ("the Answer") on November 21, 2012. The Answer denied the twelve causes of action, asserted eleven Affirmative Defenses, and alleged three Counterclaims. The Counterclaims were: 1) Breach of Contract: 2) Declaratory Relief: and 3) Injunctive Relief. The Plaintiffs filed a SECOND AMENDED COMPLAINT ("the Second Amended Complaint") on March 26, 2013. The Defendants filed an ANSWER TO SECOND AMENDED COMPLAINT AND COUNTER CLAIM ("the Second Answer") on May 23, 2013.

These proceedings have been the subject of numerous allegations of discovery abuses by the Defendants. The Court denied a request for case concluding sanctions in its ORDER REGARDING ORIGINAL MOTION FOR CASE CONCLUDING SANCTIONS filed December 18, 2013 ("the December Order"). The Court found case concluding sanctions were not appropriate; however, the Court felt some sanctions were warranted based on the Defendants' repeated discovery violations. The Court struck all of the Defendants' Counterclaims in the December Order and required the Defendants to pay for the costs of the Plaintiffs' representation in litigating the issue of case concluding sanctions.

The Plaintiffs' renewed their motion for case concluding sanctions on January 27, 2014. The Court conducted a two day hearing regarding a renewed motion for case concluding sanctions. The Court entered an ORDER GRANTING PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS on October 3, 2014 ("the October Order"). The Defendants' Answer was stricken in the October Order. A Default was entered against the Defendants on November 26, 2014. The Court conducted a "prove-up" hearing regarding the issue of damages from March 23 to March 25, 2015. The Court entered the FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT on October 9, 2015 ("the Judgment"). The Court set a hearing on punitive damages for December 10, 2015. The hearing was vacated due to the filing of the Motion.

The Motion contends the Court lacks subject matter jurisdiction over this entire dispute. The Motion alleges the Plaintiffs have failed to abide by procedures codified in NRS 38.310. NRS 38.310 provides:

> 1. 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 by an association; or
>
> (b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property,
>
> may be commenced in any court in this State unless the action has been submitted to mediation or, if the parties agree, has been referred to a program pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.
>
> *2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.*

(emphasis added). The Motion avers the Plaintiffs' claims pertain to the "interpretation, application or enforcement of any covenant, conditions or restrictions" of the governing documents to the GSR condominiums. The governing documents in this matter are the Seventh Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Reservations of Easements

for Hotel Condominiums at Grand Sierra Resort ("the CC&Rs"), The Grand Sierra Resort Unit Maintenance Agreement ("the UMA"), the Grand Sierra Resort Purchase and Sale Agreement ("the PA"), and the Unit Rental Agreements ("the URA"). The Motion asserts the failure to comply with the provisions of NRS 38.310 requires all action taken in this matter should be vacated and the case dismissed.

The Motion asserts the creation, operation, and management of the Grand Sierra Resort Unit Rental Association ("GSRURA") is expressly provided for within the CC&R's. The fees imposed on the condominium owners, including those within the UMA, are controlled by the CC&Rs. The Motion argues the Second Amend Complaint alleged violations of the CC&R's and UMA, thus requiring their interpretation and requiring the application of NRS 38.310.

The Opposition avers NRS 38.310 is not applicable to the instant case because the Defendants are third-parties outside the scope of NRS 38.310's protections. The Opposition relies on *Hamm v. Arrowcreek Homeowners' Ass'n,* 124 Nev. 290, 183 P.3d 895 (2008), to support their contention the Defendants are not acting as agents of the GSRURA. In *Hamm,* the Supreme Court of the State of Nevada ("the Supreme Court") addressed whether NRS 38.310 applied to collection agencies. The Supreme Court determined the collection agency at issue was in an agency relationship with the HOA because it was hired by the HOA to collect the assessments from the homeowner. "An agency relationship results when one person possesses the contractual right to control another's manner of performing the duties for which he or she was hired." *Id.* at 299, 183 P.3d at 902. The Supreme Court determined "an agency relationship existed here because Arrowcreek HOA hired [the collection agency] to collect the Hamms' alleged assessments and possessed the contractual right to direct" the collection agency to act on the HOA's behalf. *Id.*, 183 P.3d at 902. The Supreme Court concluded NRS 38.310 was applicable to those claims arising from actions performed as the HOA's agent. The Opposition asserts the Supreme Court therefore held NRS 38.310 only applies to the HOA or agents of the HOA.

The Opposition argues MEI-GSR, Gage, and AM-GSR are not agents of GSRURA, thus NRS 38.310 is not applicable to the defendants in this action. The Opposition therefore asserts the dismissal of this case in not warranted. The Opposition argues the evidence presented in this case

fails to demonstrate the GSRURA pays MEI-GSR to operate the rental program. The Opposition asserts MEI-GSR never acted to effectuate the purposes of GSRURA, only to effectuate the goals of MEI-GSR, Gage, and AM-GSR. The Opposition contends the actions of the Defendants were only to benefit themselves and "wholly abandoned the interests and purposes of the [GSRURA]" by never putting the money collected for various fees and assessments into GSRURA reserves and by acting with the intent to eliminate the GSRURA. The Opposition 20:16-17. The Opposition asserts the absence of an agency relationship between the Defendants and GSRURA renders NRS 38.310 inapplicable. The Opposition argues, should the Court find an agency relationship, NRS 38.310 is still inapplicable because the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Eleventh, and Twelfth causes of action are not asserted against GSRURA. The Opposition alleges the first cause of action for the appointment of a receiver is not subject to NRS 38.310 because an arbitrator cannot appoint a receiver.

The Reply argues the Defendants are all within the provisions of NRS 38.300 to NRS 38.360. The Reply contends GSRURA is the homeowner's association for the Grand Sierra hotel-condominium units and is covered by NRS 38.310. Both Gage and AM-GSR are successor Declarants pursuant to the CC&Rs. The liability of both Gage and AM-GSR to the Plaintiffs would be as Declarants under the CC&Rs relating to the operation and management of the units. The Reply asserts all issues in the Second Amended Complaint implicate the interpretation and application of the governing documents, requiring the Plaintiffs to comply with NRS 38.310.

The Opposition also relies on *McKnight Family, LLP v. Adept Mgmt. Serv.*, 129 Nev. Adv. Op. 64, 310 P.3d 555 (2013), to argue NRS 38.310 is inapplicable to claims regarding the right to possess and use property. In *McKnight,* the Supreme Court found:

> An action is exempt from the NRS 38.310 requirements if the action relates to an individual's right to possess and use his or her property. In Hamm, this court determined that a lien on a property does not present an immediate danger of irreparable harm nor is it related to an individual's title to property for NRS 38.310 purposes because a lien exists separate from the property, and the right to use and dispose of the property remains with the owner until the lien is enforced at foreclosure proceedings.

Id., 310 P.3d at 558. The Opposition asserts all causes of action in this case relate to the Plaintiffs' right to use and possess their property. The Opposition argues the evidence establishes the Defendants deliberately interfered with the Plaintiffs' rights to use and possess their property by renting the condominiums without permission and taking steps to force the Plaintiffs to sell or lose their units. The Opposition relies on the Court's finding MEI-GSR wrongfully committed numerous acts of dominion and control over the property of the Plaintiffs in "derogation, exclusion or defiance of the title and/or rights of the individual unit owners." The Judgment 18:15-21. Within the Opposition, and during oral argument, the Plaintiffs argue all their claims pertain to and stem from the title the Plaintiffs hold in the condominium units.

The Reply argues the Plaintiffs' claims do not relate to the title of property. The Reply contends the *McKnight* Court stated claims "relating to title" are exempt from NRS 38.310, not claims regarding the right to possess and use property. The *McKnight* Court addressed wrongful foreclosure, quiet title, and slander of title. The Supreme Court found only the quite title claim was exempt from NRS 38.300(3) because it required the district court to determine who holds superior title to a land parcel. The Reply contends the Plaintiffs' claims exist separate from the title to land and are civil actions per NRS 38.300.

The Court finds none of the claims in the Second Amended Complaint would impact the owners' title to the units; therefore the Court will not deny the Motion on this ground. The Court finds the claims raised by the Plaintiffs require interpretation and application of the governing documents. The Plaintiffs' causes of action relate to matters provided for in the governing documents. *McKnight* limited its analysis to a claim for quiet title. The causes of action in this matter do not concern claims of superior title. To determine whether there was interference with the use of the Plaintiffs' ability to use their condominiums necessarily requires interpretation of the CC&Rs. To apply *McKnight*'s "possession and use" language as the Plaintiffs request would be a broader application than the Supreme Court has permitted in *McKnight*. *McKnight,* 129 Nev. Adv. Op. 64, 310 P.3d at 558. Pursuant to the Plaintiffs' argument, almost any alleged violations of the CC&Rs could arguably be framed as interference with the use and possession of one's property.

This is an unreasonable reading of the applicable statute. "If the plain meaning of a statute is clear on its face, then [this court] will not go beyond the language of the statute to determine its meaning." *Rosequist v. Int'l Ass'n of Firefighters,* 118 Nev. 444, 448, 49 P.3d 651, 653 (2002).[1]

The Opposition next contends NRS 38.310 does not pertain to subject matter jurisdiction. The Opposition asserts NRS 38.310 pertains to justiciability and not jurisdiction. The Opposition argues "the Nevada Legislature *cannot divest the District Court of subject matter jurisdiction.*" The Opposition 27:20-22 (emphasis in original). The Opposition alleges the Supreme Court has erred in finding a party must exhaust administrative remedies prior to proceeding with an action in the district court. The Opposition 29:3-5. The Opposition cites *City of Henderson v. Kilgore,* 122 Nev. 331, 336, 131 P.3d 11, 15, n.10 (2006), to argue the failure to exhaust administrative remedies does not pertain to subject matter jurisdiction, but pertains to justiciability. The Reply contends NRS 38.310 provides a mandatory statutory administrative remedy which deprives the Court of subject matter jurisdiction due to the Plaintiffs' failure to exhaust all administrative measures.

The Court finds the Opposition's argument on this issue be unpersuasive. Access to the courts has been limited by the legislature via requirements to exhaust available administrative remedies. "[W]hether couched in terms of subject-matter jurisdiction or ripeness, a person generally must exhaust all available administrative remedies before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable." *Allstate Ins. Co. v. Thorpe,* 123 Nev. 565, 571, 170 P.3d 989, 993 (2007). There are various types of legal actions which the legislature has placed conditions upon before a party may seek relief in the district court. Similar to the requirements of

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[1] *McKnight* has been cited twenty-four times by the Federal District Court for the District of Nevada ("Federal District Court") and once in an unpublished decision by the Supreme Court. The Court finds these cases to be persuasive, but not precedential, authority. In reversing the granting of a motion to dismiss a quiet title action, the Supreme Court stated *McKnight* recognized a quiet title claim is exempt from NRS 38.310, but did not expand *McKnight*'s holding. *LN Mgmt., LLC v. Caban*, 64833, 2014 WL 5795500, at *1 (Nev. Nov. 5, 2014). The Federal District Court has found claims for unjust enrichment, bad faith, and wrongful foreclosure fall under the confines of NRS 38.310 and such claims must be dismissed. The Federal District Court has noted *McKnight* found quiet title claims are expressly exempt from NRS 38.310, but has not expanded this exemption beyond causes of action for quiet title. *Carrington Mortgage Services, LLC v. Absolute Bus. Sols., LLC; Estrella Homeowners Ass'n*, 215CV01862JADPAL, 2016 WL 1465339, at *3 (D. Nev. 2016); *U.S. Bank, N.A., v. Woodchase Condominum Homeowners Association & Jason Edington,* 215CV01153APGGWF, 2016 WL 1734085, at *2 (D. Nev. 2016); *Abet Justice LLC v. First Am. Tr. Servicing Sols., LLC,* 214CV908JCMGWF, 2016 WL 1170989, at *3 (D. Nev. 2016); *U.S. Bank, Nat. Ass'n v. NV Eagles, LLC*, 2:15-CV-00786-RCJ, 2015 WL 4475517, at *3 (D. Nev. 2015).

NRS 38.310, NRS 613.420, requires the exhaustive of administrative remedies as a prerequisite for filing employment discrimination claims in district court. *Pope v. Motel 6,* 121 Nev. 307, 114 P.3d 277 (2005) ("NRS 613.420 requires an employee alleging employment discrimination to exhaust her administrative remedies by a filing a complaint with NERC before filing a district court action."). The Supreme Court has acknowledged "the legislature intended that claims involving employment discrimination were to be administratively exhausted prior to seeking redress in the district courts." *Palmer v. State,* 106 Nev. 151, 153, 787 P.2d 803, 804 (1990). The Supreme Court has upheld similar application of administrative remedy requirements in various matters. *See* NRS 679B.120; NRS 463.310; NRS 374.640; NRS 278.3195; NRS 41A.071.

In *State, Nevada Dept. of Taxation v. Scotsman Mfg. Co., Inc.,* 109 Nev. 252, 254, 849 P.2d 317, 319 (1993), the Supreme Court addressed whether NRS 374.640(1) and NRS 374.680 required Scotsman to file a refund claim with the Department of Taxation and Tax Commission prior to filing a claim in the district court. The Supreme Court found "[a] taxpayer must exhaust its administrative remedies before seeking judicial relief; failure to do so deprives the district court of subject matter jurisdiction." *Id.,* 849 P.2d at 319.

The Supreme Court discussed the exhaustion of administrative remedies requirement in *Benson v. State Eng'r,* 131 Nev. Adv. Op. 78, 358 P.3d 221 (2015). In *Benson,* the district court granted the State Engineer's motion to dismiss for failure to exhaust administrative remedies. The Supreme Court affirmed and found the party was required to "exhaust all available administrative remedies pertaining to the State Engineer's decision on a water permit before filing a petition for judicial review with the district court." *Id.,* 358 P.3d at 228. In *Mesagate Homeowners' Ass'n v. City of Fernley*, 124 Nev. 1092, 1099, 194 P.3d 1248, 1252 (2008), the Supreme Court again found exhaustion of administrative remedies was required "before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable." The Supreme Court held in *Mesagate* the plaintiff failed to exhaust their administrative remedies by not appealing the City's approval of a building permit to the Board of Appeals established pursuant to NRS 278.3195, and the matter was nonjusticable as a result.

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Similar to the language in NRS 38.310, NRS 41A.071 states if an action for medical malpractice "is filed in the district court, the district court *shall* dismiss the action, without prejudice, if the action is filed without a [medical expert] affidavit." (emphasis added). Both NRS 38.310 and NRS 41A.071 contain "shall." Shall "is mandatory and does not denote judicial discretion." *Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex. re. County of Washoe,* 122 Nev. 1298, 1303, 148 P.3d 790 (2006). "The Legislature's choice of the words 'shall dismiss' instead of 'subject to dismissal' indicated that the Legislature intended that the court have no discretion with respect to dismissal." *Id.,* 148 P.3d at 790.

The Supreme Court has recently found failure to comply with the affidavit requirement warrants dismissal even after years of litigation. In *Wheble v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 128 Nev. Adv. Op. 11, 272 P.3d 134, 137 (2012), the plaintiff filed the complaint in 2006. The plaintiff failed to attach the affidavit to the complaint and filed an errata to the complaint five days later attaching the expert affidavit. The defendants moved for summary judgment in 2009 arguing the plaintiff's failure to attach an expert affidavit to their initial complaint rendered the entire complaint void. The Supreme Court held a "medical malpractice complaint filed without the required affidavit is void ab initio." *Id.,* 272 P.3d at 137. A void ab initio complaint is "of no force and effect" from the beginning of the action. *Washoe Med Ctr,* 122 Nev. at 1304, 148 P.3d at 794.

The United States Supreme Court has recognized there is a "long-settled rule of judicial administration that no one is entitled to judicial relief for supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers v. Bethlehem Shipbuilding Corp.,* 303 U.S. 41, 50-51, 58 S. Ct. 459, 463 (1938). The "doctrine is applied in a number of different situations." *McKart v. United States*, 395 U.S. 185, 193, 89 S. Ct. 1657, 1662 (1969). The United States Supreme Court has held "strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *McNeil v. United States,* 508 U.S. 106, 113, 113 S.Ct. 1980, 1984 (1993)(citing *Mohasco Corp. v. Silver,* 447 U.S. 807, 826, 100 S.Ct. 2486, 2497, (1980)).

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"Lack of subject matter jurisdiction can be raised at any time during the proceedings and is not waivable." *Mainor v. Nault*, 120 Nev. 750, 761, 101 P.3d 308, 315 (2004). The Supreme Court, however, has held "a party may, by his conduct, become estopped to raise such a jurisdictional question." *Gamble v. Silver Peak Mines,* 35 Nev. 319, 133 P. 936, 937 (1913). The Opposition asserts the Defendants have waived the issue of subject matter jurisdiction by litigating this case, filing in justice court, and by stipulating with the Plaintiffs to bring the dispute before the Court. The Court notes the Defendants filed the Motion after the entry of the Judgment in this matter and prior to the hearing on punitive damages. The Defendants did not raise the purported jurisdictional defect until almost four years after the institution of this action. The Defendants explained during oral argument the issue of subject matter jurisdiction could be raised at any time. When asked by the Court whether the trial could have occurred and the jury was in deliberation whether the Defendants could seek to dismiss the case for lack of subject matter jurisdiction, the Defendants responded in the affirmative. February 8, 2016, Hearing Trans. 9:17-24. The Defendant asserted the parties "could have gone through the entire case, and then if there was an appeal, the Supreme Court could have actually, on their own, without anyone raising the issue" dismissed the action for lack of subject matter jurisdiction pursuant to NRS 38.310. February 8, 2016, Hearing Trans. 33:13-18.

The Defendants allege they were not aware of the application and requirements of NRS 38.310 until preparing for the punitive damages hearing. Dec. of H. Stan Johnson 1:6-10 ("I was doing research on the Opposition to Plaintiffs' Motion for Punitive Damages. I read a case which referenced NRS 38.310. To the best of my knowledge this was when I became aware of NRS 38.310."). The Court notes it is unclear why NRS 38.310 was discovered in the course of punitive damages research and not at a prior time. The Defendants referenced NRS 116 at the March 25, 2015, Evidentiary Hearing. The Defendants acknowledged the requirement to arbitrate because the Real Estate Division "actually have primary jurisdiction" over issues regarding the homeowners association's actions regarding reserves. March 25, 2015, Evidentiary Hearing Trans. 537:15-16. As the Plaintiffs noted at oral argument, the reference to NRS 116 indicates there was an awareness of possible administrative measures that needed to be exhausted prior to the Court having jurisdiction. Defendants' counsel's assertion his comments were limited to NRS 116 and

underfunded reserve damages sought rather than civil actions considered under NRS 38.310, is unpersuasive. The reasoning of *Gamble,* however, is not applicable to the instant case.

The Supreme Court in *Gamble* addressed the jurisdictional argument raised by the respondents, finding, "[a] party in an *appellate* court who has treated the judgment as final and asked that the same be affirmed or reversed will not be heard afterwards, when the decision has gone against him, to contend that the judgment was not final and the court therefore without jurisdiction to determine the questions presented on appeal." *Gamble,* 35 Nev. at 319, 133 P. at 937 (emphasis added). The Supreme Court stated,

> We see no valid reason why the rule of estoppel to question the finality of the judgment ought not to apply as well to a respondent who has assumed throughout the proceedings that the judgment was final. In this case counsel for respondents, not only did not question the finality of the judgment in brief or oral argument, but prayed for its affirmance. In the lower court they stipulated that the statement on motion for a new trial should be regarded as the statement on appeal from the judgment. They also petitioned for and obtained an order for the issuance of a writ of assistance as a part of the process to carry out the judgment, assuming, as they must have done for such purpose, that the judgment was final.

Id., 133 P. at 938. The Supreme Court has further noted defendants who are willing to proceed and be bound by the jurisdiction of the court and the ultimate resolution of the dispute cannot challenge jurisdiction after judgment has been entered against them. *Boisen v. Boisen,* 85 Nev. 122, 124, 451 P.2d 363, 364 (1969)("[H]is assertion of jurisdiction by the counterclaim coupled with his complete acquiescence in the wife's claim to jurisdiction at trial estopped him from raising the issue for the first time on appeal."). The "judgement being in favor of the [Plaintiffs], the [Defendants], who invoked the jurisdiction of the court in the first instance, cannot now be heard to question that jurisdiction." *Grant v. Grant,* 38 Nev. 185, 189, 147 P. 451, 452 (1915).

Clearly there is a tension between the freedom to raise jurisdiction at any time and the waiver or estoppel bars to raise the issue. The Court finds it is constrained to resolve the issue in favor of the Defendants. The Court finds the reasoning of *Gamble* or *Grant* does not extend to this case. The Defendants sought relief through the court system by filing numerous actions in Justice Court. The Defendants later stipulated with the Plaintiffs to resolve the disputes between the parties in District Court. The Opposition 3:18-21. However, the parties did not proceed to trial. It was the action of

this Court in issuing case concluding sanctions which resulted in the judgment in favor of the Plaintiffs. The Court's actions accelerated the conclusion of these proceedings and the parties did not proceed to the ultimate resolution of the matter through trial. The Defendants did not wait to raise the issue of jurisdiction after the conclusion of trial and on appeal such as the parties did in *Gamble.* Accordingly, the Court finds the facts of this case do not warrant estoppel as discussed in *Gamble* and *Grant.*

The Court finds the language of NRS 38.310 mandates the Court to dismiss this action. Under NRS 38.310, "the district court must dismiss any dispute arising from the interpretation, application, or enforcement of homeowners' associations covenants, conditions, and restrictions [ ] if the parties did not first submit the dispute to mediation or arbitration." *Hamm,* 124 Nev. at 293, 183 P.3d at 898. Unlike *Arrowcreek* and *McKnight*, where the parties challenging the court's jurisdiction acted immediately, the Defendants waited to take action until after judgment was rendered against them. This conduct results in great detriment to the Plaintiffs in this action. Yet, the Court finds the Supreme Court's application of mandatory statutory language in *Wheble* requires the Court to dismiss this action, despite the great deal of work the parties and Court have dedicated to this litigation.

The Court finds to act contrary to the mandates of NRS 38.310 would violate the separation of powers, whereby courts are bound to follow the laws passed by legislative bodies. As John Adams noted in his 7th "Novanglus" letter published in 1774, we are "a government of laws, and not of men." "This separation is fundamentally necessary because '[w]ere the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would be the legislator: Were it joined to the executive power the judge might behave with all the violence of an oppressor.'" *Berkson v. LePome,* 126 Nev. 492, 498-99, 245 P.3d 560, 565 (2010)(*citing Galloway v. Truesdell,* 83 Nev. 13, 19, 422 P.2d 237, 242 (1967)). The Court cannot substitute its opinion of what should happen under these facts for the opinion of the people of this State as expressed by their elected legislators.

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This matter has been the subject of extensive motion practice. The Court finds this result to be inimical and unjust after the course of the Defendants' conduct throughout this litigation. The record speaks for itself regarding the lackadaisical and inappropriate approach the Defendants have exhibited toward the Nevada Rules of Civil Procedure, the District Court Rules, the Washoe District Court Rules, and the Court's orders. The Defendants have done everything possible to make the proceedings unjust, dilatory, and costly in abject contravention of NRCP 1. The Court is bound to following the law and its application and interpretation by the Supreme Court. Should this Court feel it had the authority to decide the issue presented based on what was "fair" or "just" it would deny the Motion out of hand. The Defendants clearly do not deserve the result they will receive, but it is the law.

IT IS HEREBY ORDERED the DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION is GRANTED.

DATED this 9 day of May, 2016.

ELLIOTT A. SATTLER
District Judge

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 _____ day of May, 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:

NONE

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 9 day of May, 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:

Jonathan Tew, Esq.

Jarrad Miller, Esq.

Stan Johnson, Esq.

Mark Wray, Esq.

Sheila Mansfield
Administrative Assistant

EXHIBIT “6”

EXHIBIT “6”

EXHIBIT “6”

2540
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IN THE SECOND JUDICIAL DISTRICTCOURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, et. al.

Plaintiff(s),

v.

MEI-GSR HOLDINGS, LLC., a Nevada Limited Liability Company, AM-GSR Holdings, LLC., a Nevada Limited Liability Company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada Nonprofit Corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC., a Nevada Limited Liability Company and DOES I-X inclusive,

Defendant(s).

Case No.: CV-12-02222

Dept. No.: 10

NOTICE OF ENTRY OF ORDER

. . .

PLEASE TAKE NOTICE that an *Order* on the *Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction* was entered on May 9, 2016, a copy of which is attached as Exhibit 1.

.

AFFIRMATION PURSUANT TO NRS §239B.030

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

Dated this 11th day of May, 2016.

COHEN|JOHNSON|PARKER|EDWARDS

/s/ H. Stan Johnson
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of COHEN|JOHNSON|PARKER|EDWARDS, and that on this date I caused to be served a true and correct copy of the foregoing was served on all the parties to this action by the method(s) indicated below:

_X__ by using the Court's CM/ECF Electronic Notification System addressed to:

JONATHAN TEW, ESQ. for CAYENNE TRUST et al
JARRAD MILLER, ESQ. for CAYENNE TRUST et al
G. ROBERTSON, ESQ. for CAYENNE TRUST et al
MARK WRAY, ESQ. for GRAND SIERRA RESORT UNIT-OWNER'S ASSOCIATION et al
H. JOHNSON, ESQ. for GRAND SIERRA RESORT UNIT-OWNER'S ASSOCIATION et al

DATED the 11th day of May, 2016.

/s/ Sarah Gondek
An employee of Cohen|Johnson|Parker|Edwards

COHEN | JOHNSON | PARKER | EDWARDS
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Exhibit 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

vs.

MEI-GSR HOLDINGS, LLC, a Nevada Limited Liability Company, et al,

Defendants.

_____/

Case No: CV12-02222

Dept. No: 10

ORDER

Presently before the Court is DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION ("the Motion") filed by the Defendants MEI-GSR HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY, ET AL. ("the Defendants") on December 1, 2015. Plaintiffs ALBERT THOMAS, ET AL., ("the Plaintiffs") filed an OPPOSITION TO MOTION TO DISMISS ("the Opposition") on December 21, 2015. The Defendants filed a REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION ("the Reply") on December 29, 2015. The Court heard argument on the Motion on February 8, 2016, and March 2, 2016. This written ORDER follows.

The COMPLAINT ("Complaint") in this matter was filed on August 27, 2012. The Complaint alleged twelve causes of action: 1) Petition for Appointment of a Receiver as to Defendant Grand Sierra Resort Unit-Owner's Association; 2) Intentional and/or Negligent

Misrepresentation as to Defendant MEI-GSR; 3) Breach of Contract as to Defendant MEI-GSR; 4) Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR; 5) Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR; 6) Consumer Fraud/Nevada Deceptive Trade Practices Act Violations as to Defendant MEI-GSR; 7) Declaratory Relief as to Defendant MEI-GSR; 8) Conversion as to Defendant MEI-GSR; 9) Demand for an Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association; 10) Specific Performance Pursuant to NRS 116.122, Unconscionable Agreement; 11) Unjust Enrichment/Quantum Meruit against Defendant Gage Village Development; and 12) Tortious Interference with Contract and/or Prospective Business Advantage against Defendants MEI-GSR and Gage Development. The Plaintiffs were individuals or other entities who had purchased condominiums in the Grand Sierra Resort ("the GSR"). The Plaintiffs filed the FIRST AMENDED COMPLAINT ("the First Amended Complaint") on September 10, 2012. The First Amended Complaint alleged the same causes of action as the Complaint.

The Defendants filed an ANSWER AND COUNTER CLAIM ("the Answer") on November 21, 2012. The Answer denied the twelve causes of action, asserted eleven Affirmative Defenses, and alleged three Counterclaims. The Counterclaims were: 1) Breach of Contract: 2) Declaratory Relief: and 3) Injunctive Relief. The Plaintiffs filed a SECOND AMENDED COMPLAINT ("the Second Amended Complaint") on March 26, 2013. The Defendants filed an ANSWER TO SECOND AMENDED COMPLAINT AND COUNTER CLAIM ("the Second Answer") on May 23, 2013.

These proceedings have been the subject of numerous allegations of discovery abuses by the Defendants. The Court denied a request for case concluding sanctions in its ORDER REGARDING ORIGINAL MOTION FOR CASE CONCLUDING SANCTIONS filed December 18, 2013 ("the December Order"). The Court found case concluding sanctions were not appropriate; however, the Court felt some sanctions were warranted based on the Defendants' repeated discovery violations. The Court struck all of the Defendants' Counterclaims in the December Order and required the Defendants to pay for the costs of the Plaintiffs' representation in litigating the issue of case concluding sanctions.

The Plaintiffs' renewed their motion for case concluding sanctions on January 27, 2014. The Court conducted a two day hearing regarding a renewed motion for case concluding sanctions. The Court entered an ORDER GRANTING PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS on October 3, 2014 ("the October Order"). The Defendants' Answer was stricken in the October Order. A Default was entered against the Defendants on November 26, 2014. The Court conducted a "prove-up" hearing regarding the issue of damages from March 23 to March 25, 2015. The Court entered the FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT on October 9, 2015 ("the Judgment"). The Court set a hearing on punitive damages for December 10, 2015. The hearing was vacated due to the filing of the Motion.

The Motion contends the Court lacks subject matter jurisdiction over this entire dispute. The Motion alleges the Plaintiffs have failed to abide by procedures codified in NRS 38.310. NRS 38.310 provides:

> 1. 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 by an association; or
>
> (b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property,
>
> may be commenced in any court in this State unless the action has been submitted to mediation or, if the parties agree, has been referred to a program pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.
>
> *2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.*

(emphasis added). The Motion avers the Plaintiffs' claims pertain to the "interpretation, application or enforcement of any covenant, conditions or restrictions" of the governing documents to the GSR condominiums. The governing documents in this matter are the Seventh Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Reservations of Easements

for Hotel Condominiums at Grand Sierra Resort ("the CC&Rs"), The Grand Sierra Resort Unit Maintenance Agreement ("the UMA"), the Grand Sierra Resort Purchase and Sale Agreement ("the PA"), and the Unit Rental Agreements ("the URA"). The Motion asserts the failure to comply with the provisions of NRS 38.310 requires all action taken in this matter should be vacated and the case dismissed.

The Motion asserts the creation, operation, and management of the Grand Sierra Resort Unit Rental Association ("GSRURA") is expressly provided for within the CC&R's. The fees imposed on the condominium owners, including those within the UMA, are controlled by the CC&Rs. The Motion argues the Second Amend Complaint alleged violations of the CC&R's and UMA, thus requiring their interpretation and requiring the application of NRS 38.310.

The Opposition avers NRS 38.310 is not applicable to the instant case because the Defendants are third-parties outside the scope of NRS 38.310's protections. The Opposition relies on *Hamm v. Arrowcreek Homeowners' Ass'n,* 124 Nev. 290, 183 P.3d 895 (2008), to support their contention the Defendants are not acting as agents of the GSRURA. In *Hamm,* the Supreme Court of the State of Nevada ("the Supreme Court") addressed whether NRS 38.310 applied to collection agencies. The Supreme Court determined the collection agency at issue was in an agency relationship with the HOA because it was hired by the HOA to collect the assessments from the homeowner. "An agency relationship results when one person possesses the contractual right to control another's manner of performing the duties for which he or she was hired." *Id.* at 299, 183 P.3d at 902. The Supreme Court determined "an agency relationship existed here because Arrowcreek HOA hired [the collection agency] to collect the Hamms' alleged assessments and possessed the contractual right to direct" the collection agency to act on the HOA's behalf. *Id.*, 183 P.3d at 902. The Supreme Court concluded NRS 38.310 was applicable to those claims arising from actions performed as the HOA's agent. The Opposition asserts the Supreme Court therefore held NRS 38.310 only applies to the HOA or agents of the HOA.

The Opposition argues MEI-GSR, Gage, and AM-GSR are not agents of GSRURA, thus NRS 38.310 is not applicable to the defendants in this action. The Opposition therefore asserts the dismissal of this case in not warranted. The Opposition argues the evidence presented in this case

fails to demonstrate the GSRURA pays MEI-GSR to operate the rental program. The Opposition asserts MEI-GSR never acted to effectuate the purposes of GSRURA, only to effectuate the goals of MEI-GSR, Gage, and AM-GSR. The Opposition contends the actions of the Defendants were only to benefit themselves and "wholly abandoned the interests and purposes of the [GSRURA]" by never putting the money collected for various fees and assessments into GSRURA reserves and by acting with the intent to eliminate the GSRURA. The Opposition 20:16-17. The Opposition asserts the absence of an agency relationship between the Defendants and GSRURA renders NRS 38.310 inapplicable. The Opposition argues, should the Court find an agency relationship, NRS 38.310 is still inapplicable because the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Eleventh, and Twelfth causes of action are not asserted against GSRURA. The Opposition alleges the first cause of action for the appointment of a receiver is not subject to NRS 38.310 because an arbitrator cannot appoint a receiver.

The Reply argues the Defendants are all within the provisions of NRS 38.300 to NRS 38.360. The Reply contends GSRURA is the homeowner's association for the Grand Sierra hotel-condominium units and is covered by NRS 38.310. Both Gage and AM-GSR are successor Declarants pursuant to the CC&Rs. The liability of both Gage and AM-GSR to the Plaintiffs would be as Declarants under the CC&Rs relating to the operation and management of the units. The Reply asserts all issues in the Second Amended Complaint implicate the interpretation and application of the governing documents, requiring the Plaintiffs to comply with NRS 38.310.

The Opposition also relies on *McKnight Family, LLP v. Adept Mgmt. Serv.*, 129 Nev. Adv. Op. 64, 310 P.3d 555 (2013), to argue NRS 38.310 is inapplicable to claims regarding the right to possess and use property. In *McKnight,* the Supreme Court found:

> An action is exempt from the NRS 38.310 requirements if the action relates to an individual's right to possess and use his or her property. In Hamm, this court determined that a lien on a property does not present an immediate danger of irreparable harm nor is it related to an individual's title to property for NRS 38.310 purposes because a lien exists separate from the property, and the right to use and dispose of the property remains with the owner until the lien is enforced at foreclosure proceedings.

Id., 310 P.3d at 558. The Opposition asserts all causes of action in this case relate to the Plaintiffs' right to use and possess their property. The Opposition argues the evidence establishes the Defendants deliberately interfered with the Plaintiffs' rights to use and possess their property by renting the condominiums without permission and taking steps to force the Plaintiffs to sell or lose their units. The Opposition relies on the Court's finding MEI-GSR wrongfully committed numerous acts of dominion and control over the property of the Plaintiffs in "derogation, exclusion or defiance of the title and/or rights of the individual unit owners." The Judgment 18:15-21. Within the Opposition, and during oral argument, the Plaintiffs argue all their claims pertain to and stem from the title the Plaintiffs hold in the condominium units.

The Reply argues the Plaintiffs' claims do not relate to the title of property. The Reply contends the *McKnight* Court stated claims "relating to title" are exempt from NRS 38.310, not claims regarding the right to possess and use property. The *McKnight* Court addressed wrongful foreclosure, quiet title, and slander of title. The Supreme Court found only the quite title claim was exempt from NRS 38.300(3) because it required the district court to determine who holds superior title to a land parcel. The Reply contends the Plaintiffs' claims exist separate from the title to land and are civil actions per NRS 38.300.

The Court finds none of the claims in the Second Amended Complaint would impact the owners' title to the units; therefore the Court will not deny the Motion on this ground. The Court finds the claims raised by the Plaintiffs require interpretation and application of the governing documents. The Plaintiffs' causes of action relate to matters provided for in the governing documents. *McKnight* limited its analysis to a claim for quiet title. The causes of action in this matter do not concern claims of superior title. To determine whether there was interference with the use of the Plaintiffs' ability to use their condominiums necessarily requires interpretation of the CC&Rs. To apply *McKnight*'s "possession and use" language as the Plaintiffs request would be a broader application than the Supreme Court has permitted in *McKnight*. *McKnight,* 129 Nev. Adv. Op. 64, 310 P.3d at 558. Pursuant to the Plaintiffs' argument, almost any alleged violations of the CC&Rs could arguably be framed as interference with the use and possession of one's property.

This is an unreasonable reading of the applicable statute. "If the plain meaning of a statute is clear on its face, then [this court] will not go beyond the language of the statute to determine its meaning." *Rosequist v. Int'l Ass'n of Firefighters,* 118 Nev. 444, 448, 49 P.3d 651, 653 (2002).[1]

The Opposition next contends NRS 38.310 does not pertain to subject matter jurisdiction. The Opposition asserts NRS 38.310 pertains to justiciability and not jurisdiction. The Opposition argues "the Nevada Legislature *cannot divest the District Court of subject matter jurisdiction.*" The Opposition 27:20-22 (emphasis in original). The Opposition alleges the Supreme Court has erred in finding a party must exhaust administrative remedies prior to proceeding with an action in the district court. The Opposition 29:3-5. The Opposition cites *City of Henderson v. Kilgore,* 122 Nev. 331, 336, 131 P.3d 11, 15, n.10 (2006), to argue the failure to exhaust administrative remedies does not pertain to subject matter jurisdiction, but pertains to justiciability. The Reply contends NRS 38.310 provides a mandatory statutory administrative remedy which deprives the Court of subject matter jurisdiction due to the Plaintiffs' failure to exhaust all administrative measures.

The Court finds the Opposition's argument on this issue be unpersuasive. Access to the courts has been limited by the legislature via requirements to exhaust available administrative remedies. "[W]hether couched in terms of subject-matter jurisdiction or ripeness, a person generally must exhaust all available administrative remedies before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable." *Allstate Ins. Co. v. Thorpe,* 123 Nev. 565, 571, 170 P.3d 989, 993 (2007). There are various types of legal actions which the legislature has placed conditions upon before a party may seek relief in the district court. Similar to the requirements of

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[1] *McKnight* has been cited twenty-four times by the Federal District Court for the District of Nevada ("Federal District Court") and once in an unpublished decision by the Supreme Court. The Court finds these cases to be persuasive, but not precedential, authority. In reversing the granting of a motion to dismiss a quiet title action, the Supreme Court stated *McKnight* recognized a quiet title claim is exempt from NRS 38.310, but did not expand *McKnight*'s holding. *LN Mgmt., LLC v. Caban*, 64833, 2014 WL 5795500, at *1 (Nev. Nov. 5, 2014). The Federal District Court has found claims for unjust enrichment, bad faith, and wrongful foreclosure fall under the confines of NRS 38.310 and such claims must be dismissed. The Federal District Court has noted *McKnight* found quiet title claims are expressly exempt from NRS 38.310, but has not expanded this exemption beyond causes of action for quiet title. *Carrington Mortgage Services, LLC v. Absolute Bus. Sols., LLC; Estrella Homeowners Ass'n*, 215CV01862JADPAL, 2016 WL 1465339, at *3 (D. Nev. 2016); *U.S. Bank, N.A., v. Woodchase Condominum Homeowners Association & Jason Edington,* 215CV01153APGGWF, 2016 WL 1734085, at *2 (D. Nev. 2016); *Abet Justice LLC v. First Am. Tr. Servicing Sols., LLC,* 214CV908JCMGWF, 2016 WL 1170989, at *3 (D. Nev. 2016); *U.S. Bank, Nat. Ass'n v. NV Eagles, LLC*, 2:15-CV-00786-RCJ, 2015 WL 4475517, at *3 (D. Nev. 2015).

NRS 38.310, NRS 613.420, requires the exhaustive of administrative remedies as a prerequisite for filing employment discrimination claims in district court. *Pope v. Motel 6,* 121 Nev. 307, 114 P.3d 277 (2005) ("NRS 613.420 requires an employee alleging employment discrimination to exhaust her administrative remedies by a filing a complaint with NERC before filing a district court action."). The Supreme Court has acknowledged "the legislature intended that claims involving employment discrimination were to be administratively exhausted prior to seeking redress in the district courts." *Palmer v. State,* 106 Nev. 151, 153, 787 P.2d 803, 804 (1990). The Supreme Court has upheld similar application of administrative remedy requirements in various matters. *See* NRS 679B.120; NRS 463.310; NRS 374.640; NRS 278.3195; NRS 41A.071.

In *State, Nevada Dept. of Taxation v. Scotsman Mfg. Co., Inc.,* 109 Nev. 252, 254, 849 P.2d 317, 319 (1993), the Supreme Court addressed whether NRS 374.640(1) and NRS 374.680 required Scotsman to file a refund claim with the Department of Taxation and Tax Commission prior to filing a claim in the district court. The Supreme Court found "[a] taxpayer must exhaust its administrative remedies before seeking judicial relief; failure to do so deprives the district court of subject matter jurisdiction." *Id.,* 849 P.2d at 319.

The Supreme Court discussed the exhaustion of administrative remedies requirement in *Benson v. State Eng'r,* 131 Nev. Adv. Op. 78, 358 P.3d 221 (2015). In *Benson,* the district court granted the State Engineer's motion to dismiss for failure to exhaust administrative remedies. The Supreme Court affirmed and found the party was required to "exhaust all available administrative remedies pertaining to the State Engineer's decision on a water permit before filing a petition for judicial review with the district court." *Id.,* 358 P.3d at 228. In *Mesagate Homeowners' Ass'n v. City of Fernley*, 124 Nev. 1092, 1099, 194 P.3d 1248, 1252 (2008), the Supreme Court again found exhaustion of administrative remedies was required "before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable." The Supreme Court held in *Mesagate* the plaintiff failed to exhaust their administrative remedies by not appealing the City's approval of a building permit to the Board of Appeals established pursuant to NRS 278.3195, and the matter was nonjusticable as a result.

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Similar to the language in NRS 38.310, NRS 41A.071 states if an action for medical malpractice "is filed in the district court, the district court *shall* dismiss the action, without prejudice, if the action is filed without a [medical expert] affidavit." (emphasis added). Both NRS 38.310 and NRS 41A.071 contain "shall." Shall "is mandatory and does not denote judicial discretion." *Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex. re. County of Washoe,* 122 Nev. 1298, 1303, 148 P.3d 790 (2006). "The Legislature's choice of the words 'shall dismiss' instead of 'subject to dismissal' indicated that the Legislature intended that the court have no discretion with respect to dismissal." *Id.,* 148 P.3d at 790.

The Supreme Court has recently found failure to comply with the affidavit requirement warrants dismissal even after years of litigation. In *Wheble v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 128 Nev. Adv. Op. 11, 272 P.3d 134, 137 (2012), the plaintiff filed the complaint in 2006. The plaintiff failed to attach the affidavit to the complaint and filed an errata to the complaint five days later attaching the expert affidavit. The defendants moved for summary judgment in 2009 arguing the plaintiff's failure to attach an expert affidavit to their initial complaint rendered the entire complaint void. The Supreme Court held a "medical malpractice complaint filed without the required affidavit is void ab initio." *Id.,* 272 P.3d at 137. A void ab initio complaint is "of no force and effect" from the beginning of the action. *Washoe Med Ctr,* 122 Nev. at 1304, 148 P.3d at 794.

The United States Supreme Court has recognized there is a "long-settled rule of judicial administration that no one is entitled to judicial relief for supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers v. Bethlehem Shipbuilding Corp.,* 303 U.S. 41, 50-51, 58 S. Ct. 459, 463 (1938). The "doctrine is applied in a number of different situations." *McKart v. United States*, 395 U.S. 185, 193, 89 S. Ct. 1657, 1662 (1969). The United States Supreme Court has held "strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *McNeil v. United States,* 508 U.S. 106, 113, 113 S.Ct. 1980, 1984 (1993)(citing *Mohasco Corp. v. Silver,* 447 U.S. 807, 826, 100 S.Ct. 2486, 2497, (1980)).

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"Lack of subject matter jurisdiction can be raised at any time during the proceedings and is not waivable." *Mainor v. Nault*, 120 Nev. 750, 761, 101 P.3d 308, 315 (2004). The Supreme Court, however, has held "a party may, by his conduct, become estopped to raise such a jurisdictional question." *Gamble v. Silver Peak Mines,* 35 Nev. 319, 133 P. 936, 937 (1913). The Opposition asserts the Defendants have waived the issue of subject matter jurisdiction by litigating this case, filing in justice court, and by stipulating with the Plaintiffs to bring the dispute before the Court. The Court notes the Defendants filed the Motion after the entry of the Judgment in this matter and prior to the hearing on punitive damages. The Defendants did not raise the purported jurisdictional defect until almost four years after the institution of this action. The Defendants explained during oral argument the issue of subject matter jurisdiction could be raised at any time. When asked by the Court whether the trial could have occurred and the jury was in deliberation whether the Defendants could seek to dismiss the case for lack of subject matter jurisdiction, the Defendants responded in the affirmative. February 8, 2016, Hearing Trans. 9:17-24. The Defendant asserted the parties "could have gone through the entire case, and then if there was an appeal, the Supreme Court could have actually, on their own, without anyone raising the issue" dismissed the action for lack of subject matter jurisdiction pursuant to NRS 38.310. February 8, 2016, Hearing Trans. 33:13-18.

The Defendants allege they were not aware of the application and requirements of NRS 38.310 until preparing for the punitive damages hearing. Dec. of H. Stan Johnson 1:6-10 ("I was doing research on the Opposition to Plaintiffs' Motion for Punitive Damages. I read a case which referenced NRS 38.310. To the best of my knowledge this was when I became aware of NRS 38.310."). The Court notes it is unclear why NRS 38.310 was discovered in the course of punitive damages research and not at a prior time. The Defendants referenced NRS 116 at the March 25, 2015, Evidentiary Hearing. The Defendants acknowledged the requirement to arbitrate because the Real Estate Division "actually have primary jurisdiction" over issues regarding the homeowners association's actions regarding reserves. March 25, 2015, Evidentiary Hearing Trans. 537:15-16. As the Plaintiffs noted at oral argument, the reference to NRS 116 indicates there was an awareness of possible administrative measures that needed to be exhausted prior to the Court having jurisdiction. Defendants' counsel's assertion his comments were limited to NRS 116 and

underfunded reserve damages sought rather than civil actions considered under NRS 38.310, is unpersuasive. The reasoning of *Gamble,* however, is not applicable to the instant case.

The Supreme Court in *Gamble* addressed the jurisdictional argument raised by the respondents, finding, "[a] party in an *appellate* court who has treated the judgment as final and asked that the same be affirmed or reversed will not be heard afterwards, when the decision has gone against him, to contend that the judgment was not final and the court therefore without jurisdiction to determine the questions presented on appeal." *Gamble,* 35 Nev. at 319, 133 P. at 937 (emphasis added). The Supreme Court stated,

> We see no valid reason why the rule of estoppel to question the finality of the judgment ought not to apply as well to a respondent who has assumed throughout the proceedings that the judgment was final. In this case counsel for respondents, not only did not question the finality of the judgment in brief or oral argument, but prayed for its affirmance. In the lower court they stipulated that the statement on motion for a new trial should be regarded as the statement on appeal from the judgment. They also petitioned for and obtained an order for the issuance of a writ of assistance as a part of the process to carry out the judgment, assuming, as they must have done for such purpose, that the judgment was final.

Id., 133 P. at 938. The Supreme Court has further noted defendants who are willing to proceed and be bound by the jurisdiction of the court and the ultimate resolution of the dispute cannot challenge jurisdiction after judgment has been entered against them. *Boisen v. Boisen,* 85 Nev. 122, 124, 451 P.2d 363, 364 (1969)("[H]is assertion of jurisdiction by the counterclaim coupled with his complete acquiescence in the wife's claim to jurisdiction at trial estopped him from raising the issue for the first time on appeal."). The "judgement being in favor of the [Plaintiffs], the [Defendants], who invoked the jurisdiction of the court in the first instance, cannot now be heard to question that jurisdiction." *Grant v. Grant,* 38 Nev. 185, 189, 147 P. 451, 452 (1915).

Clearly there is a tension between the freedom to raise jurisdiction at any time and the waiver or estoppel bars to raise the issue. The Court finds it is constrained to resolve the issue in favor of the Defendants. The Court finds the reasoning of *Gamble* or *Grant* does not extend to this case. The Defendants sought relief through the court system by filing numerous actions in Justice Court. The Defendants later stipulated with the Plaintiffs to resolve the disputes between the parties in District Court. The Opposition 3:18-21. However, the parties did not proceed to trial. It was the action of

this Court in issuing case concluding sanctions which resulted in the judgment in favor of the Plaintiffs. The Court's actions accelerated the conclusion of these proceedings and the parties did not proceed to the ultimate resolution of the matter through trial. The Defendants did not wait to raise the issue of jurisdiction after the conclusion of trial and on appeal such as the parties did in *Gamble.* Accordingly, the Court finds the facts of this case do not warrant estoppel as discussed in *Gamble* and *Grant.*

The Court finds the language of NRS 38.310 mandates the Court to dismiss this action. Under NRS 38.310, "the district court must dismiss any dispute arising from the interpretation, application, or enforcement of homeowners' associations covenants, conditions, and restrictions [ ] if the parties did not first submit the dispute to mediation or arbitration." *Hamm,* 124 Nev. at 293, 183 P.3d at 898. Unlike *Arrowcreek* and *McKnight*, where the parties challenging the court's jurisdiction acted immediately, the Defendants waited to take action until after judgment was rendered against them. This conduct results in great detriment to the Plaintiffs in this action. Yet, the Court finds the Supreme Court's application of mandatory statutory language in *Wheble* requires the Court to dismiss this action, despite the great deal of work the parties and Court have dedicated to this litigation.

The Court finds to act contrary to the mandates of NRS 38.310 would violate the separation of powers, whereby courts are bound to follow the laws passed by legislative bodies. As John Adams noted in his 7th "Novanglus" letter published in 1774, we are "a government of laws, and not of men." "This separation is fundamentally necessary because '[w]ere the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would be the legislator: Were it joined to the executive power the judge might behave with all the violence of an oppressor.'" *Berkson v. LePome,* 126 Nev. 492, 498-99, 245 P.3d 560, 565 (2010)(*citing Galloway v. Truesdell,* 83 Nev. 13, 19, 422 P.2d 237, 242 (1967)). The Court cannot substitute its opinion of what should happen under these facts for the opinion of the people of this State as expressed by their elected legislators.

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This matter has been the subject of extensive motion practice. The Court finds this result to be inimical and unjust after the course of the Defendants' conduct throughout this litigation. The record speaks for itself regarding the lackadaisical and inappropriate approach the Defendants have exhibited toward the Nevada Rules of Civil Procedure, the District Court Rules, the Washoe District Court Rules, and the Court's orders. The Defendants have done everything possible to make the proceedings unjust, dilatory, and costly in abject contravention of NRCP 1. The Court is bound to following the law and its application and interpretation by the Supreme Court. Should this Court feel it had the authority to decide the issue presented based on what was "fair" or "just" it would deny the Motion out of hand. The Defendants clearly do not deserve the result they will receive, but it is the law.

IT IS HEREBY ORDERED the DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION is GRANTED.

DATED this 9 day of May, 2016.

ELLIOTT A. SATTLER
District Judge

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 _____ day of May, 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:

NONE

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 9 day of May, 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:

Jonathan Tew, Esq.

Jarrad Miller, Esq.

Stan Johnson, Esq.

Mark Wray, Esq.

Sheila Mansfield
Administrative Assistant

EXHIBIT “5”

EXHIBIT “5”

EXHIBIT “5”

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

vs.

MEI-GSR HOLDINGS, LLC, a Nevada Limited Liability Company, et al,

Defendants.

_____/

Case No: CV12-02222

Dept. No: 10

ORDER

Presently before the Court is DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION ("the Motion") filed by the Defendants MEI-GSR HOLDINGS, LLC, A NEVADA LIMITED LIABILITY COMPANY, ET AL. ("the Defendants") on December 1, 2015. Plaintiffs ALBERT THOMAS, ET AL., ("the Plaintiffs") filed an OPPOSITION TO MOTION TO DISMISS ("the Opposition") on December 21, 2015. The Defendants filed a REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION ("the Reply") on December 29, 2015. The Court heard argument on the Motion on February 8, 2016, and March 2, 2016. This written ORDER follows.

The COMPLAINT ("Complaint") in this matter was filed on August 27, 2012. The Complaint alleged twelve causes of action: 1) Petition for Appointment of a Receiver as to Defendant Grand Sierra Resort Unit-Owner's Association; 2) Intentional and/or Negligent

Misrepresentation as to Defendant MEI-GSR; 3) Breach of Contract as to Defendant MEI-GSR; 4) Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR; 5) Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR; 6) Consumer Fraud/Nevada Deceptive Trade Practices Act Violations as to Defendant MEI-GSR; 7) Declaratory Relief as to Defendant MEI-GSR; 8) Conversion as to Defendant MEI-GSR; 9) Demand for an Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association; 10) Specific Performance Pursuant to NRS 116.122, Unconscionable Agreement; 11) Unjust Enrichment/Quantum Meruit against Defendant Gage Village Development; and 12) Tortious Interference with Contract and/or Prospective Business Advantage against Defendants MEI-GSR and Gage Development. The Plaintiffs were individuals or other entities who had purchased condominiums in the Grand Sierra Resort ("the GSR"). The Plaintiffs filed the FIRST AMENDED COMPLAINT ("the First Amended Complaint") on September 10, 2012. The First Amended Complaint alleged the same causes of action as the Complaint.

The Defendants filed an ANSWER AND COUNTER CLAIM ("the Answer") on November 21, 2012. The Answer denied the twelve causes of action, asserted eleven Affirmative Defenses, and alleged three Counterclaims. The Counterclaims were: 1) Breach of Contract: 2) Declaratory Relief: and 3) Injunctive Relief. The Plaintiffs filed a SECOND AMENDED COMPLAINT ("the Second Amended Complaint") on March 26, 2013. The Defendants filed an ANSWER TO SECOND AMENDED COMPLAINT AND COUNTER CLAIM ("the Second Answer") on May 23, 2013.

These proceedings have been the subject of numerous allegations of discovery abuses by the Defendants. The Court denied a request for case concluding sanctions in its ORDER REGARDING ORIGINAL MOTION FOR CASE CONCLUDING SANCTIONS filed December 18, 2013 ("the December Order"). The Court found case concluding sanctions were not appropriate; however, the Court felt some sanctions were warranted based on the Defendants' repeated discovery violations. The Court struck all of the Defendants' Counterclaims in the December Order and required the Defendants to pay for the costs of the Plaintiffs' representation in litigating the issue of case concluding sanctions.

The Plaintiffs' renewed their motion for case concluding sanctions on January 27, 2014. The Court conducted a two day hearing regarding a renewed motion for case concluding sanctions. The Court entered an ORDER GRANTING PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS on October 3, 2014 ("the October Order"). The Defendants' Answer was stricken in the October Order. A Default was entered against the Defendants on November 26, 2014. The Court conducted a "prove-up" hearing regarding the issue of damages from March 23 to March 25, 2015. The Court entered the FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT on October 9, 2015 ("the Judgment"). The Court set a hearing on punitive damages for December 10, 2015. The hearing was vacated due to the filing of the Motion.

The Motion contends the Court lacks subject matter jurisdiction over this entire dispute. The Motion alleges the Plaintiffs have failed to abide by procedures codified in NRS 38.310. NRS 38.310 provides:

> 1. 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 by an association; or
>
> (b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property,
>
> may be commenced in any court in this State unless the action has been submitted to mediation or, if the parties agree, has been referred to a program pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.
>
> *2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.*

(emphasis added). The Motion avers the Plaintiffs' claims pertain to the "interpretation, application or enforcement of any covenant, conditions or restrictions" of the governing documents to the GSR condominiums. The governing documents in this matter are the Seventh Amendment to Condominium Declaration of Covenants, Conditions, Restrictions and Reservations of Easements

for Hotel Condominiums at Grand Sierra Resort ("the CC&Rs"), The Grand Sierra Resort Unit Maintenance Agreement ("the UMA"), the Grand Sierra Resort Purchase and Sale Agreement ("the PA"), and the Unit Rental Agreements ("the URA"). The Motion asserts the failure to comply with the provisions of NRS 38.310 requires all action taken in this matter should be vacated and the case dismissed.

The Motion asserts the creation, operation, and management of the Grand Sierra Resort Unit Rental Association ("GSRURA") is expressly provided for within the CC&R's. The fees imposed on the condominium owners, including those within the UMA, are controlled by the CC&Rs. The Motion argues the Second Amend Complaint alleged violations of the CC&R's and UMA, thus requiring their interpretation and requiring the application of NRS 38.310.

The Opposition avers NRS 38.310 is not applicable to the instant case because the Defendants are third-parties outside the scope of NRS 38.310's protections. The Opposition relies on *Hamm v. Arrowcreek Homeowners' Ass'n,* 124 Nev. 290, 183 P.3d 895 (2008), to support their contention the Defendants are not acting as agents of the GSRURA. In *Hamm,* the Supreme Court of the State of Nevada ("the Supreme Court") addressed whether NRS 38.310 applied to collection agencies. The Supreme Court determined the collection agency at issue was in an agency relationship with the HOA because it was hired by the HOA to collect the assessments from the homeowner. "An agency relationship results when one person possesses the contractual right to control another's manner of performing the duties for which he or she was hired." *Id.* at 299, 183 P.3d at 902. The Supreme Court determined "an agency relationship existed here because Arrowcreek HOA hired [the collection agency] to collect the Hamms' alleged assessments and possessed the contractual right to direct" the collection agency to act on the HOA's behalf. *Id.*, 183 P.3d at 902. The Supreme Court concluded NRS 38.310 was applicable to those claims arising from actions performed as the HOA's agent. The Opposition asserts the Supreme Court therefore held NRS 38.310 only applies to the HOA or agents of the HOA.

The Opposition argues MEI-GSR, Gage, and AM-GSR are not agents of GSRURA, thus NRS 38.310 is not applicable to the defendants in this action. The Opposition therefore asserts the dismissal of this case in not warranted. The Opposition argues the evidence presented in this case

fails to demonstrate the GSRURA pays MEI-GSR to operate the rental program. The Opposition asserts MEI-GSR never acted to effectuate the purposes of GSRURA, only to effectuate the goals of MEI-GSR, Gage, and AM-GSR. The Opposition contends the actions of the Defendants were only to benefit themselves and "wholly abandoned the interests and purposes of the [GSRURA]" by never putting the money collected for various fees and assessments into GSRURA reserves and by acting with the intent to eliminate the GSRURA. The Opposition 20:16-17. The Opposition asserts the absence of an agency relationship between the Defendants and GSRURA renders NRS 38.310 inapplicable. The Opposition argues, should the Court find an agency relationship, NRS 38.310 is still inapplicable because the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Eleventh, and Twelfth causes of action are not asserted against GSRURA. The Opposition alleges the first cause of action for the appointment of a receiver is not subject to NRS 38.310 because an arbitrator cannot appoint a receiver.

The Reply argues the Defendants are all within the provisions of NRS 38.300 to NRS 38.360. The Reply contends GSRURA is the homeowner's association for the Grand Sierra hotel-condominium units and is covered by NRS 38.310. Both Gage and AM-GSR are successor Declarants pursuant to the CC&Rs. The liability of both Gage and AM-GSR to the Plaintiffs would be as Declarants under the CC&Rs relating to the operation and management of the units. The Reply asserts all issues in the Second Amended Complaint implicate the interpretation and application of the governing documents, requiring the Plaintiffs to comply with NRS 38.310.

The Opposition also relies on *McKnight Family, LLP v. Adept Mgmt. Serv.*, 129 Nev. Adv. Op. 64, 310 P.3d 555 (2013), to argue NRS 38.310 is inapplicable to claims regarding the right to possess and use property. In *McKnight,* the Supreme Court found:

> An action is exempt from the NRS 38.310 requirements if the action relates to an individual's right to possess and use his or her property. In Hamm, this court determined that a lien on a property does not present an immediate danger of irreparable harm nor is it related to an individual's title to property for NRS 38.310 purposes because a lien exists separate from the property, and the right to use and dispose of the property remains with the owner until the lien is enforced at foreclosure proceedings.

Id., 310 P.3d at 558. The Opposition asserts all causes of action in this case relate to the Plaintiffs' right to use and possess their property. The Opposition argues the evidence establishes the Defendants deliberately interfered with the Plaintiffs' rights to use and possess their property by renting the condominiums without permission and taking steps to force the Plaintiffs to sell or lose their units. The Opposition relies on the Court's finding MEI-GSR wrongfully committed numerous acts of dominion and control over the property of the Plaintiffs in "derogation, exclusion or defiance of the title and/or rights of the individual unit owners." The Judgment 18:15-21. Within the Opposition, and during oral argument, the Plaintiffs argue all their claims pertain to and stem from the title the Plaintiffs hold in the condominium units.

The Reply argues the Plaintiffs' claims do not relate to the title of property. The Reply contends the *McKnight* Court stated claims "relating to title" are exempt from NRS 38.310, not claims regarding the right to possess and use property. The *McKnight* Court addressed wrongful foreclosure, quiet title, and slander of title. The Supreme Court found only the quite title claim was exempt from NRS 38.300(3) because it required the district court to determine who holds superior title to a land parcel. The Reply contends the Plaintiffs' claims exist separate from the title to land and are civil actions per NRS 38.300.

The Court finds none of the claims in the Second Amended Complaint would impact the owners' title to the units; therefore the Court will not deny the Motion on this ground. The Court finds the claims raised by the Plaintiffs require interpretation and application of the governing documents. The Plaintiffs' causes of action relate to matters provided for in the governing documents. *McKnight* limited its analysis to a claim for quiet title. The causes of action in this matter do not concern claims of superior title. To determine whether there was interference with the use of the Plaintiffs' ability to use their condominiums necessarily requires interpretation of the CC&Rs. To apply *McKnight*'s "possession and use" language as the Plaintiffs request would be a broader application than the Supreme Court has permitted in *McKnight*. *McKnight,* 129 Nev. Adv. Op. 64, 310 P.3d at 558. Pursuant to the Plaintiffs' argument, almost any alleged violations of the CC&Rs could arguably be framed as interference with the use and possession of one's property.

This is an unreasonable reading of the applicable statute. "If the plain meaning of a statute is clear on its face, then [this court] will not go beyond the language of the statute to determine its meaning." *Rosequist v. Int'l Ass'n of Firefighters,* 118 Nev. 444, 448, 49 P.3d 651, 653 (2002).[1]

The Opposition next contends NRS 38.310 does not pertain to subject matter jurisdiction. The Opposition asserts NRS 38.310 pertains to justiciability and not jurisdiction. The Opposition argues "the Nevada Legislature *cannot divest the District Court of subject matter jurisdiction.*" The Opposition 27:20-22 (emphasis in original). The Opposition alleges the Supreme Court has erred in finding a party must exhaust administrative remedies prior to proceeding with an action in the district court. The Opposition 29:3-5. The Opposition cites *City of Henderson v. Kilgore,* 122 Nev. 331, 336, 131 P.3d 11, 15, n.10 (2006), to argue the failure to exhaust administrative remedies does not pertain to subject matter jurisdiction, but pertains to justiciability. The Reply contends NRS 38.310 provides a mandatory statutory administrative remedy which deprives the Court of subject matter jurisdiction due to the Plaintiffs' failure to exhaust all administrative measures.

The Court finds the Opposition's argument on this issue be unpersuasive. Access to the courts has been limited by the legislature via requirements to exhaust available administrative remedies. "[W]hether couched in terms of subject-matter jurisdiction or ripeness, a person generally must exhaust all available administrative remedies before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable." *Allstate Ins. Co. v. Thorpe,* 123 Nev. 565, 571, 170 P.3d 989, 993 (2007). There are various types of legal actions which the legislature has placed conditions upon before a party may seek relief in the district court. Similar to the requirements of

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[1] *McKnight* has been cited twenty-four times by the Federal District Court for the District of Nevada ("Federal District Court") and once in an unpublished decision by the Supreme Court. The Court finds these cases to be persuasive, but not precedential, authority. In reversing the granting of a motion to dismiss a quiet title action, the Supreme Court stated *McKnight* recognized a quiet title claim is exempt from NRS 38.310, but did not expand *McKnight*'s holding. *LN Mgmt., LLC v. Caban*, 64833, 2014 WL 5795500, at *1 (Nev. Nov. 5, 2014). The Federal District Court has found claims for unjust enrichment, bad faith, and wrongful foreclosure fall under the confines of NRS 38.310 and such claims must be dismissed. The Federal District Court has noted *McKnight* found quiet title claims are expressly exempt from NRS 38.310, but has not expanded this exemption beyond causes of action for quiet title. *Carrington Mortgage Services, LLC v. Absolute Bus. Sols., LLC; Estrella Homeowners Ass'n*, 215CV01862JADPAL, 2016 WL 1465339, at *3 (D. Nev. 2016); *U.S. Bank, N.A., v. Woodchase Condominum Homeowners Association & Jason Edington,* 215CV01153APGGWF, 2016 WL 1734085, at *2 (D. Nev. 2016); *Abet Justice LLC v. First Am. Tr. Servicing Sols., LLC,* 214CV908JCMGWF, 2016 WL 1170989, at *3 (D. Nev. 2016); *U.S. Bank, Nat. Ass'n v. NV Eagles, LLC*, 2:15-CV-00786-RCJ, 2015 WL 4475517, at *3 (D. Nev. 2015).

NRS 38.310, NRS 613.420, requires the exhaustive of administrative remedies as a prerequisite for filing employment discrimination claims in district court. *Pope v. Motel 6,* 121 Nev. 307, 114 P.3d 277 (2005) ("NRS 613.420 requires an employee alleging employment discrimination to exhaust her administrative remedies by a filing a complaint with NERC before filing a district court action."). The Supreme Court has acknowledged "the legislature intended that claims involving employment discrimination were to be administratively exhausted prior to seeking redress in the district courts." *Palmer v. State,* 106 Nev. 151, 153, 787 P.2d 803, 804 (1990). The Supreme Court has upheld similar application of administrative remedy requirements in various matters. *See* NRS 679B.120; NRS 463.310; NRS 374.640; NRS 278.3195; NRS 41A.071.

In *State, Nevada Dept. of Taxation v. Scotsman Mfg. Co., Inc.,* 109 Nev. 252, 254, 849 P.2d 317, 319 (1993), the Supreme Court addressed whether NRS 374.640(1) and NRS 374.680 required Scotsman to file a refund claim with the Department of Taxation and Tax Commission prior to filing a claim in the district court. The Supreme Court found "[a] taxpayer must exhaust its administrative remedies before seeking judicial relief; failure to do so deprives the district court of subject matter jurisdiction." *Id.,* 849 P.2d at 319.

The Supreme Court discussed the exhaustion of administrative remedies requirement in *Benson v. State Eng'r,* 131 Nev. Adv. Op. 78, 358 P.3d 221 (2015). In *Benson,* the district court granted the State Engineer's motion to dismiss for failure to exhaust administrative remedies. The Supreme Court affirmed and found the party was required to "exhaust all available administrative remedies pertaining to the State Engineer's decision on a water permit before filing a petition for judicial review with the district court." *Id.,* 358 P.3d at 228. In *Mesagate Homeowners' Ass'n v. City of Fernley*, 124 Nev. 1092, 1099, 194 P.3d 1248, 1252 (2008), the Supreme Court again found exhaustion of administrative remedies was required "before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable." The Supreme Court held in *Mesagate* the plaintiff failed to exhaust their administrative remedies by not appealing the City's approval of a building permit to the Board of Appeals established pursuant to NRS 278.3195, and the matter was nonjusticable as a result.

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Similar to the language in NRS 38.310, NRS 41A.071 states if an action for medical malpractice "is filed in the district court, the district court *shall* dismiss the action, without prejudice, if the action is filed without a [medical expert] affidavit." (emphasis added). Both NRS 38.310 and NRS 41A.071 contain "shall." Shall "is mandatory and does not denote judicial discretion." *Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex. re. County of Washoe,* 122 Nev. 1298, 1303, 148 P.3d 790 (2006). "The Legislature's choice of the words 'shall dismiss' instead of 'subject to dismissal' indicated that the Legislature intended that the court have no discretion with respect to dismissal." *Id.,* 148 P.3d at 790.

The Supreme Court has recently found failure to comply with the affidavit requirement warrants dismissal even after years of litigation. In *Wheble v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 128 Nev. Adv. Op. 11, 272 P.3d 134, 137 (2012), the plaintiff filed the complaint in 2006. The plaintiff failed to attach the affidavit to the complaint and filed an errata to the complaint five days later attaching the expert affidavit. The defendants moved for summary judgment in 2009 arguing the plaintiff's failure to attach an expert affidavit to their initial complaint rendered the entire complaint void. The Supreme Court held a "medical malpractice complaint filed without the required affidavit is void ab initio." *Id.,* 272 P.3d at 137. A void ab initio complaint is "of no force and effect" from the beginning of the action. *Washoe Med Ctr,* 122 Nev. at 1304, 148 P.3d at 794.

The United States Supreme Court has recognized there is a "long-settled rule of judicial administration that no one is entitled to judicial relief for supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers v. Bethlehem Shipbuilding Corp.,* 303 U.S. 41, 50-51, 58 S. Ct. 459, 463 (1938). The "doctrine is applied in a number of different situations." *McKart v. United States*, 395 U.S. 185, 193, 89 S. Ct. 1657, 1662 (1969). The United States Supreme Court has held "strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." *McNeil v. United States,* 508 U.S. 106, 113, 113 S.Ct. 1980, 1984 (1993)(citing *Mohasco Corp. v. Silver,* 447 U.S. 807, 826, 100 S.Ct. 2486, 2497, (1980)).

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"Lack of subject matter jurisdiction can be raised at any time during the proceedings and is not waivable." *Mainor v. Nault*, 120 Nev. 750, 761, 101 P.3d 308, 315 (2004). The Supreme Court, however, has held "a party may, by his conduct, become estopped to raise such a jurisdictional question." *Gamble v. Silver Peak Mines,* 35 Nev. 319, 133 P. 936, 937 (1913). The Opposition asserts the Defendants have waived the issue of subject matter jurisdiction by litigating this case, filing in justice court, and by stipulating with the Plaintiffs to bring the dispute before the Court. The Court notes the Defendants filed the Motion after the entry of the Judgment in this matter and prior to the hearing on punitive damages. The Defendants did not raise the purported jurisdictional defect until almost four years after the institution of this action. The Defendants explained during oral argument the issue of subject matter jurisdiction could be raised at any time. When asked by the Court whether the trial could have occurred and the jury was in deliberation whether the Defendants could seek to dismiss the case for lack of subject matter jurisdiction, the Defendants responded in the affirmative. February 8, 2016, Hearing Trans. 9:17-24. The Defendant asserted the parties "could have gone through the entire case, and then if there was an appeal, the Supreme Court could have actually, on their own, without anyone raising the issue" dismissed the action for lack of subject matter jurisdiction pursuant to NRS 38.310. February 8, 2016, Hearing Trans. 33:13-18.

The Defendants allege they were not aware of the application and requirements of NRS 38.310 until preparing for the punitive damages hearing. Dec. of H. Stan Johnson 1:6-10 ("I was doing research on the Opposition to Plaintiffs' Motion for Punitive Damages. I read a case which referenced NRS 38.310. To the best of my knowledge this was when I became aware of NRS 38.310."). The Court notes it is unclear why NRS 38.310 was discovered in the course of punitive damages research and not at a prior time. The Defendants referenced NRS 116 at the March 25, 2015, Evidentiary Hearing. The Defendants acknowledged the requirement to arbitrate because the Real Estate Division "actually have primary jurisdiction" over issues regarding the homeowners association's actions regarding reserves. March 25, 2015, Evidentiary Hearing Trans. 537:15-16. As the Plaintiffs noted at oral argument, the reference to NRS 116 indicates there was an awareness of possible administrative measures that needed to be exhausted prior to the Court having jurisdiction. Defendants' counsel's assertion his comments were limited to NRS 116 and

underfunded reserve damages sought rather than civil actions considered under NRS 38.310, is unpersuasive. The reasoning of *Gamble,* however, is not applicable to the instant case.

The Supreme Court in *Gamble* addressed the jurisdictional argument raised by the respondents, finding, "[a] party in an *appellate* court who has treated the judgment as final and asked that the same be affirmed or reversed will not be heard afterwards, when the decision has gone against him, to contend that the judgment was not final and the court therefore without jurisdiction to determine the questions presented on appeal." *Gamble,* 35 Nev. at 319, 133 P. at 937 (emphasis added). The Supreme Court stated,

> We see no valid reason why the rule of estoppel to question the finality of the judgment ought not to apply as well to a respondent who has assumed throughout the proceedings that the judgment was final. In this case counsel for respondents, not only did not question the finality of the judgment in brief or oral argument, but prayed for its affirmance. In the lower court they stipulated that the statement on motion for a new trial should be regarded as the statement on appeal from the judgment. They also petitioned for and obtained an order for the issuance of a writ of assistance as a part of the process to carry out the judgment, assuming, as they must have done for such purpose, that the judgment was final.

Id., 133 P. at 938. The Supreme Court has further noted defendants who are willing to proceed and be bound by the jurisdiction of the court and the ultimate resolution of the dispute cannot challenge jurisdiction after judgment has been entered against them. *Boisen v. Boisen,* 85 Nev. 122, 124, 451 P.2d 363, 364 (1969)("[H]is assertion of jurisdiction by the counterclaim coupled with his complete acquiescence in the wife's claim to jurisdiction at trial estopped him from raising the issue for the first time on appeal."). The "judgement being in favor of the [Plaintiffs], the [Defendants], who invoked the jurisdiction of the court in the first instance, cannot now be heard to question that jurisdiction." *Grant v. Grant,* 38 Nev. 185, 189, 147 P. 451, 452 (1915).

Clearly there is a tension between the freedom to raise jurisdiction at any time and the waiver or estoppel bars to raise the issue. The Court finds it is constrained to resolve the issue in favor of the Defendants. The Court finds the reasoning of *Gamble* or *Grant* does not extend to this case. The Defendants sought relief through the court system by filing numerous actions in Justice Court. The Defendants later stipulated with the Plaintiffs to resolve the disputes between the parties in District Court. The Opposition 3:18-21. However, the parties did not proceed to trial. It was the action of

this Court in issuing case concluding sanctions which resulted in the judgment in favor of the Plaintiffs. The Court's actions accelerated the conclusion of these proceedings and the parties did not proceed to the ultimate resolution of the matter through trial. The Defendants did not wait to raise the issue of jurisdiction after the conclusion of trial and on appeal such as the parties did in *Gamble.* Accordingly, the Court finds the facts of this case do not warrant estoppel as discussed in *Gamble* and *Grant.*

The Court finds the language of NRS 38.310 mandates the Court to dismiss this action. Under NRS 38.310, "the district court must dismiss any dispute arising from the interpretation, application, or enforcement of homeowners' associations covenants, conditions, and restrictions [ ] if the parties did not first submit the dispute to mediation or arbitration." *Hamm,* 124 Nev. at 293, 183 P.3d at 898. Unlike *Arrowcreek* and *McKnight*, where the parties challenging the court's jurisdiction acted immediately, the Defendants waited to take action until after judgment was rendered against them. This conduct results in great detriment to the Plaintiffs in this action. Yet, the Court finds the Supreme Court's application of mandatory statutory language in *Wheble* requires the Court to dismiss this action, despite the great deal of work the parties and Court have dedicated to this litigation.

The Court finds to act contrary to the mandates of NRS 38.310 would violate the separation of powers, whereby courts are bound to follow the laws passed by legislative bodies. As John Adams noted in his 7th "Novanglus" letter published in 1774, we are "a government of laws, and not of men." "This separation is fundamentally necessary because '[w]ere the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would be the legislator: Were it joined to the executive power the judge might behave with all the violence of an oppressor.'" *Berkson v. LePome,* 126 Nev. 492, 498-99, 245 P.3d 560, 565 (2010)(*citing Galloway v. Truesdell,* 83 Nev. 13, 19, 422 P.2d 237, 242 (1967)). The Court cannot substitute its opinion of what should happen under these facts for the opinion of the people of this State as expressed by their elected legislators.

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This matter has been the subject of extensive motion practice. The Court finds this result to be inimical and unjust after the course of the Defendants' conduct throughout this litigation. The record speaks for itself regarding the lackadaisical and inappropriate approach the Defendants have exhibited toward the Nevada Rules of Civil Procedure, the District Court Rules, the Washoe District Court Rules, and the Court's orders. The Defendants have done everything possible to make the proceedings unjust, dilatory, and costly in abject contravention of NRCP 1. The Court is bound to following the law and its application and interpretation by the Supreme Court. Should this Court feel it had the authority to decide the issue presented based on what was "fair" or "just" it would deny the Motion out of hand. The Defendants clearly do not deserve the result they will receive, but it is the law.

IT IS HEREBY ORDERED the DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION is GRANTED.

DATED this 9 day of May, 2016.

ELLIOTT A. SATTLER
District Judge

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 _____ day of May, 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:

NONE

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 9 day of May, 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:

Jonathan Tew, Esq.

Jarrad Miller, Esq.

Stan Johnson, Esq.

Mark Wray, Esq.

Sheila Mansfield
Administrative Assistant

EXHIBIT “4”

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FILED
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2014-10-03 02:02:11 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4636596

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

vs.

MEI-GSR Holdings, LLC, a Nevada Limited Liability Company, et al,

Defendants.

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Case No: CV12-02222

Dept. No: 10

ORDER GRANTING PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS

ALBERT THOMAS et al. ("the Plaintiffs") filed the PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS ("the Motion") on January 27, 2014. MEI-GSR Holdings, LLC ("the Defendants") filed the DEFENDANTS' OPPOSITION TO THE PLAINTIFFS' MOTION FOR CASE-TERMINATING SANCTIONS ("the Opposition") on February 25, 2014.[1] The Plaintiffs filed the REPLY IN SUPPORT OF MOTION FOR CASE- TERMINATING SANCTIONS ("the Reply") on March 10, 2014. The Plaintiffs submitted the matter for decision on

[1] Pursuant to a stipulation of the parties, the Court entered the ORDER EXTENDING BRIEFING SCHEDULE on February 13, 2014. That order required the Defendants to file their opposition by the close of business February 24, 2014. This is yet one more example of the Defendants flaunting or disregarding rules of practice in this case. The Court has also had to hold counsel in contempt on two occasions: (1) continuous untimely filing on May 14, 2014; and (2) being one-half hour late to the hearing on August 1, 2014.

March 11, 2014. The Court held hearings on the Motion on August 1, 2014, and August 11, 2014.

The Plaintiffs previously filed a Motion for Case Concluding Sanctions on September 24, 2013. The Court held a three-day hearing October 21, 2013 to October 23, 2013 ("October 2013 hearing"). The Court struck the Defendants' counterclaims and ordered that the Defendants pay all attorney fees and costs associated with the three-day hearing. The Motion renews the Plaintiffs' request for case terminating sanctions and asks the Court to strike the Defendants' Answer. The Motion asserts that the Defendants' discovery conduct prior to October of 2013 was willful and did severely prejudice the Plaintiffs. The Motion argues that during the October 2013 hearing neither the Court nor the Plaintiffs had a complete understanding of the Defendants' discovery misconduct. The Motion argues that since October of 2013, the Defendants have continued to violate discovery orders and delay discovery.

The Opposition contends that the Defendants have engaged in no conduct warranting the imposition of case concluding sanctions. The Opposition argues the allegations made by the Plaintiffs pre-date the October 2013 hearing. The Opposition argues that no evidence has been lost or fabricated, and that the Defendants have not willfully obstructed the discovery process. The Defendants submit that they have cooperated with the Plaintiffs' effort to locate 224,000 e-mails that contain a word that might relate to the case even though the Defendants believe the vast majority of those e-mails to be irrelevant. The Opposition further argues that the Defendants have cooperated with the Plaintiffs' desire to run a "VB Script" on the Defendants' computer system that may have violated third-party copyrights but which ultimately located no additional e-mails. The Opposition argues that the e-mail production has been expedited but has taken time due to the volume of e-mails. The Opposition contends that the e-mail privilege log that the Defendants submitted

complied with case law of the Ninth Circuit and that they were not required to comply with the Discovery Commissioner's recommendation until the Court adopted the order. [2]

The Nevada Rules of Civil Procedure provide that a party who fails to comply with an order can be sanctioned for that failure. NRCP 37(b). Sanctions against a party are graduated in severity and can include: designation of facts to be taken as established; refusal to allow the disobedient party to support or oppose designated claims or defenses; prohibition of the offending party from introducing designated matters in evidence; an order striking out pleadings or parts thereof or dismissing the action; or rendering a judgment by default against the disobedient party. NRCP 37(b)(2). A disobedient party can also be required to pay the reasonable expenses, including attorney fees caused by the failure. NRCP 37(b)(2)(E).

Discovery sanctions are properly analyzed under Young v Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990). Young requires "every order of dismissal with prejudice as a discovery sanction be supported by an express, careful and preferably written explanation of the court's analysis of the pertinent factors." Young, 106 Nev. at 93, 787 P.2d at 780. The Young factors are as follows: (1) the degree of willfulness of the offending party; (2) the extent to which the non-offending party would be prejudiced by a lesser sanction; (3) the severity of the sanction of dismissal relative to the severity of the discovery abuse; (4) whether any evidence has been irreparably lost; (5) the feasibility and fairness of less severe sanctions; (6) the policy favoring adjudication on the merits; (7) whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney; and (8) the need to deter parties and future litigants from similar

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[2] The Court adopted the Discovery Commissioner's recommendation regarding the privilege log on March 13, 2014. The Court noted that the current discovery situation is a product of the Defendants' discovery failures. The Court further stated that any lack of time to prepare an adequate privilege log was a result of the Defendants' inaction and lack of participation in the discovery process.

abuses. Id. In discovery abuse situations where possible case-concluding sanctions are warranted, the trial judge has discretion in deciding which factors are to be considered. Bahena v. Goodyear Tire & Rubber Co., 126 Nev. Adv. Op. 57, 245 P.3d 1182 (2010). The Young factor list is not exhaustive and the Court is not required to find that all factors are present prior to making a finding. "Fundamental notions of fairness and due process require that discovery sanctions be just and . . . relate to the specific conduct at issue." GNLV Corp v. Service Control Corp, 111 Nev. 866, 870, 900 P.2d 323, 325 (1995).

The Court analyzed the Young factors at the October 2013 hearing and found: (1) the Defendants failed to comply with discovery orders and failed to meet the extended production deadlines; (2) the discovery failures were not willful; (3) lesser sanctions could be imposed, and such sanctions would not unduly cause the Plaintiffs prejudice; (4) the severity of the discovery failures did not warrant ending the case in favor of the Plaintiffs; (5) no evidence was presented that evidence had been irreparably lost; (6) any misconduct of the attorneys did not unfairly operate to penalize the Defendants; (7) there were alternatives to the requested case-concluding sanctions that could serve to deter a party from engaging in abusive discovery practices in the future; and (8) non-case concluding sanctions could be used to accomplish both the policy of adjudicating cases on the merits and the policy of deterring discovery abuses.

The Defendants have, to date, violated NRCP 33 and NRCP 34 (twice). The Defendants have violated three rulings of the Discovery Commissioner and three confirming orders. The Court is aware of four violations of its own orders. The information that has been provided to the Plaintiffs during discovery has been incomplete, disclosed only with a Court order, and often turned over very late with no legitimate explanation for the delays. The Plaintiffs have written dozens of letters and e-mails to the Defendants' counsel in an effort to facilitate discovery. The Plaintiffs have filed five

motions to compel and five motions for sanctions. The Court held multiple hearings on discovery matters including two extensive, multi-day hearings on case concluding sanctions. The Court is highly concerned about the Defendants' conduct during discovery and the resulting prejudice to the Plaintiffs. Based on the progress of discovery, the Defendants' ongoing discovery conduct, and the Plaintiffs' Motion the Court has chosen to revisit the Young factors and reassess the decision made at the October 2013 hearing.

The first factor of the Young analysis is willfulness. The Plaintiffs allege that the discovery failures in this case were deliberate and willful. Repeated discovery abuses and failure to comply with district court orders evidences willfulness. Foster v. Dingwall, 126 Nev. Op. 6, 227 P.3d 1042 (2010)(*citing*, Young, 106 Nev. at 93, 787 P.2d at 780). Willfulness may be found when a party fails to provide discovery and such failure is not due to an inability on the offending party's part. Havas v Bank of Nevada, 96 Nev. 567, 570, 613 P.2d 706, 708 (1980). The Nevada Supreme Court has not opined that it is necessary to establish wrongful intent to establish willfulness.

At the October 2013 hearing, the Defendants argued that they were substantially in compliance with the June 17, 2013, discovery request. The Defendants initially disclosed between 200-300 e-mails. The Defendants argued that the discovery dispute was only over a few irrelevant documents. Since the October 2013 hearing, additional e-mail searches have uncovered 224,226 e-mails not previously disclosed to the Plaintiffs. The Court now has serious doubt that the representations made by the Defendants at the October 2013 hearing were accurate and genuine.

The Defendants designated Caroline Rich, the Defendants' previous Controller, to gather the discovery information with assistance from their internet technology department ("IT"). The Court initially believed that Ms. Rich did her best to produce the discovery information (including e-mails) she felt was relevant. Ms. Rich did not have direct access to the IT system of the Defendants. Nor

did she have access to the e-mails of all staff members. For instance, she did not have access to the e-mails of those employees who outranked her. The Plaintiffs have subsequently discovered e-mails where Ms. Rich is a participant in e-mail correspondence that was directly relevant to the search. It would be excusable if Ms. Rich overlooked e-mail sent by other employees or did not have access to her superiors' e-mail accounts. However, it now appears that she did not disclose e-mails in which she was a participant in the correspondence. This calls into question her credibility.

The Court is further troubled by the representations of the Defendants' counsel, Sean Brohawn, that the volume of subsequent e-mails was going to be inconsequential and it would take minimal time for the Defendants to produce. The Court would have found the information that there were potentially hundreds of thousands of additional e-mails to be critical in reaching its October 2013, decision. The discrepancy between the 200-300 e-mails produced in the original discovery and the 224,226 subsequently identified is enormous. The Court cannot attribute this discrepancy to a good faith error. The discrepancy appears at best to be a failure of the Defendants to adequately search their e-mail system in response to the initial discovery requests. At worst, it is a deliberate failure to comply with the discovery rules.

The Defendants had an obligation to engage in an adequate search of the information requested in discovery, and to designate the appropriate party to testify regarding the discovery production. *See generally*, NRCP 16.1(b); NRCP 26(b); NRCP 26 (e). Defendants' counsel had the responsibility to oversee and supervise the collection of the discovery. *See*, NRCP 16.1(e)(3). Both the Defendants and the Defendants' counsel failed to meet their discovery obligations. That failure led to the Court being provided seriously inaccurate information at the October 2013 hearing.

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The Defendants have consistently violated Nevada Rules of Civil Procedure, orders compelling discovery, and the Court's directives. The Defendants have not proffered any legitimate or lawful explanation for their conduct. The Defendants have not objected to or requested clarification of discovery requests. Many times they have simply not responded. Other responses have been incomplete. Often, information was only produced after the Plaintiffs filed motions to compel. At various hearings and conferences the Defendants produced previously undisclosed discovery information that suddenly appeared. The Court reverses its earlier decision and finds that the Defendants discovery failures are in fact willful.

The Court next considered the second Young factor possible prejudice to the Plaintiffs if a lesser sanction were imposed. The Nevada Supreme Court has upheld entries of default where litigants engage in abusive litigation practices that cause interminable delays. Foster, 126 Nev. Op. 6, 227 P.3d at 1048 (*citing* Young, 106 Nev. at 93, 787 P.2d at 780). Willful and recalcitrant disregard of the judicial process presumably prejudices the non-offending party. Id. The discovery received by the Plaintiffs had to be forced from the Defendants, with multiple motions to compel, which has greatly increased the Plaintiffs' costs. The Plaintiffs have been hindered in developing their causes of action and preparing for trial. In reviewing the possible prejudice to the Plaintiffs, the Court finds that the Plaintiffs have been more prejudiced than was apparent at the time of the October 2013 hearing.

The Plaintiffs were not provided with 200,000 e-mails at the outset of discovery in accordance with their June 17, 2013, Request for Production. The Plaintiffs conducted their depositions prior to receiving the additional e-mail and financial information. The value of a deposition is significantly diminished if the deposing party does not have all the relevant information they need prior to the deposition. Given the new information, the Plaintiffs may need to re-depose

those individuals. The Plaintiffs discovered additional employees of the Defendants who would potentially have information and require deposition. The Plaintiffs estimated that after review of the e-mails, which was still ongoing at the time of the August hearings, that they would need another six to nine months to prepare the case for trial. That would result in trial almost a year and a half after the original trial date. As additional information has to come light, it has become apparent that the Defendants' discovery conduct has severely prejudiced the Plaintiffs' case.

Thirdly, the Court compared the severity of dismissal to the severity of the discovery abuse. "The dismissal of a case, based upon a discovery abuse . . . should be used only in extreme situations; if less drastic sanctions are available, they should be utilized." GNLV Corp., 111 Nev. at 870, 900 P.2d at 325 (*citing* Young, 106 Nev. at 92, 787 P.2d at 779-80). The Court is no longer persuaded that the effort of Ms. Rich was in good faith or that the Defendants designated the appropriate party to undertake the production of discovery. Ms. Rich was a relatively new employee, she did not have access to her superiors' e-mail and records, and she did not know the names and positions of other Defendants' employees. The Court is not convinced that the Defendants have properly made discovery disclosures such that the Plaintiffs have had a fair opportunity to develop their litigation plan. The Court is keenly aware that granting the Plaintiffs' motion would effectively end the case, leaving only the issue of damages to be decided. The Defendants have abused and manipulated the discovery rules and case-terminating sanctions is the option available to properly punish the Defendants' conduct.

In looking at the fourth factor in October 2013, the Court noted that there was no evidence presented at the hearing or raised by the moving papers that evidence had been irreparably lost. The Plaintiffs argue that information has been lost or destroyed. The fact that evidence had not been produced is not the same as the destruction or loss of evidence. There remains no evidence to

indicate that evidence has been lost or destroyed by the Defendants. This factor remains consistent in the reevaluation of the October 2013, decision.

Fifth, in October 2013, the Court found that there were many alternatives to the requested case-concluding sanctions that could serve to deter a party from engaging in abusive discovery practices in the future. The Defendants have received four sanctions for their discovery failures. The Defendants' conduct since the October 2013 hearing indicates that the previously imposed sanctions have not been sufficient to modify the Defendants' behavior. Time has shown that there are no effective alternatives to case concluding sanctions.

The Court considered two major policy factors together. Nevada has a strong policy, and the Court firmly believes, that cases should be adjudicated on their merits. *See*, Scrimer v. Dist. Court, 116 Nev. 507, 516-517, 998 P.2d 1190, 1196 (2000). *See also*, Kahn v. Orme, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992). Further, there is a need to deter litigants from abusing the discovery process established by Nevada law. When a party repeatedly and continuously engaged in discovery misconduct the policy of adjudicating cases on the merits is not furthered by a lesser sanction. Foster, 126 Nev. Op. 6, 227 P.3d at 1048. In revaluating the matter, the Court again considered the major policy that cases be adjudicated on their merits. The Court must balance that policy with the need to deter litigants from abusing the discovery process. The information provided at the October 2013 hearing was disingenuous. The Defendants' discovery abuse persisted after the October 2013 hearing despite the severity of the sanctions imposed. The Court is now convinced that the Defendants' actions warrant the imposition of case concluding sanctions. In light of Defendants' repeated and continued abuses, the policy of adjudicating cases on the merits is not furthered in this case. The ultimate sanctions are necessary to demonstrate to future litigants that they are not free to disregard and disrespect the Court's orders.

Lastly, the Court considered whether striking the Answer would unfairly operate to penalize the Defendants for the misconduct, if any, of their attorneys. As previously stated, there were failures to produce and abuses of discovery on behalf of the Defendants. The Court remains concerned that the attorneys for the Defendants did not adequately supervise discovery and misrepresented the number of e-mails at issue for disclosure. There remains no evidence to show that Defendants' counsel directed their client to hide or destroy evidence. Any misconduct on the part of the attorney does not unfairly operate to punish the Defendants.

The Nevada Supreme Court offered guidance as to how sanctions are to be imposed. "Fundamental notions of fairness and due process require that discovery sanctions be just and . . . relate to the specific conduct at issue." GNLV Corp., 111 Nev. at 870, 900 P.2d at 325 (*citing* Young, 106 Nev. at 92, 787 P.2d at 779-80). The Court recognizes that discovery sanctions should be related to the specific conduct at issue. The discovery abuse in this case is pervasive and colors the entirety of the case. The previous discovery sanctions have been unsuccessful in deterring the Defendants' behavior. Due to the severity and pattern of the Defendants' conduct there are no lesser sanctions that are suitable.

Despite the October 2013 hearing sanctions, the Defendants have continued their noncompliant discovery conduct. The stern sanctions which the Court imposed on the Defendants in October 2013, did not have the desired effect of bringing the Defendants' conduct in line with the discovery rules. After the October 2013 hearing, the Court identified that the major outstanding discovery issue between the parties was the Plaintiffs' access to Defendants' e-mail system. The parties were ordered to work together to develop terms to be used in the e-mail search. The Defendants were ordered to review the 224, 226 e-mails identified by November 25, 2013. The Defendants were ordered to deliver a privilege log for those e-mails the Defendants believed should

not be provided to the Plaintiffs. Further, the Defendants were ordered to provide a copy of withheld e-mails to the court with the privilege log for an in-camera review, and e-mail a copy of the privilege log to the Plaintiffs. The Plaintiffs were to be provided access to all the e-mails not designated in the privilege log beginning November 26, 2013. The Defendants failed to produce those e-mails by the Courts' deadline and the Plaintiffs moved for sanctions. The parties were ordered to submit the Defendants' November 25, 2013, privilege log to Discovery Commissioner, Wesley Ayres, with corresponding briefing. Commissioner Ayres determined that the privilege log was legally insufficient. The result was the Defendants waived any right to withhold e-mails identified in their privilege log and the Plaintiffs were entitled to all 78,473 e-mails containing the search term "condo" or "condominium". The Court adopted the recommendation of the Discovery Commissioner finding that the Defendants' objection to the recommendation based on shortage of time to review the privilege log was a result of the Defendants' inaction and lack of participation in the discovery process. The Defendants still did not release the e-mails and the Plaintiffs filed a motion to compel.

Nevada Rule of Civil Procedure 1 indicates that the rules of civil procedure are to be administered to secure the "just, speedy, and inexpensive determination of every action." It appears to the Court that the Defendants' focus in this case has been not to comply with NRCP 1. The Defendants' failures to comply with discovery rules have been numerous and pervasive throughout the case. The trial has been rescheduled multiple times resulting in a delay of over a year. The Defendants' failures have led to additional costs to the Plaintiffs and required the Plaintiffs to seek relief from the Court on multiple occasions. This has placed an undue burden on both the Plaintiffs and the Court. The Court has employed progressive sanctions to address discovery abuses. Those sanctions have not been adequate to curtail the Defendants' improper conduct. The Court has repeatedly warned the Defendants that if it found the information provided at the October 2013

hearing to be disingenuous, or if discovery abuses continued it would grant case terminating sanctions.

NOW, THEREFORE IT IS HEREBY ORDERED that the Motion is GRANTED.

IT IS FURTHER ORDERED, that the Defendants' Answer is stricken. The Parties are ORDERED to contact the Judicial Assistant for Department 10 within ten days from the date of this order to set a hearing to prove up damages.

DATED this 3 day of October, 2014.

ELLIOTT A. SATTLER
District Judge

CERTIFICATE OF MAILING

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

Jonathan Tew, Esq. for Cayenne Trust, et al
Jarrad Miller, Esq. for Cayenne Trust, et al
G. Robertson, Esq. for Cayenne Trust, et al
Sean Brohawn, Esq. for Grand Sierra Resort Unit-Owners Association, et al
Stan H. Johnson, Esq. for Grand Sierra Resort Unit-Owners Association, et al.

DATED this 3 day of October, 2014.

SHEILA MANSFIELD
Judicial Assistant

EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

FILED
Electronically
12-18-2013:11:09:01 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4206388

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

ALBERT THOMAS, individually, et al,

Plaintiffs,

vs.

MEI-GSR Holdings, LLC, a Nevada Limited Liability Company, et al,

Defendants.

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Case No: CV12-02222

Dept. No: 10

ORDER REGARDING ORIGINAL MOTION FOR CASE CONCLUDING SANCTIONS

Albert Thomas et al ("the Plaintiffs") filed a Motion for Sanctions Under NRCP 37(b) for Failure to Comply with Court Orders ("the Motion") on September 24, 2013. The Court enter an Oder Shortening time on September 27, 2013, in light of the fast-approaching trial date. The Defendants were to file an opposition no later than 5:00 p.m. on October 2, 2013. No opposition was filed by this deadline. On October 3, 2103, the Plaintiffs requested that this matter be submitted for decision. Approximately one hour later, MEI-GSR Holdings, LLC et al ("the Defendants") filed an Opposition to Plaintiffs' Motion for Sanctions ("the Opposition"). The Plaintiffs filed a Reply in Support of Plaintiffs' Motion for Sanctions Under NRCP 37(b) for Failure to Comply with Court Orders ("the Reply") on October 4, 2013. An Errata to the Reply was filed later that day. The Plaintiffs contemporaneously resubmitted the matter for the Court's decision.

The Motion asked the Court to strike the Defendants' Answer. This would effectively end the case, leaving only the issue of damages to be decided. The Court issued an Order on October 17,

2013 ("the October Order") in which the factual background of the discovery issues are fully and adequately recited. The Court hereby adopts that factual recitation, making specific note of the Defendants' repeated failures to respond to the Plaintiffs' motions to compel, to object to Commissioner Ayers' Recommendations for Order, and to comply with the Adopted Orders of this Court based off of Commissioner Ayers' recommendations. *See*, October Order, 2:23 – 6-9. The Court felt a hearing would assist in assessing the extent to which sanctions were appropriate. A three-day hearing commenced on October 21, 2013, at approximately 1:30 p.m.[1] Over the course of those three days the Court heard testimony from Craig Greene, a financial investigator, Caroline Rich, the Grand Sierra Resort's Controller, and William Lee Burtch, the Grand Sierra Resort's Senior Vice President of Innovation and Technology. The Court conducted a lengthy analysis under Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990), and ultimately declined to impose case-concluding sanctions. The Court instead struck the Defendants' counterclaims and ordered that the Defendants pay all attorney's fees and costs associated with the three-day hearing.

Young requires "every order of dismissal with prejudice as a discovery sanction be supported by an express, careful and preferably written explanation of the court's analysis of the pertinent factors." Young, 106 Nev. at 93, 787 P.2d at 780. The Court did not grant such a sanction. However, the Court did thoroughly analyze those factors in reaching its decision to impose the lesser sanctions. This Order memorializes the Court's findings and will thus detail each factor, *infra.*

The Young factors are as follows: (1) the degree of willfulness of the offending party, (2) the extent to which the non-offending party would be prejudiced by a lesser sanction, (3) the severity of the sanction of dismissal relative to the severity of the discovery abuse, (4) whether any evidence has been irreparably lost, (5) the feasibility and fairness of less severe sanctions, (6) the policy favoring adjudication on the merits, (7) whether sanctions unfairly operate to penalize a party for the

[1] The two-week trial was originally set to begin on October 21, 2013. In an in-chambers status conference on October 16, 2013, the Court informed counsel that trial could not start on the scheduled date due to failures in discovery. The Court pushed back the trial date two days to October 23, 2013. Notwithstanding the advance notice and extra time, the Defendants failed to submit their proposed jury instructions in violation of WDCR 7(8). The Defendants' counsel did not assist the Court staff with marking exhibits prior to the scheduled trial date, and failed to timely file a trial statement as required by WDCR 5. Lastly, the Court noted at the hearing that the Defendants' pretrial disclosures were filed two weeks late, in violation of N.R.C.P. 16.1(3).

misconduct of his or her attorney, and (8) the need to deter parties and future litigants from similar abuses. Id. In discovery abuse situations where possible case-concluding sanctions are warranted, the trial judge has discretion in deciding which factors are to be considered. Bahena v. Goodyear Tire & Rubber Co., 126 Nev. Adv. Op. 57, 245 P.3d 1182, (2010).

The Plaintiffs alleged that the discovery failures in this case were deliberate and willful. The Court found that there was no doubt that certain failures laid at the feet of the Defendants. The Defendants failed to comply with discovery orders and failed to meet the extended production deadlines to which they agreed. However, after hearing testimony from Caroline Rich, the Court could not find that such failure was willful. The fact that emails were not produced and accounts were not searched did not appear to be an intentional disruption of the discovery process by the employees of the Defendant. Ms. Rich did her best to produce what she felt was relevant. Although her judgment excluded pertinent material, such oversight did not rise to the level of willfulness. Further, the Court could not find that the Defense attorneys Mr. Brohawn or Mr. Reese willfully obstructed the discovery process.

The Court next considered the possible prejudice to the Plaintiffs if a lesser sanction were imposed. "The dismissal of a case, based upon a discovery abuse . . . should be used only in extreme situations; if less drastic sanctions are available, they should be utilized." GNLV Corp v. Service Control Corp, 111 Nev. 866, 870, 900 P.2d 323, 325 (1995). While a case-concluding sanction would benefit the Plaintiffs, the Court found that (1) lesser sanctions could be imposed, and (2) such sanctions would not unduly cause the Plaintiffs prejudice. Instrumental in this finding was the Plaintiffs' Counsel's own admission that, if necessary, they could go to trial in a matter of days with the information that they had at that point.

Thirdly, the Court compared the severity of dismissal to the severity of the discovery abuse. The Court again affirmatively found that discovery failures had occurred. The severity of those abuses was not determinable and thus did not warrant ending the case in favor of the Plaintiffs. There was no evidence as to who was at fault for the failures to produce information. Further, the Court found that the good faith effort of Caroline Rich eliminated the possibility that the violations should be met with such a severe sanction.

In looking at the fourth factor, the Court noted that there was no evidence presented at the hearing or raised by the moving papers that evidence had been irreparably lost. The fact that evidence had not been produced is not the same as the destruction or loss of evidence. This factor was not particularly helpful in the Court's determination.

Fifth, the Court found that there were many alternatives to the requested case-concluding sanctions that could serve to deter a party from engaging in abusive discovery practices in the future. The Court excluded from its consideration certain possible sanctions. For example, the Court found that it would not be feasible to order a jury to deem a fact relating to withheld evidence to be true, when the Court itself could not find that such evidence in fact existed. Notwithstanding, the Court found that other sanctions could be feasible and fair to both parties.

The Court considered the two major policy factors together. Nevada has a strong policy, and the Court firmly believes, that cases should be adjudicated on their merits. *See*, Scrimer v. Dist. Court, 116 Nev. 507, 516-517, 998 P.2d 1190, 1196 (2000). *See also*, Kahn v. Orme, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992). Further, there is a need to deter litigants from abusing the discovery process established by Nevada law. The Court found that it could employ non-case concluding sanctions to accomplish both of these prerogatives.

Lastly, the Court considered whether striking the Answer would unfairly operate to penalize the Defendants for the misconduct, if any, of their attorneys. As previously stated, there were failures to produce and abuses of discovery on behalf of the Defendants. The Defendants produced some, albeit incomplete, information to the Plaintiffs. The evidence did not show that Mr. Brohawn, Mr. Reese, or their firm was directing the client to hide or destroy evidence. While the abuses amount to the kind of misconduct that warrants some sort of sanction, they do not warrant penalizing the Defendants themselves with the extreme sanction of concluding the case.

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The Nevada Supreme Court offered guidance as to sanctions that may be imposed in lieu of case-concluding sanctions. "Fundamental notions of fairness and due process require that discovery sanctions be just and . . . relate to the specific conduct at issue." GNLV Corp., 111 Nev. at 870, 900 P.2d at 325 (citing Young, 106 Nev. at 92, 787 P.2d at 779-80). Under those fundamental notions and upon balance of the Young factors, the Court found the following sanctions to be appropriate:

1. All of the Defendants' counterclaims were stricken.[2]
2. The Defendants would bear the reasonable cost associated with the three-day hearing, including attorney's fees, expert witness fees and all other reasonable expenses.[3]

IT IS SO ORDERED.

DATED this 18 day of December, 2013.

ELLIOTT A. SATTLER
District Judge

[2] *See*, NRCP 37(b)(2)(when a party fails to comply with a court order, the court may strike pleadings or parts thereof). *See also* GNLV Corp., 111 Nev. at 871, 900 P.2d at 326 (suggesting that a Court can strike a party's cross-claim as an appropriate sanction).

[3] *See* NRCP 37(b)(2)("[T]he Court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure" to comply).

CERTIFICATE OF MAILING

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

Jonathan Tew, Esq. for Cayenne Trust, et al
Jarrad Miller, Esq. for Cayenne Trust, et al
G. Robertson, Esq. for Cayenne Trust, et al
Sean Brohawn, Esq. for Grand Sierra Resort Unit-Owners Association, et al

DATED this 18th day of December, 2013.

Marie Stone for
SHEILA MANSFIELD
Judicial Assistant

EXHIBIT “2”

EXHIBIT “2”

EXHIBIT “2”

1085
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IN THE SECOND JUDICAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNIE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI and GEORGE VAGUJHELYI, as Trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT, U/T/A APRIL 13, 2001; D' ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; DONALD SCHREIFELS, individually; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LORI ORDOVER, individually; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, individually; FARAD TORABKHAN, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, individually; USHA RAGHURAM, individually; LORI K. TOKUTOMI, individually; GARRET TOM, individually; ANITA TOM, individually; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE and

Case No.: CV12-02222

Dept. No.:10

ANSWER TO SECOND AMENDED COMPLAINT AND COUNTERCLAIM

MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, individually; ELIAS SHAMIEH, individually; JEFFREY QUINN, individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDRICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, individually; MAY ANN HOM, as Trustee of the MAY ANN HOM TRUST; MICHAEL HURLEY, individually; DOMINIC YIN, individually; DUANE WINDHORST, individually; MARILYN WINDHORST, individually; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLENE LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISINE MECHAM, individually; KWANGSOO SON, individually; SOO YEUN MOON, individually; JOHNSON AKINDODUNSE, individually; IRENE WEISS, as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA, individually; TERRY POPE, individually; NANCY POPE, individually; JAMES TAYLOR, individually; RYAN TAYLOR, individually; KI HAM, individually; YOUNG JA CHOI, individually; SANG DEE SOHN, individually; KUK HYUNG (CONNIE), individually; SANG (MIKE) YOO, individually; BRETT MENMUIR, as Trustee of the CAYENNE TRUST; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDERS MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, individually; PATRICIA M. MOLL, individually; DANIEL MOLL, individually; and DOE PLAINTIFFS 1 THROUGH 10, inclusive,

Plaintiffs

v.

MEI-GSR HOLDINGS, LLC, a Nevada limited liability company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited Liability Company and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

/

MEI-GSR HOLDINGS, LLC, a Nevada limited liability company,

Counterclaimant

v.

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNIE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI and GEORGE VAGUJHELYI, as Trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT, U/T/A APRIL 13, 2001; D' ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; DONALD SCHREIFELS, individually; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; GARRET TOM, individually; ANITA TOM, individually; RAMON FADRILAN, individually; FAYE

FADRILAN, individually; PETER K. LEE and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; JEFFREY QUINN, individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually;BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; NADINE'S REAL ESTATE INVESTMENTS, LLC; ROBERT A. WILLIAMS, individually; DUANE WINDHORST, individually; MARILYN WINDHORST, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLENE LINDGREN, individually; SOO YEUN MOON, individually; IRENE WEISS, as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA, individually; TERRY POPE, individually; NANCY POPE, individually; KI NAM CHOI, individually; YOUNG JA CHOI, individually; KUK HYUNG (CONNIE) YOO, individually; SANG (MIKE) YOO, individually; BRETT MENMUIR, as Trustee of the CAYENNE TRUST; CHANH TRUONG, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, individually; and DOES 1 through 200, inclusive,

Counter-Defendants

ANSWER

Defendants, MEI-GSR HOLDINGS, LLC, a Nevada limited liability company ("GSR"), GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation ("GSR UOA"), GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited Liability Company ("Gage Village") (collectively "Defendants"), by and through their counsel of record, SEAN L. BROHAWN, PLLC, for their answer to Plaintiffs' Second Amended Complaint, allege as follows:

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1 through 99 and, therefore, the same are denied.

2. Defendants admit the allegations of Paragraph 100.

3. Defendants deny the allegations of Paragraph 101.

4. Defendants deny the allegations of Paragraph 102.

5. Defendants admit the allegations of Paragraph 103.

6. Answering the allegations of Paragraph 104, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 and, therefore, the same are denied.

7. Answering the allegations of Paragraph 105, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

8. Answering the allegations of paragraph 106, Defendants admit that the GSR Condo Units are part of the Grand Sierra Resort Unit-Owners' Association, and that the GSR Condo Units are located on floors 17 through 24 of the hotel tower of the Grand Sierra Resort & Casino, at 2500 East Second Street, Reno, Nevada. Defendants deny the remaining allegations of Paragraph 106.

9. Defendants admit the allegations of 107.

10. Defendants admit the allegations of Paragraph 108.

11. Defendants deny the allegations of Paragraph 109.

12. Defendants admit the allegations of Paragraph 110.

13. Defendants admit the allegations of Paragraph 111.

14. Defendants deny the allegations of Paragraph 112.

15. Defendants deny the allegations of Paragraph 113.

16. Defendants deny the allegations of Paragraph 114.

17. Defendants deny the allegations of Paragraph 115.

18. Defendants admit the allegations of Paragraph 116.

19. Answering the allegations of Paragraph 117, Defendants admit that the Unit Owners' Association maintains a capital reserve account, and that the Unit Owners' Association collects association dues that vary depending upon the size of the unit, as provided in the

CC&Rs. Defendants deny the remaining allegations of Paragraph 117.

20. Answering the allegations of Paragraph 118, Defendants admit that the Unit Owners pay for certain taxes, unit cleaning services, capital reserve funding for components within the units and for identified elements and systems of the building, routine maintenance of each unit and utilities that service each unit. Defendants deny the remaining allegations of Paragraph 118.

21. Defendants deny the allegations of Paragraph 119.

22. Defendants deny the allegations of Paragraph 120.

23. Defendants deny the allegations of Paragraph 121.

24. Defendants admit the allegations of Paragraph 122.

25. Defendants deny the allegations of Paragraph 123.

26. Defendants deny the allegations of Paragraph 124.

27. Answering the allegations of Paragraph 125, Defendants admit that certain fees paid by Unit Owners are not included within the budget of the Unit Owners' Association, as provided in the CC&Rs. Defendants deny the remaining allegations of Paragraph 125.

28. Defendants deny the allegations of Paragraph 126.

29. Defendants deny the allegations of Paragraph 127.

30. Defendants deny the allegations of Paragraph 128.

31. Defendants deny the allegations of Paragraph 129.

32. Defendants deny the allegations of Paragraph 130.

33. Defendants deny the allegations of Paragraph 131.

34. Answering the allegations of Paragraph 132, Defendants admit that GSR rents GSR Condo Units owned by GSR and Gage Village, as well as some of the GSR Condo Units owned by certain individual condo Unit owners. Defendants deny the remaining allegations of Paragraph 132.

35. Answering the allegations of Paragraph 133, Defendants admit that GSR has entered into Unit Rental Agreements with certain individual condo Unit owners. Defendants deny the remaining allegations of Paragraph 133.

36. Defendants deny the allegations of Paragraph 134.

37. Defendants are without knowledge or information sufficient to form a belief as to

the truth of the allegations contained in Paragraph 135 and, therefore, the same are denied.

38. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 136 and, therefore, the same are denied.

39. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 137 and, therefore, the same are denied.

40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 138 and, therefore, the same are denied.

41. Defendants deny the allegations of Paragraph 139.

42. Defendants deny the allegations of Paragraph 140.

43. Defendants deny the allegations of Paragraph 141.

44. Defendants admit the allegations of Paragraph 142.

45. Defendants deny the allegations of Paragraph 143.

46. Defendants deny the allegations of Paragraph 144.

47. Defendants deny the allegations of Paragraph 145.

FIRST CLAIM FOR RELIEF

48. Answering the allegations of Paragraph 146, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

49. Defendants admit the allegations of Paragraph 147.

50. Defendants deny the allegations of Paragraph 148.

51. Defendants deny the allegations of Paragraph 149.

52. Defendants deny the allegations of Paragraph 150.

53. Defendants deny the allegations of Paragraph 151.

54. Defendants deny the allegations of Paragraph 152.

55. Defendants deny the allegations of Paragraph 153.

SECOND CLAIM FOR RELIEF

56. Answering the allegations of Paragraph 154, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

57. Defendants admit the allegations of Paragraph 155.

58. Defendants deny the allegations of Paragraph 156.

59. Defendants deny the allegations of Paragraph 157.

60. Defendants deny the allegations of Paragraph 158.

61. Defendants deny the allegations of Paragraph 159.

62. Defendants deny the allegations of Paragraph 160.

63. Defendants deny the allegations of Paragraph 161.

64. Defendants deny the allegations of Paragraph 162.

THIRD CLAIM FOR RELIEF

65. Answering the allegations of Paragraph 163, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

66. Answering the allegations of Paragraph 164, Defendants admit that GSR has entered into Unit Rental Agreements with certain individual condo Unit owners. Defendants deny the remaining allegations of Paragraph 164.

67. Defendants deny the allegations of Paragraph 165.

68. Answering the allegations of Paragraph 166, Defendants admit that GSR has entered into individual Unit Rental Agreements with certain individual condo Unit owners, but has not entered into a global agreement regarding Unit rental with Unit Owners as a whole. Defendants admit that each individual existing rental agreement is enforceable. Defendants deny the remaining allegations of Paragraph 166.

69. Defendants deny the allegations of Paragraph 167.

70. Defendants deny the allegations of Paragraph 168.

71. Defendants deny the allegations of Paragraph 169.

FOURTH CLAIM FOR RELIEF

72. Answering the allegations of Paragraph 170, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

73. Answering the allegations of Paragraph 171, Defendants admit that GSR and Plaintiffs are contractually obligated to each other, under one or more types of agreements between them. Defendants deny the remaining allegations of Paragraph 171.

74. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 172 and, therefore, the same are denied.

75. Defendants deny the allegations of Paragraph 173.

76. Defendants deny the allegations of Paragraph 174.

77. Defendants deny the allegations of Paragraph 175.

78. Defendants deny the allegations of Paragraph 176.

79. Defendants deny the allegations of Paragraph 177.

80. Defendants deny the allegations of Paragraph 178.

81. Defendants deny the allegations of Paragraph 179.

82. Defendants deny the allegations of Paragraph 180.

FIFTH CLAIM FOR RELIEF

83. Answering the allegations of Paragraph 181, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

84. Answering the allegations of Paragraph 182, Defendants admit that GSR and Plaintiffs are contractually obligated to each other, under one or more types of agreements between them. Defendants deny the remaining allegations of Paragraph 182.

85. Answering the allegations of Paragraph 183, Defendants admit that individual rental agreements require GSR to market and rent individually owned units. Defendants deny the remaining allegations of Paragraph 183.

86. Defendants deny the allegations of Paragraph 184.

87. Defendants deny the allegations of Paragraph 185.

88. Defendants deny the allegations of Paragraph 186.

89. Defendants deny the allegations of Paragraph 187.

90. Defendants deny the allegations of Paragraph 188.

SIXTH CLAIM FOR RELIEF

91. Answering the allegations of Paragraph 189, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

92. Answering the allegations of Paragraph 190, Defendants assert that NRS 41.600 speaks for itself. Defendants deny the remaining allegations of Paragraph 190.

93. Answering the allegations of Paragraph 191, Defendants assert that NRS 41.600 speaks for itself. Defendants deny the remaining allegations of Paragraph 191.

94. Answering the allegations of Paragraph 192, Defendants assert that NRS Chapter 598 speaks for itself. Defendants deny the remaining allegations of Paragraph 192.

95. Defendants deny the allegations of Paragraph 193.

96. Defendants deny the allegations of Paragraph 194.

97. Defendants deny the allegations of Paragraph 195.

98. Defendants deny the allegations of Paragraph 196.

99. Defendants deny the allegations of Paragraph 197.

SEVENTH CLAIM FOR RELIEF

100. Answering the allegations of Paragraph 198, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

101. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 199 and, therefore, the same are denied.

102. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 200 and, therefore, the same are denied.

103. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 201 and, therefore, the same are denied.

104. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 202 and, therefore, the same are denied.

105. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 203 and, therefore, the same are denied.

EIGHTH CLAIM FOR RELIEF

106. Answering the allegations of Paragraph 204, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

107. Defendants deny the allegations of Paragraph 205.

108. Defendants deny the allegations of Paragraph 206.

109. Defendants deny the allegations of Paragraph 207.

NINTH CLAIM FOR RELIEF

110. Answering the allegations of Paragraph 208, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

111. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 209 and, therefore, the same are denied.

112. Defendants deny the allegations of Paragraph 210.

113. Defendants are without knowledge or information sufficient to form a belief as to

the truth of the allegations contained in Paragraph 211 and, therefore, the same are denied.

114. Defendants deny the allegations of Paragraph 212.

115. Defendants deny the allegations of Paragraph 213.

116. Defendants deny the allegations of Paragraph 214.

TENTH CLAIM FOR RELIEF

117. Answering the allegations of Paragraph 215, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

118. Answering the allegations of Paragraph 216, Defendants admit that GSR and Plaintiffs are contractually obligated to each other, under one or more types of agreements between them. Defendants deny the remaining allegations of Paragraph 216.

119. Defendants deny the allegations of Paragraph 217.

120. Defendants deny the allegations of Paragraph 218.

ELEVENTH CLAIM FOR RELIEF

121. Answering the allegations of Paragraph 219, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

122. Defendants deny the allegations of Paragraph 220.

123. Defendants deny the allegations of Paragraph 221.

124. Defendants deny the allegations of Paragraph 222.

TWELFTH CLAIM FOR RELIEF

125. Answering the allegations of Paragraph 223, Defendants incorporate the preceding allegations of this Answer, as if the same were set forth at length herein.

126. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 224 and, therefore, the same are denied.

127. Defendants deny the allegations of Paragraph 225.

128. Defendants deny the allegations of Paragraph 226.

129. Defendants deny the allegations of Paragraph 227.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim or cause of action against Defendants for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages and, to the extent of such failure of such mitigation, are precluded from recovery herein.

THIRD AFFIRMATIVE DEFENSE

Defendants allege that the incidents referred to in the Complaint, and any and all injuries and damages resulting therefrom, if any occurred, were caused or contributed to by the acts or omissions of a third party over whom Defendants had no control.

FOURTH AFFIRMATIVE DEFENSE

Defendants allege that the injuries or damages suffered by Plaintiffs, if any, were caused in whole or in part by an independent intervening cause over which these Defendants had no control.

FIFTH AFFIRMATIVE DEFENSE

The injuries or damages, if any, sustained by Plaintiffs were caused in whole, or in part, through the negligence of others who were not the agents of these Defendants or acting on behalf of the these Defendants.

SIXTH AFFIRMATIVE DEFENSE

The injuries or damages, if any, suffered by Plaintiffs, were caused in whole, or in part, or were contributed to by reason of the negligence of Plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by one or more statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs assumed the risk of injury by virtue of its own conduct.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs waived the causes of action asserted herein.

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TENTH AFFIRMATIVE DEFENSE

Defendants presently have insufficient knowledge or information upon which to form a belief as to whether they may have additional, and as yet, unstated affirmative defenses available. Defendants therefore reserve the right to assert additional affirmative defenses in the event discovery indicates that they are appropriate.

WHEREFORE, Defendants pray that:

1. Plaintiffs' Complaint be dismissed, with prejudice.

2. For all litigation expenses, costs, attorney's fees, and other damages incurred in defending against the Complaint; and

3. For such other and further relief as the Court deems proper.

COUNTERCLAIM

Counterclaimant MEI-GSR HOLDINGS, LLC, a Nevada limited liability company ("GSR"), for its counterclaim against Counter-Defendants, alleges as follows:

1. The named Counter-Defendants are all current or former owners of one or more hotel-condominiums within the project known as the Grand Sierra Resort Unit-Owners' Association (the "Project").

2. The Counter-Defendants referred to herein as DOES 1 through 200 are as yet unknown parties to the UMAs an/or CC&Rs referred to herein, or are current or former owners of one or more hotel-condominiums within the Project, and as such owe duties to GSR under such contracts, or based upon other causes of action. GSR will seek leave of this Court to amend this Counterclaim to name such parties at such time as their identities become known to GSR.

3. GSR is a successor declarant in the Project, and as such, is entitled to collect certain non-homeowner's association dues and/or fees under the CC&Rs governing the Project, and under separate Unit Maintenance Agreements between each unit owner in the Project and GSR.

4. GSR has demanded that Counter-Defendants pay the full amount of dues and fees owed by them under the CC&Rs and/or the UMAs, but to date, Counter-Defendants have failed or refused to make all such payments.

5. Additionally, each UMA requires the unit owner to provide active credit card

information to GSR, as a source for payment of certain expenses incurred by the unit owner.

6. Some of the Counter-Defendants have failed or refused to provide active credit card information to GSR, in compliance with the UMAs.

7. Prior to bringing this Counterclaim, GSR provided notice to each Counter-Defendant of the above breaches of the UMAs, and provided each Counter-Defendant with at leas 60 days within which to cure such breaches, however, Counter-Defendants have failed or refused to cure all such breaches.

FIRST CAUSE OF ACTION
(Breach of Contract)

8. GSR incorporates by reference the preceding Paragraphs of this Counterclaim as if set forth at length herein.

9. GSR and Counter-Defendants are parties to the CC&Rs and UMAs.

10. GSR has performed all obligations required to be performed by it under the CC&Rs and UMAs, or was excused from performance of such obligations due to Counter-Defendants' conduct.

11. Counter-Defendants have breached the CC&Rs and UMAs by failing to pay all sums when due under those agreements and/or by failing to provide active credit card information as required by the UMAs, despite individual written demands by GSR.

12. Counter-Defendants' breaches of the CC&Rs and UMAs have foreseeably caused GSR damages in an amount in excess of $10,000, subject to proof at trial.

SECOND CAUSE OF ACTION
(Declaratory Relief)

13. GSR incorporates by reference the preceding paragraphs of this Counterclaim as if set forth at length herein.

14. GSR asserts that the CC&Rs and UMAs are valid and existing contracts to which each Counter-Defendant is a party, and that Counter-Defendants owe duties to GSR under those contracts. On information and belief, Counter-Defendants deny that they owe duties to GSR under the C&Rs and UMAs.

15. An actual controversy has arisen and now exists between GSR and Counter-Defendants concerning their respective rights, entitlements, obligations and duties under the CC&Rs and UMAs.

16. GSR therefore requests a declaratory judgment determining the parties' rights under the CC&Rs and UMAs.

THIRD CAUSE OF ACTION
(Injunctive Relief)

17. GSR incorporates by reference the preceding paragraphs of this Counterclaim as if set forth at length herein.

18. Counter-Defendants are obligated under each UMA to provide active credit card information to GSR to help defray charges incurred under each UMA. Several of the Counter-Defendants have failed or refused to provide such credit card information to GSR.

19. GSR therefore requests that this Court enter a mandatory injunction requiring Counter-Defendants to provide active credit card information to GSR, as required by the UMAs.

WHEREFORE, GSR requests relief against Counter-Defendants as follows:

1. That GSR be granted judgment for all past due dues, fees, and related charges owed by Counter-Defendants under the CC&Rs and UMAs, in an amount in excess of $10,000, subject to proof at trial;

2. That this Court enter a declaratory judgment determining the parties' rights under the CC&Rs and UMAs;

3. That this Court enter a mandatory injunction requiring Counter-Defendants to provide active credit card information to GSR, as required by the UMAs;

4. For costs of suit incurred herein, interest, and attorneys' fees; and

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

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AFFIRMATION

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

DATED this 23rd day of May, 2013,

SEAN L. BROHAWN, PLLC

By: _____
Sean L. Brohawn, Esq.
Nevada Bar #7618

50 West Liberty Street, Suite 1040
Reno, NV 89501
Telephone: (775) 453-1505
Facsimile: (775) 453-1537
Sean@brohawnlaw.com

Attorneys for Defendants / Counterclaimant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of SEAN L. BROHAWN, PLLC, and that on the date shown below, I caused service of a true and correct copy of the attached:

ANSWER TO SECONDN AMENDED COMPLAINT AND COUNTERCLAIM

to be completed by:

_____ personally delivering

_____ sending via Federal Express or other overnight delivery service

_____ depositing for mailing in the U.S. mail with sufficient postage affixed thereto

_____ delivery via facsimile machine to fax no._____

__X__ delivery via e-mail/Electronic court filing

addressed to:

G. David Robertson, Esq. (NV Bar No. 1001) Jarrad C. Miller, Esq. (NV Bar No. 7093) Jonathan J. Tew, Esq. (NV Bar No. 11874) Robertson, Johnson, Miller & Williamson 50 West Liberty Street, Suite 600 Reno, Nevada 89501	(775) 329-5600	Attorneys for Plaintiffs

DATED this 23rd day of May, 2013.

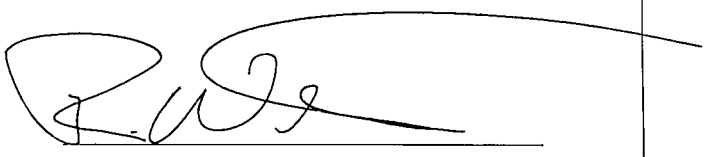

EXHIBIT “1”

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Joey Orduna Hastings
Clerk of the Court
Transaction # 3617729

CODE: 1090
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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNIE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI and GEORGE VAGUJHELYI, as Trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT, U/T/A APRIL 13, 2001; D' ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; DONALD SCHREIFELS, individually; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LORI ORDOVER, individually; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, individually; FARAD TORABKHAN, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, individually; USHA RAGHURAM, individually; LORI K. TOKUTOMI, individually; GARRET TOM, individually; ANITA TOM, individually; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, individually; ELIAS SHAMIEH, individually; JEFFREY QUINN,

Case No. CV12-02222
Dept. No. 10

SECOND AMENDED COMPLAINT

individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDRICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, individually; MAY ANN HOM, as Trustee of the MAY ANN HOM TRUST; MICHAEL HURLEY, individually; DOMINIC YIN, individually; DUANE WINDHORST, individually; MARILYN WINDHORST, individually; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLENE LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISINE MECHAM, individually; KWANGSOO SON, individually; SOO YEUN MOON, individually; JOHNSON AKINDODUNSE, individually; IRENE WEISS, as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA, individually; TERRY POPE, individually; NANCY POPE, individually; JAMES TAYLOR, individually; RYAN TAYLOR, individually; KI HAM, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUNG (CONNIE), individually; SANG (MIKE) YOO, individually; BRETT MENMUIR, as Trustee of the CAYENNE TRUST; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDERS MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, individually; PATRICIA M. MOLL, individually; DANIEL MOLL, individually; and DOE

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Reno, Nevada 89501

PLAINTIFFS 1 THROUGH 10, inclusive,

Plaintiffs,

vs.

MEI-GSR Holdings, LLC, a Nevada Limited Liability Company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited Liability Company and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

COME NOW Plaintiffs ("Plaintiffs" or "Individual Unit Owners"), by and through their counsel of record, Robertson, Johnson, Miller & Williamson, and for their causes of action against Defendants hereby complain as follows:

GENERAL ALLEGATIONS

The Parties

1. Plaintiff Albert Thomas is a competent adult and is a resident of the State of California.

2. Plaintiff Jane Dunlap is a competent adult and is a resident of the State of California.

3. Plaintiff John Dunlap is a competent adult and is a resident of the State of California.

4. Plaintiff Barry Hay is a competent adult and is a resident of the State of California.

5. Plaintiff Marie-Annie Alexander, as Trustee of the Marie-Annie Alexander Living Trust, is a competent adult and is a resident of the State of California.

6. Plaintiff Melissa Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a resident of the State of Nevada.

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7. Plaintiff George Vagujhelyi, as Co-Trustee of the George Vagujhelyi and Melissa Vagujheyli 2001 Family Trust Agreement U/T/A April 13, 2001, is a competent adult and is a resident of the State of Nevada.

8. Plaintiff D'Arcy Nunn is a competent adult and is a resident of the State of California.

9. Plaintiff Henry Nunn is a competent adult and is a resident of the State of California.

10. Plaintiff Lee Van Der Bokke is a competent adult and is a resident of the State of California.

11. Plaintiff Madelyn Van Der Bokke is a competent adult and is a resident of the State of California.

12. Plaintiff Donald Schreifels is a competent adult and is a resident of the State of Minnesota.

13. Plaintiff Robert R. Pederson, individually and as Trustee of the Pederson 1990 Trust, is a competent adult and is a resident of the State of California.

14. Plaintiff Lou Ann Pederson, individually and as Trustee of the Pederson 1990 Trust, is a competent adult and is a resident of the State of California.

15. Plaintiff Lori Ordover is a competent adult and is a resident of the State of Connecticut.

16. Plaintiff William A. Henderson is a competent adult and is a resident of the State of California.

17. Plaintiff Christine E. Henderson is a competent adult and is a resident of the State of California.

18. Plaintiff Loren D. Parker is a competent adult and is a resident of the State of Washington.

19. Plaintiff Suzanne C. Parker is a competent adult and is a resident of the State of Washington.

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20. Plaintiff Michael Izady is a competent adult and is a resident of the State of New York.

21. Plaintiff Steven Takaki is a competent adult and is a resident of the State of California.

22. Plaintiff Farad Torabkhan is a competent adult and is a resident of the State of New York.

23. Plaintiff Sahar Tavakol is a competent adult and is a resident of the State of New York.

24. Plaintiff M&Y Holdings is a Nevada Limited Liability Company with its principal place of business in Nevada.

25. Plaintiff JL&YL Holdings, LLC is a Nevada Limited Liability Company with its principal place of business in Nevada.

26. Plaintiff Sandi Raines is a competent adult and is a resident of the State of Minnesota.

27. Plaintiff R. Raghuram is a competent adult and is a resident of the State of California.

28. Plaintiff Usha Raghuram is a competent adult and is a resident of the State of California.

29. Plaintiff Lori K. Tokutomi is a competent adult and is a resident of the State of California.

30. Plaintiff Garett Tom is a competent adult and is a resident of the State of California.

31. Plaintiff Anita Tom is a competent adult and is a resident of the State of California.

32. Plaintiff Ramon Fadrilan is a competent adult and is a resident of the State of California.

33. Plaintiff Faye Fadrilan is a competent adult and is a resident of the State of California.

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34. Plaintiff Peter K. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a competent adult and is a resident of the State of California.

35. Plaintiff Monica L. Lee, as Trustee of the Lee Family 2002 Revocable Trust, is a competent adult and is a resident of the State of California.

36. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.

37. Plaintiff Elias Shamieh is a competent adult and is a resident of the State of California.

38. Plaintiff Nadine's Real Estate Investments, LLC, is a North Dakota Limited Liability Company.

39. Plaintiff Jeffery James Quinn is a competent adult and is a resident of the State of Hawaii.

40. Plaintiff Barbara Rose Quinn is a competent adult and is a resident of the State of Hawaii.

41. Plaintiff Kenneth Riche is a competent adult and is a resident of the State of Wisconsin.

42. Plaintiff Maxine Riche is a competent adult and is a resident of the State of Wisconsin.

43. Plaintiff Norman Chandler is a competent adult and is a resident of the State of Alabama.

44. Plaintiff Benton Wan is a competent adult and is a resident of the State of California.

45. Plaintiff Timothy Kaplan is a competent adult and is a resident of the State of California.

46. Plaintiff Silkscape Inc. is a California Corporation.

47. Plaintiff Peter Cheng is a competent adult and is a resident of the State of California.

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48. Plaintiff Elisa Cheng is a competent adult and is a resident of the State of California.

49. Plaintiff Greg A. Cameron is a competent adult and is a resident of the State of California.

50. Plaintiff TMI Property Group, LLC is a California Limited Liability Company.

51. Plaintiff Richard Lutz is a competent adult and is a resident of the State of California.

52. Plaintiff Sandra Lutz is a competent adult and is a resident of the State of California.

53. Plaintiff Mary A. Kossick is a competent adult and is a resident of the State of California.

54. Plaintiff Melvin H. Cheah is a competent adult and is a resident of the State of California.

55. Plaintiff Di Shen is a competent adult and is a resident of the State of Texas.

56. Plaintiff Ajit Gupta is a competent adult and is a resident of the State of California.

57. Plaintiff Seema Gupta is a competent adult and is a resident of the State of California.

58. Plaintiff Fredrick Fish is a competent adult and is a resident of the State of Minnesota.

59. Plaintiff Lisa Fish is a competent adult and is a resident of the State of Minnesota.

60. Plaintiff Robert A. Williams is a competent adult and is a resident of the State of Minnesota.

61. Plaintiff Jacquelin Pham is a competent adult and is a resident of the State of California.

62. Plaintiff May Ann Hom, as Trustee of the May Ann Hom Trust, is a competent adult and is a resident of the State of California.

63. Plaintiff Michael Hurley is a competent adult and is a resident of the State of Minnesota.

64. Plaintiff Dominic Yin is a competent adult and is a resident of the State of California.

65. Plaintiff Duane Windhorst is a competent adult and is a resident of the State of Minnesota.

66. Plaintiff Marilyn Windhorst is a competent adult and is a resident of the State of Minnesota.

67. Plaintiff Vinod Bhan is a competent adult and is a resident of the State of California.

68. Plaintiff Anne Bhan is a competent adult and is a resident of the State of California.

69. Plaintiff Guy P. Browne is a competent adult and is a resident of the State of California.

70. Plaintiff Garth Williams is a competent adult and is a resident of the State of California.

71. Plaintiff Pamela Y. Aratani is a competent adult and is a resident of the State of California.

72. Plaintiff Darleen Lindgren is a competent adult and is a resident of the State of Minnesota.

73. Plaintiff Laverne Roberts is a competent adult and is a resident of the State of Nevada.

74. Plaintiff Doug Mecham is a competent adult and is a resident of the State of Nevada.

75. Plaintiff Chrisine Mecham is a competent adult and is a resident of the State of Nevada.

76. Plaintiff Kwangsoo Son is a competent adult and is a resident of Vancouver, British Columbia.

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77. Plaintiff Soo Yeun Moon is a competent adult and is a resident of Vancouver, British Columbia.

78. Plaintiff Johnson Akindodunse is a competent adult and is a resident of the State of California.

79. Plaintiff Irene Weiss, as Trustee of the Weiss Family Trust, is a competent adult and is a resident of the State of Texas.

80. Plaintiff Pravesh Chopra is a competent adult and is a resident of the State of California.

81. Plaintiff Terry Pope is a competent adult and is a resident of the State of Nevada.

82. Plaintiff Nancy Pope is a competent adult and is a resident of the State of Nevada.

83. Plaintiff James Taylor is a competent adult and is a resident of the State of California.

84. Plaintiff Ryan Taylor is a competent adult and is a resident of the State of California.

85. Plaintiff Ki Ham is a competent adult and is a resident of Surry B.C.

86. Plaintiff Young Ja Choi is a competent adult and is a resident of Coquitlam, B.C.

87. Plaintiff Sang Dae Sohn is a competent adult and is a resident of Vancouver, B.C.

88. Plaintiff Kuk Hyung ("Connie") is a competent adult and is a resident of Coquitlam, B.C.

89. Plaintiff Sang ("Mike") Yoo is a competent adult and is a resident of Coquitlam, British Columbia.

90. Plaintiff Brett Menmuir, as Trustee of the Cayenne Trust, is a competent adult and is a resident of the State of Nevada.

91. Plaintiff William Miner, Jr., is a competent adult and is a resident of the State of California.

92. Plaintiff Chanh Truong is a competent adult and is a resident of the State of California.

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93. Plaintiff Elizabeth Anders Mecua is a competent adult and is a resident of the State of California.

94. Plaintiff Shepherd Mountain, LLC is a Texas Limited Liability Company with its principal place of business in Texas.

95. Plaintiff Robert Brunner is a competent adult and is a resident of the State of Minnesota.

96. Plaintiff Amy Brunner is a competent adult and is a resident of the State of Minnesota.

97. Plaintiff Jeff Riopelle is a competent adult and is a resident of the State of California.

98. Plaintiff Patricia M. Moll is a competent adult and is a resident of the State of Illinois.

99. Plaintiff Daniel Moll is a competent adult and is a resident of the State of Illinois.

100. Plaintiffs are informed and believe and thereon allege that at all relevant times herein, Defendant MEI-GSR Holdings, LLC ("MEI-GSR") is a Nevada Limited Liability Company with its principal place of business in Nevada.

101. Plaintiffs are informed and believe and thereon allege that at all relevant times herein, Defendant Gage Village Commercial Development, LLC ("Gage Village") is a Nevada Limited Liability Company with its principal place of business in Nevada.

102. Plaintiffs are informed and believe and thereon allege that Gage Village is related to, controlled by, affiliated with, and/or a subsidiary of MEI-GSR.

103. Plaintiffs are informed and believe and thereon allege that at all relevant times herein, Defendant Grand Sierra Resort Unit Owners' Association (the "Unit Owners' Association") is a Nevada nonprofit corporation with its principal place of business in Nevada.

104. The true names and capacities whether individual, corporate, associate or otherwise of Plaintiff Does and Defendant Does 1 through 10, are unknown to Plaintiffs, and Plaintiffs therefore include them by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when such are ascertained. Plaintiffs are informed and

believe and thereon allege that each of the fictitiously named Defendant Does is liable to Plaintiffs in some manner for the occurrences that are herein alleged.

MEI-GSR's Control of the Unit Owners' Association is to Plaintiffs' Detriment

105. The Individual Unit Owners re-allege each and every allegation contained in paragraphs 1 through 102 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

106. The Grand Sierra Resort Condominium Units ("GSR Condo Units") are part of the Grand Sierra Unit Owners Association, which is an apartment style hotel condominium development of 670 units in one 27-story building. The GSR Condo Units occupy floors 17 through 24 of the Grand Sierra Resort and Casino, a large-scale hotel casino, located at 2500 East Second Street, Reno, Nevada.

107. All of the Individual Unit Owners: hold an interest in, own, or have owned, one or more GSR Condo Units.

108. Defendants Gage Village and MEI-GSR own multiple GSR Condo Units.

109. Defendant MEI-GSR owns the Grand Sierra Resort and Casino.

110. Under the Declaration of Covenants, Conditions, Restrictions and Reservations of Easements for Hotel-Condominiums at Grand Sierra Resort ("CC&Rs"), there is one voting member for each unit of ownership (thus, an owner with multiple units has multiple votes).

111. Because Defendants MEI-GSR and Gage Village control more units of ownership than any other person or entity, they effectively control the Unit Owners' Association by having the ability to elect Defendant MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR Condo Units).

112. As a result of Defendants MEI-GSR and Gage Village controlling the Unit Owners' Association, the Individual Unit Owners effectively have no input or control over the management of the Unit Owners' Association.

113. Defendants MEI-GSR and Gage Village have used, and continue to use, their control over the Defendant Unit Owners' Association to advance Defendants MEI-GSR and Gage Villages' economic objectives to the detriment of the Individual Unit Owners.

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114. Defendants MEI-GSR and Gage Villages' control of the Unit Owners' Association violates Nevada law as it defeats the purpose of forming and maintaining a homeowners' association.

115. Further, the Nevada Division of Real Estate requires a developer to sell off the units within 7 years, exit and turn over the control and management to the owners.

116. Under the CC&Rs, the Individual Unit Owners are required to enter into a "Unit Maintenance Agreement" and participate in the "Hotel Unit Maintenance Program," wherein Defendant MEI-GSR provides certain services (including, without limitation, reception desk staffing, in-room services, guest processing services, housekeeping services, Hotel Unit inspection, repair and maintenance services, and other services).

117. The Unit Owners' Association maintains capital reserve accounts that are funded by the owners of GSR Condo Units. The Unit Owners' Association collects association dues of approximately $25 per month per unit, with some variation depending on a particular unit's square footage.

118. The Individual Unit Owners pay for contracted "Hotel Fees," which include taxes, deep cleaning, capital reserve for the room, capital reserve for the building, routine maintenance, utilities, etc.

119. Defendant MEI-GSR has systematically allocated and disproportionately charged capital reserve contributions to the Individual Unit Owners, so as to force the Individual Unit Owners to pay capital reserve contributions in excess of what should have been charged.

120. Defendants MEI-GSR and Gage Development have failed to pay proportionate capital reserve contribution payments in connection with their Condo Units.

121. Defendant MEI-GSR has failed to properly account for, or provide an accurate accounting for the collection and allocation of the collected capital reserve contributions.

122. The Individual Unit Owners also pay "Daily Use Fees" (a charge for each night a unit is occupied by any guest for housekeeping services, etc.).

123. Defendants MEI-GSR and Gage Village have failed to pay proportionate Daily Use Fees for the use of Defendants' GSR Condo Units.

124. Defendant MEI-GSR has failed to properly account for the contracted "Hotel Fees" and "Daily Use Fees."

125. Further, the Hotel Fees and Daily Use Fees are not included in the Unit Owners' Association's annual budget with other assessments that provide the Individual Unit Owners' the ability to reject assessment increases and proposed budget ratification.

126. Defendant MEI-GSR has systematically endeavored to increase the various fees that are charged in connection with the use of the GSR Condo Units in order to devalue the units owned by Individual Unit Owners.

127. The Individual Unit Owners' are required to abide by the unilateral demands of MEI-GSR, through its control of the Unit Owners' Association, or risk being considered in default under Section 12 of the Agreement, which provides lien and foreclosure rights pursuant to Section 6.10(f) of the CC&R's.

128. Defendants MEI-GSR and/or Gage Village have attempted to purchase, and purchased, units devalued by their own actions, at nominal, distressed prices when Individual Unit Owners decide to, or are effectively forced to, sell their units because the units fail to generate sufficient revenue to cover expenses.

129. Defendant MEI-GSR and/or Gage Village have, in late 2011 and 2012, purchased such devalued units for $30,000 less than the amount they purchased units for in March of 2011.

130. The Individual Unit Owners effectively pay association dues to fund the Unit Owners' Association, which acts contrary to the best interests of the Individual Unit Owners.

131. Defendant MEI-GSR's interest in maximizing its profits is in conflict with the interest of the Individual Unit Owners. Accordingly, Defendant MEI-GSR's control of the Unit Owners' Association is a conflict of interest.

MEI-GSR's Rental Program

132. As part of Defendant MEI-GSR's Grand Sierra Resort and Casino business operations, it rents: (1) hotel rooms owned by Defendant MEI-GSR that are not condominium

units; (2) GSR Condo Units owned by Defendant MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by the Individual Condo Unit Owners.

133. Defendant MEI-GSR has entered into a Grand Sierra Resort Unit Rental Agreement with Individual Unit Owners.

134. Defendant MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned by Defendant MEI-GSR and/or Gage Village; and (3) GSR Condo Units owned by Individual Condo Unit Owners so as to maximize Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by the Individual Unit Owners.

135. Defendant MEI-GSR has rented the Individual Condo Units for as little as $0.00 to $25.00 a night.

136. Yet, MEI-GSR has charged "Daily Use Fees" of approximately $22.38, resulting in revenue to the Individual Unit Owners as low as $2.62 per night for the use of their GSR Condo Unit (when the unit was rented for a fee as opposed to being given away).

137. By functionally, and in some instances actually, giving away the use of units owned by the Individual Unit Owners, Defendant MEI-GSR has received a benefit because those who rent the Individual Units frequently gamble and purchase food, beverages, merchandise, spa services and entertainment access from Defendant MEI-GSR.

138. Defendant MEI-GSR has rented Individual Condo Units to third parties without providing Individual Unit Owners with any notice or compensation for the use of their unit.

139. Further, Defendant MEI-GSR has systematically endeavored to place a priority on the rental of Defendant MEI-GSR's hotel rooms, Defendant MEI-GSR's GSR Condo Units, and Defendant Gage Village's Condo Units.

140. Such prioritization effectively devalues the units owned by the Individual Unit Owners.

141. Defendants MEI-GSR and Gage Village intend to purchase the devalued units at nominal, distressed prices when Individual Unit Owners decide to, or are effectively forced to,

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sell their units because the units fail to generate sufficient revenue to cover expenses and have no prospect of selling their persistently loss-making units to any other buyer.

142. Some of the Individual Unit Owners have retained the services of a third party to market and rent their GSR Condo Unit(s).

143. Defendant MEI-GSR has systematically thwarted the efforts of any third party to market and rent the GSR Units owned by the Individual Unit Owners.

144. Defendant MEI-GSR has breached the Grand Sierra Resort Unit Rental Agreement with Individual Condo Unit Owners by failing to follow its terms, including but not limited to, the failure to implement an equitable Rotational System as referenced in the agreement.

145. Defendant MEI-GSR has failed to act in good faith in exercising its duties under the Grand Sierra Resort Unit Rental Agreements with the Individual Unit Owners.

FIRST CLAIM FOR RELIEF
(Petition for Appointment of Receiver as to Defendant Grand Sierra Resort Unit Owners' Association)

146. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 143 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

147. Because Defendant MEI-GSR and/or Gage Village controls more units of ownership than any other person or entity, Defendant MEI-GSR and Gage Village effectively control the Grand Sierra Resort Unit Owners' Association by having the ability to elect Defendant MEI-GSR's chosen representatives to the Board of Directors (the governing body over the GSR Condo Units).

148. As a result of Defendant MEI-GSR controlling the Grand Sierra Resort Unit-Owners' Association, Plaintiffs effectively have no input or control over the management of the Unit Owners' Association.

149. Defendant MEI-GSR has used, and continues to use, its control over the Defendant Grand Sierra Resort Unit Owners' Association to advance Defendant MEI-GSR's economic objectives to the detriment of Plaintiffs.

150. Plaintiffs are entitled to a receiver pursuant to NRS § 32.010.

151. Pursuant to NRS § 32.010, the appointment of a receiver is appropriate in this case as a matter of statute and equity.

152. Unless a receiver is appointed, Defendant MEI-GSR will continue to control the Unit Owners' Association to advance Defendant MEI-GSR's economic objections to the detriment of Plaintiffs.

153. Without the grant of the remedies sought in this Complaint, Plaintiffs have no adequate remedy at law to enforce their rights and Plaintiffs will suffer irreparable harm unless granted the relief as prayed for herein.

WHEREFORE, Plaintiffs request judgment against the Defendant Grand Sierra Resort Unit Owners' Association, as set forth below.

SECOND CLAIM FOR RELIEF
(Intentional and/or Negligent Misrepresentation as to Defendant MEI-GSR)

154. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 151 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

155. Defendant MEI-GSR made affirmative representations to Plaintiffs regarding the use, rental and maintenance of the Individual Unit Owners' GSR Condo Units.

156. Plaintiffs are now informed and believe, and thereon allege, that these representations were false.

157. The Defendant MEI-GSR knew that the affirmative representations were false, in the exercise of reasonable care should have known that they were false, and/or knew or should have known that it lacked a sufficient basis for making said representations.

158. The representations were made with the intention of inducing Plaintiffs to contract with Defendant MEI-GSR for the marketing and rental of Plaintiffs' GSR Condo Units and otherwise act, as set out above, in reliance upon the representations.

159. Plaintiffs justifiably relied upon the affirmative representations of Defendant MEI-GSR in contracting with Defendant MEI-GSR for the rental of their GSR Condo Units.

160. As a direct and proximate result of Defendant MEI-GSR's misrepresentations, Plaintiffs have been, and will continue to be, harmed in the manner herein.

161. Plaintiffs are further informed and believe, and thereon allege, that said representations were made by Defendant MEI-GSR with the intent to commit an oppression directed toward Plaintiffs by intentionally devaluing there GSR Condo Units. As a result, Plaintiffs are entitled to an award of exemplary damages against the Defendant, according to proof at the time of trial.

162. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

THIRD CLAIM FOR RELIEF
(Breach of Contract as to Defendant MEI-GSR)

163. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 160 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

164. Defendant MEI-GSR has entered into a Grand Sierra Resort Unit Rental Agreement (the "Agreement") with Individual Condo Unit Owners.

165. Defendant MEI-GSR has breached the Agreement with Individual Unit Owners by failing to follow its terms, including but not limited to, the failure to implement an equitable Rotational System as referenced in the agreement.

166. The Agreement is an enforceable contract between Defendant MEI-GSR and Plaintiffs.

167. Plaintiffs have performed all of their obligations and satisfied all of their conditions under the Agreement, and/or their performance and conditions were excused.

168. As a direct and proximate result of Defendant MEI-GSR's breaches of the Agreement as alleged herein, Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

169. In addition, as a direct, proximate and necessary result of Defendant's bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees which they are entitled to recover under the terms of the Agreement.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

FOURTH CLAIM FOR RELIEF
(Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR)

170. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 167 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

171. Defendant MEI-GSR is contractually obligated to Plaintiffs. The contractual obligations are based upon the underlying agreements between Defendant MEI-GSR and Plaintiffs, and principles of equity and representations made by MEI-GSR.

172. Plaintiffs relied upon the representations of Defendant MEI-GSR and trusted Defendant MEI-GSR with the marketing and rental of their GSR Condo Units.

173. Due to the devaluation of the GSR Condo Units caused by Defendant MEI-GSR's actions, the expenses they have had to incur, and their inability to sell the Property in its current state, Plaintiffs have suffered damages.

174. Defendant MEI-GSR was informed of, and in fact knew of, Plaintiffs' reliance upon its representations.

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175. Based on these facts, equitable or quasi-contracts existed between Plaintiffs and Defendant MEI-GSR's actions as described hereinabove.

176. Defendant MEI-GSR, however, has failed and refused to perform its obligations.

177. These refusals and failures constitute material breaches of their agreements.

178. Plaintiffs have performed all of their obligations and satisfied all conditions under the contracts, and/or their performance and conditions, under the contracts, were excused.

179. As a direct and proximate result of Defendant MEI-GSR's wrongful conduct as alleged herein, the Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

180. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

FIFTH CLAIM FOR RELIEF
(Breach of the Implied Covenant of Good Faith and Fair Dealing as to Defendant MEI-GSR)

181. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 178 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

182. As alleged herein, Plaintiffs entered into one or more contracts with Defendant MEI-GSR, including the Grand Sierra Resort Unit Rental Agreement.

183. Under the terms of their respective agreement(s), Defendant MEI-GSR was obligated to market and rent Plaintiffs' GSR Condo Units.

184. Defendant MEI-GSR has manipulated the rental of: (1) the hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned by Defendant MEI-GSR and Defendant Gage Village; and (3) GSR Condo Units owned by Plaintiffs so as to maximize Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by Plaintiffs.

185. Every contract in Nevada has implied into it, a covenant that the parties thereto will act in the spirit of good faith and fair dealing.

186. Defendant MEI-GSR has breached this covenant by intentionally making false and misleading statements to Plaintiffs, and for its other wrongful actions as alleged in this Complaint.

187. As a direct and proximate result of Defendant MEI-GSR's breaches of the implied covenant of good faith and fair dealing, Plaintiffs have been, and will continue to be, harmed in the manner herein alleged.

188. In addition, as a direct, proximate and necessary result of Defendant MEI-GSR's bad faith and wrongful conduct, Plaintiffs have been forced to incur costs and attorneys' fees and thus Plaintiffs hereby seek an award of said costs and attorneys' fees as damages pursuant to statute, decisional law, common law and this Court's inherent powers.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

SIXTH CLAIM FOR RELIEF
(Consumer Fraud/Nevada Deceptive Trade Practices Act Against Defendant MEI-GSR)

189. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 186 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

190. NRS § 41.600(1) provides that "[a]n action may be brought by any person who is a victim of consumer fraud."

191. NRS § 41.600(2) explains, in part, "'consumer fraud' means . . . [a] deceptive trade practice as defined in NRS §§ 598.0915 to 598.0925, inclusive."

192. NRS Chapter 598 identifies certain activities which constitute deceptive trade practices; many of those activities occurred in MEI-GSR's dealings with Plaintiffs.

193. Defendant MEI-GSR, in the course of its business or occupation, knowingly made false representations and/or misrepresentations to Plaintiffs.

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Reno, Nevada 89501

194. Defendant MEI-GSR failed to represent the actual marketing and rental practices implemented by Defendant MEI-GSR, as the Defendant was contractually and legally required to do.

195. Defendant MEI-GSR's conduct, as described in this Complaint, constitutes deceptive trade practices and is in violation of, among other statutory provisions and administrative regulations, NRS §§ 598.0915 to 598.0925.

196. As a direct and proximate result of Defendant MEI-GSR's deceptive trade practices, Plaintiffs have suffered damages.

197. Plaintiffs are also entitled to recover their costs in this action and reasonable attorneys' fees, as allowed by law.

WHEREFORE, Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

SEVENTH CLAIM FOR RELIEF
(Declaratory Relief as to Defendant MEI-GSR)

198. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 195 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

199. As alleged hereinabove, an actual controversy has arisen and now exists between Plaintiffs and Defendant MEI-GSR, regarding the extent to which Defendant MEI-GSR has the legal right to control the Grand Sierra Resort Unit-Owners' Association to advance Defendant MEI-GSR's economic objections to the detriment of Plaintiffs.

200. The interests of Plaintiffs and Defendant MEI-GSR are completely adverse as to the Plaintiffs.

201. Plaintiffs have a legal interest in this dispute as they are the owners of record of certain GSR Condo Units.

202. This controversy is ripe for judicial determination in that Plaintiffs have alluded to and raised this issue in this Complaint.

203. Accordingly, Plaintiffs seek a judicial declaration that Defendant MEI-GSR cannot control the Grand Sierra Resort Unit-Owners' Association to advance Defendant MEI-GSR's economic objectives to the detriment of Plaintiffs.

WHEREFORE, the Plaintiffs request judgment against Defendant MEI-GSR, as set forth below.

EIGHTH CLAIM FOR RELIEF
(Conversion as to Defendant MEI-GSR)

204. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 201 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

205. Defendant MEI-GSR wrongfully committed a distinct act of dominion over the Plaintiffs' property by renting their GSR Condo Units both at unreasonably low rates so as to only benefit Defendant MEI-GSR, and also renting said units without providing any compensation or notice to Plaintiffs.

206. Defendant MEI-GSR's acts were in denial of, or inconsistent with, Plaintiffs' title or rights therein.

207. Defendant MEI-GSR's acts were in derogation, exclusion, or defiance of the Plaintiffs' title or rights therein.

WHEREFORE, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

NINTH CLAIM FOR RELIEF
(Demand for Accounting as to Defendant MEI-GSR and Defendant Grand Sierra Unit Owners Association)

208. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 205 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

209. The Nevada Revised Statutes impose certain duties and obligations upon trustees, fiduciaries, managers, advisors, and investors.

210. Defendant MEI-GSR has not fulfilled its duties and obligations.

211. Plaintiffs are informed and believe, and thereon allege, that they are interested parties in the Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR's endeavors to market, maintain, service and rent Plaintiffs' GSR Condo Units.

212. Among their duties, Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR are required to prepare accountings of their financial affairs as they pertain to Plaintiffs.

213. Defendant Grand Sierra Unit Owners Association and Defendant MEI-GSR have failed to properly prepare and distribute said accountings.

214. Accordingly, Plaintiffs are entitled to a full and proper accounting.

WHEREFORE, Plaintiffs request judgment against the Defendants MEI-GSR and the Grand Sierra Unit Owners Association, as set forth below.

TENTH CLAIM FOR RELIEF
(Specific Performance Pursuant to NRS 116.112, Unconscionable Agreement)

215. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 212 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

216. As alleged herein, Plaintiffs entered into one or more contracts with Defendant MEI-GSR, including the Grand Sierra Resort Unit Rental Agreement and the Unit Maintenance Agreement.

217. The Grand Sierra Resort Unit Rental Agreement is unconscionable pursuant to NRS § 116.112 because MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned or controlled by Defendant MEI-GSR; and (3) GSR Condo Units owned by Individual Unit Owners so as to maximize Defendant MEI-GSR's profits and devalue the GSR Condo Units owned by the Individual Unit Owners.

218. The Unit Maintenance Agreement is unconscionable pursuant to NRS § 116.112 because of the excessive fees charged and the Individual Unit Owners' inability to reject fee increases.

WHEREFORE, Plaintiffs request judgment against the Defendant MEI-GSR, as set forth below.

ELEVENTH CLAIM FOR RELIEF
(Unjust Enrichment / Quantum Meruit against Defendant Gage Village Development)

219. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 216 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

220. Defendant Gage Village has unjustly benefited from MEI-GSR's devaluation of the GSR Condo Units.

221. Defendant Gage Village has unjustly benefited from prioritization of its GSR Condo Units under MEI-GSR's rental scheme to the immediate detriment of the Individual Unit Owners.

222. It would be inequitable for the Defendant Gage Village to retain those benefits without full and just compensation to the Individual Unit Owners.

WHEREFORE, Plaintiffs request judgment against the Defendant Gage Village, as set forth below.

TWELFTH CLAIM FOR RELIEF
(Tortious Interference with Contract and /or Prospective Business Advantage against Defendants MEI-GSR and Gage Development)

223. Plaintiffs re-allege each and every allegation contained in paragraphs 1 through 220 of this Complaint as though fully stated herein and hereby incorporate them by this reference as if fully set forth below.

224. Individual Unit Owners have contracted with third parties to market and rent their GSR Condo Units.

225. Defendant MEI-GSR has systematically thwarted the efforts of those third parties to market and rent the GSR Condo Units owned by the Individual Unit Owners.

226. Defendant MEI-GSR has prioritized the rental of GSR Condo Units Owned by Defendant Gage Village to the economic detriment of the Individual Unit Owners.

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227. Defendant Gage Village has worked in concert with Defendant MEI-GSR in its scheme to devalue the GSR Condo Units and repurchase them.

WHEREFORE, Plaintiffs request judgment against the Defendants as follows:

1. For the appointment of a neutral receiver to take over control of Defendant Grand Sierra Unit Owners' Association;
2. For compensatory damages according to proof, in excess of $10,000.00;
3. For punitive damages according to proof;
4. For attorneys' fees and costs according to proof;
5. For declaratory relief;
6. For specific performance;
7. For an accounting; and
8. For such other and further relief as the Court may deem just and proper.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that this document does not contain the social security number of any person.

RESPECTFULLY SUBMITTED this 26th day of March, 2013.

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501

By: */s/ Jarrad C. Miller*
G. David Robertson, Esq.
Jarrad C. Miller, Esq.
Jonathan J. Tew, Esq.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of 18, and not a party within this action. I further certify that on the 26th day of March, 2013, I electronically filed the foregoing **SECOND AMENDED COMPLAINT** with the Clerk of the Court by using the ECF system which served the following parties electronically:

Sean L. Brohawn, Esq.
50 W. Liberty Street, Suite 1040
Reno, NV 89501
Attorneys for Defendants / Counterclaimants

/s/ Kimberlee A. Hill
An Employee of Robertson, Johnson, Miller & Williamson

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI and GEORGE VAGUJHELYI, as Trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT, U/T/A APRIL 13, 2001; D' ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LORI ORDOVER, individually; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, as Trustee of the STEVEN W. TAKAKI & FRANCES S. LEE REVOCABLE TRUSTEE AGREEMENT, UTD JANUARY 11, 2000; FARAD TORABKHAN, individually; SAHAR TAVAKOLI, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; USHA RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; LORI K. TOKUTOMI, individually; GARRET TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; ANITA TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE

Supreme Court No. 70498
District Court Case No. CV12-02222

Electronically Filed
Jun 27 2016 04:28 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, individually; ELIAS SHAMIEH, individually; JEFFREY QUINN, individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDERICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, as Manager of Condotel 1906 LLC; MAY ANNE HOM, as Trustee of the MAY ANNE HOM TRUST; MICHAEL HURLEY, individually; DUANE WINDHORST, as Trustee of DUANE H. WINDHORST TRUST U/A dtd. 01/15/2003 and MARILYN L. WINDHORST TRUST U/A/ dtd. 01/15/2003; MARILYN WINDHORST, as Trustee of DUANE H. WINDHORST TRUST U/A dtd. 01/15/2003 and MARILYN L. WINDHORST TRUST U/A/ dtd. 01/15/2003; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLEEN LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISTINE MECHAM, individually; KWANG SOON SON, individually; SOO YEU MOON, individually; JOHNSON AKINBODUNSE, individually; IRENE WEISS,

as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA, individually; TERRY POPE, individually; NANCY POPE, individually; JAMES TAYLOR, individually; RYAN TAYLOR, individually; KI NAM CHOI, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUN (CONNIE) YOO, individually; SANG SOON (MIKE) YOO, individually; BRETT MENMUIR, as Manager of CARRERA PROPERTIES, LLC; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDRES MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, as Trustee of the RIOPELLE FAMILY TRUST; PATRICIA M. MOLL, individually; DANIEL MOLL, individually,

Appellants,

vs.

MEI-GSR HOLDINGS, LLC, a Nevada Limited Liability Company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited Liability Company; AM-GSR HOLDINGS, LLC, a Nevada Limited Liability Company,

Respondents.

APPELLANTS' DOCKETING STATEMENT

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

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

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

1. Judicial District **Second** Department **10**

County **Washoe** Judge **Hon. Elliott Sattler**

District Ct. Case No. **CV12-02222**

2. Attorney filing this docketing statement:

Attorney **Jarrad C. Miller, Esq./Jonathan Joel Tew, Esq.**
Telephone **775/329-5600**
Firm **Robertson, Johnson, Miller & Williamson**

Address **50 W. Liberty Street, Suite 600, Reno, NV 89501**

Client(s) **All Appellants**

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

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

Attorney **H. Stan Johnson, Esq./Steven B. Cohen,Esq.**
Telephone **702/823-3500**

Firm **Cohen Johnson Parker Edwards, LLC**

Address **255 E. Warm Springs Road, Ste. 100, Las Vegas, NV 89119**

Client(s) **All Respondents**

Attorney **Daniel F. Polsenberg, Esq./Joel D. Henriod, Esq.**
Telephone **702/949-8200**

Firm **Lewis Roca Rothgerber Christie LLP**

Address **3993 Howard Hughes Pkwy, Ste. 600, Las Vegas, NV 89169**

Client(s) **All Respondents**

(List additional counsel on separate sheet if necessary) **See continuation page**

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

☐ Judgment after bench trial	■ Dismissal:
☐ Judgment after jury verdict	■ Lack of jurisdiction
☐ Summary judgment	☐ Failure to state a claim
☐ Default judgment	☐ Failure to prosecute
☐ Grant/Denial of NRCP 60(b) relief	☐ Other (specify):
☐ Grant/Denial of injunction	☐ Divorce Decree:
☐ Grant/Denial of declaratory relief	☐ Original ☐ Modification
☐ Review of agency determination	☐ Other disposition (specify):

5. Does this appeal raise issues concerning any of the following? No.

☐ Child Custody

☐ Venue

☐ Termination of parental rights

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

***MEI-GSR Holdings, LLC v. Thomas et al.*; No. 69184**

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

SEE CONTINUATION PAGE

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

Appellants (plaintiffs below) are condominium owners who sued respondents on various claims for misconduct, including intentional misrepresentation, breach of contract and deceptive trade practices. After approximately four years of litigation, the district court found that respondents committed numerous serious discovery abuses; the district court imposed case-concluding sanctions against respondents; and the district court awarded more than $8 million in compensatory damages to appellants. Shortly before the punitive damages phase was about to start, respondents moved to dismiss the case due to alleged lack of jurisdiction. The district court granted the motion.

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

Whether the district court erred by dismissing the case due to lack of subject matter jurisdiction. Included in this issue are the following: (1) whether NRS 38.310 establishes subject matter jurisdictional limits; (2) whether a defense based on NRS 38.310 can be raised after approximately four years of litigation; (3) whether doctrines of waiver or estoppel apply to a defense based on NRS 38.310; (4) whether NRS 38.310 is even applicable at all in the circumstances of the present case; and (5) whether the district court erred in dismissing the case after entering case-terminating sanctions under NRCP 37(b)(2) due to the respondents' repeated abuse of the judicial process.

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

None known.

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

■ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

■ A substantial issue of first impression

■ An issue of public policy

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

☐ A ballot question

If so, explain:

Issues of first impression and public policy include all of the issues identified in the Question 9 answer, above.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance (s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is presumptively retained by the Supreme Court, pursuant to NRAP 17(a)(13) and (14), because the case involves questions of first impression and issues of statewide public importance, including the proper interpretation, scope and application of NRS 38.310.

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

Was it a bench or jury trial? _____

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

None.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from **May 9, 2016**

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

17. Date written notice of entry of judgment or order was served
May 11, 2016; May 12, 2016

Was service by:

☐ Delivery

■ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing: _____

☐ NRCP 52(b) Date of filing: _____

☐ NRCP 59 Date of filing: _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed **May 26, 2016**

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

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

NRAP 4(a)(1) [30 days after service of notice of entry of judgment/order from which appeal is taken]

SUBSTANTIVE APPEALABILITY

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

(a)

■	NRAP 3A(b)(1)	☐	NRS 38.205
☐	NRAP 3A(b)(2)	☐	NRS 233B.150
☐	NRAP 3A(b)(3)	☐	NRS 703.376
☐	Other (specify) _____		

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

NRAP 3A(b)(1) allows an appeal from a final judgment. The order dismissing appellants' complaint is the final judgment in this action.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

SEE ATTACHED LIST OF PARTIES

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

All parties in district court are parties in this appeal.

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

Various claims, essentially consisting of intentional misrepresentation, breach of contract and deceptive trade practices. All claims were dismissed by the district court's order of May 9, 2016, from which this appeal is being taken.

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

■ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

27. Attach file-stamped copies of the following documents:

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

VERIFICATION

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

Dated: this 27th day of June, 2016.

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

By: */s/ Jarrad C. Miller*
Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, over the age of eighteen, and not a party to the within action. I further certify that on June 27, 2016, I caused to be deposited in the U.S. Mail, first-class postage fully prepaid, a true and correct copy of the foregoing Appellants' Docketing Statement addressed to the following:

Robert L. Eisenberg, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, NV 89509
Attorneys for Appellants

H. Stan Johnson, Esq.
Steven B. Cohen, Esq.
Cohen Johnson Parker Edwards, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, NV 89119
Attorneys for Respondents

Mark Wray, Esq.
The Law Offices of Mark Wray
608 Lander Street
Reno, NV 89509
Attorneys for Respondents

Gayle A. Kern, Esq.
Kern & Associates, Ltd.
5421 Kietzke Lane, Suite 200
Reno, NV 89511
Attorneys for Respondents

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, NV 89169
Attorneys for Respondents

/s/ Teresa W. Stovak
An Employee of Robertson, Johnson,
Miller & Williamson

CONTINUATION PAGE – QUESTION NO. 3

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

Attorney	**Mark Wary, Esq.**
	(Motion for Permission to Withdraw is pending)
Telephone	**775/348-8877**
Firm	**The Law Offices of Mark Wray**
Address	**608 Lander Street, Reno, NV 89509**
Client(s)	**All Respondents**

Attorney	**Gail A. Kern, Esq.**
Telephone	**775/324-5930**
Firm	**Kern & Associates, Ltd.**
Address	**5421 Kietzke Lane, Suite 200, Reno, NV 89511**
Client(s)	**All Respondents**

CONTINUATION PAGE – QUESTION NO. 7

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

Case Name	Case Number	Court	Date Dismissed
MEI-GSR Holdings, LLC., v. Gregory Cameron	RSC2012-000426	Reno Township Small Claims Court in Washoe County, Nevada	Stipulation to Dismiss without Prejudice: September 25, 2012
MEI-GSR Holdings, LLC., v. Henry Nunn	RSC2012-000430	Reno Township Small Claims Court in Washoe County, Nevada	Stipulation to Dismiss without Prejudice: September 17, 2012
MEI-GSR Holdings, LLC., v. Marie-Annie Alexander Living Trust	RSC2012-000435	Reno Township Small Claims Court in Washoe County, Nevada	Stipulation to Dismiss without Prejudice: September 18, 2012
MEI-GSR Holdings, LLC., v. Robert R. & Lou Ann Pederson	RSC2012-000601 RSC2012-000602 RSC2012-000617 *Consolidated*	Reno Township Small Claims Court in Washoe County, Nevada	Stipulation to Dismiss without Prejudice: September 26, 2012
MEI-GSR Holdings, LLC., v. Lee Van Der Bokke & Madelyne Van Der Bokke	RSC2012-000608	Reno Township Small Claims Court in Washoe County, Nevada	Stipulation to Dismiss without Prejudice: September 18, 2012
MEI-GSR Holdings, LLC., v. Jeffrey J. & Barbara R. Quinn	RSC2012-000611	Reno Township Small Claims Court in Washoe County, Nevada	Stipulation to Dismiss without Prejudice: September 25, 2012
MEI-GSR Holdings, LLC., v. Jeffrey J. & Barbara R. Quinn	RSC2012-000612	Reno Township Small Claims Court in Washoe County, Nevada	Stipulation to Dismiss without Prejudice: September 25, 2012
MEI-GSR Holdings, LLC., v. Robert & Amy Jo Brunner	RSC2012-000613	Reno Township Small Claims Court in Washoe County, Nevada	Stipulation to Dismiss without Prejudice: September 26, 2012

CONTINUATION PAGE – QUESTION NO. 22

22. List all parties involved in the action or consolidated actions in the district court:

Plaintiffs:

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI and GEORGE VAGUJHELYI, as Trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT, U/T/A APRIL 13, 2001; D' ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LORI ORDOVER, individually; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, as Trustee of the STEVEN W. TAKAKI & FRANCES S. LEE REVOCABLE TRUSTEE AGREEMENT, UTD JANUARY 11, 2000; FARAD TORABKHAN, individually; SAHAR TAVAKOLI, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; USHA RAGHURAM, as Trustee of the RAJ AND USHA RAGHURAM LIVING TRUST DATED APRIL 25, 2001; LORI K. TOKUTOMI, individually; GARRET TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; ANITA TOM, as Trustee of THE GARRET AND ANITA TOM TRUST, DATED 5/14/2006; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, individually; ELIAS SHAMIEH, individually; JEFFREY QUINN, individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ, individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDERICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, as Manager of Condotel 1906 LLC; MAY ANNE HOM, as Trustee of the MAY ANNE HOM TRUST; MICHAEL HURLEY, individually; DUANE WINDHORST, as Trustee of DUANE H. WINDHORST TRUST U/A dtd. 01/15/2003 and MARILYN L. WINDHORST TRUST U/A/ dtd. 01/15/2003; MARILYN WINDHORST, as Trustee of DUANE H. WINDHORST TRUST U/A dtd. 01/15/2003 and MARILYN L. WINDHORST TRUST U/A/ dtd. 01/15/2003; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLEEN LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISTINE MECHAM, individually; KWANG SOON SON, individually; SOO YEU MOON, individually;

JOHNSON AKINBODUNSE, individually; IRENE WEISS, as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA, individually; TERRY POPE, individually; NANCY POPE, individually; JAMES TAYLOR, individually; RYAN TAYLOR, individually; KI NAM CHOI, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUN (CONNIE) YOO, individually; SANG SOON (MIKE) YOO, individually; BRETT MENMUIR, as Manager of CARRERA PROPERTIES, LLC; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDRES MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, as Trustee of the RIOPELLE FAMILY TRUST; PATRICIA M. MOLL, individually; DANIEL MOLL, individually.

Defendants:

MEI-GSR HOLDINGS, LLC, a Nevada Limited Liability Company, GRAND SIERRA RESORT UNIT OWNERS' ASSOCIATION, a Nevada nonprofit corporation, GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada Limited Liability Company; AM-GSR HOLDINGS, LLC, a Nevada Limited Liability Company

EXHIBIT INDEX

Ex. No.	Date	Description	Pages
1	3/26/13	Second Amended Complaint	26
2	5/23/13	Answer to Second Amended Complaint and Counterclaim	17
3	12/18/13	Order Regarding Original Motion for Case Concluding Sanctions	6
4	10/3/14	Order Granting Plaintiffs' Motion for Case-Terminating Sanctions	13
5	5/9/16	Order	14
6	5/11/16	Notice of Entry of Order	18
7	5/12/16	Notice of Entry of Judgment	17