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

No. 70498

APPELLANTS' SUPPLEMENTAL APPENDIX TO REPLY BRIEF

VOLUME 8

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,

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' SUPPLEMENTAL APPENDIX TO REPLY BRIEF

VOLUME 8

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CHRONOLOGICAL INDEX TO APPELLANTS' SUPPLEMENTAL APPENDIX

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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, 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 and DOE DEFENDANTS 1 THROUGH 10, inclusive,

Defendants.

Case No. CV12-02222
Dept. No. 10

APPLICATION FOR DEFAULT JUDGMENT PURSUANT TO NRCP 55(b)(2)

Plaintiffs, by and through their counsel of record, the law firm of Robertson, Johnson, Miller & Williamson, hereby present this Application for Entry of Default Judgment ("Application"). This Application is brought pursuant to Nevada Rule of Civil Procedure 55(b)(2), and is supported by the attached memorandum of points and authorities, the attached Exhibits, the referenced hearing exhibits ("Hearing Exhibits" or "Ex."), all other pleadings and papers on file herein, and any oral argument which the Court may choose to hear.

Finally, this Application is made on the ground that a Default has been entered against each of the Defendants on November 26, 2014 following this Court's October 3, 2014 order granting case-terminating sanctions.

RESPECTFULLY SUBMITTED this 17th day of March, 2015.

ROBERTSON, JOHNSON, MILLER & WILLIAMSON
By: */s/ Jonathan Joel Tew*
Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court has set a prove-up hearing on damages to begin on March 23, 2015. To support their damages analysis and to assist the Court in the truth-seeking process, the Plaintiffs hereby submit this Application which demonstrates the Plaintiffs' prima facie case for their claims and damages as required by Foster v. Dingwall, 126 Nev. Adv. Rep. 6, 227 P.3d 1042, 1049 (2010). As the Court can see herein, the Plaintiffs can establish a prima facie case for liability and damages through: (1) the well-pleaded allegations of the Second Amended Complaint ("SAC"), which are deemed admitted due to the Defendants' default; (2) the supporting documents and evidence; and (3) the expert report of Plaintiffs' expert, Mr. Craig Greene (the "Greene Report" or "Ex. 246").

II. LEGAL ANALYSIS

A. Nevada Rule of Civil Procedure 55(b)(2)

Nevada Rule of Civil Procedure 55(b)(2) provides in pertinent part that: "[i]f the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application."

B. Legal Standards Concerning Entry of Default Judgment

"In cases involving the entry of default judgment as a discovery sanction, the non-offending party need only establish a *prima facie* case in order to obtain the default judgment." February 5, 2015 Order ("Order") at 3:2-3; accord, Young v. Johnny Ribeiro Bldg., 106 Nev. 88, 94, 787 P.2d 777, 78 (1990). Further, "[t]he offending party has forfeited the right to litigate this *prima facie* case." Young, 106 Nev. at 94, 787 P.2d at 781. "A *prima facie* case is defined by the sufficiency of evidence in order to send the question to the jury." Order at 3:9-10; Vancheri v. GNLV Corp., 105 Nev. 417, 420, 777 P.2d 366 (1989). It means offering proof which "merely meets the minimum quantum of evidence necessary for a party to prevail . . . ." Godsky v. Provo City Corp., 690 P.2d 541, 547 (Utah 1984); accord, Norvell v. Miller, 476 U.S. 1126, 1127 (1986) (same); Horgan v. Felton, 123 Nev. 577, 581, 170 P.3d 982, 985 (2007) ("Substantial

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evidence is evidence that 'a reasonable mind might accept as adequate to support a conclusion.'") (citations omitted).

Regular burdens of proof do not figure into the establishment of a *prima facie* case: "to establish a *prima facie* case, a party need not make a compelling showing or even one by the preponderance of the evidence..." Oja v. Oja, Case No. C0-02-1366, 2003 Minn. App. LEXIS 310, at *21-22 (Mar. 18, 2003). The Nevada Supreme Court has described the burden of presenting a *prima facie* case in the criminal context as equivalent with a "slight" showing – one merely "permitting [a] reasonable inference." Gaxiola v. State of Nevada, 121 Nev. 633, 650, 119 P.3d 1225, 1234 (2005). In short, "a plaintiff has a very low threshold in establishing a *prima facie* case . . . ." DeVoll v. Burdick Painting, Inc., 35 F.3d 408, 411 (9th Cir. 1994).

In addition, the substantial evidence standard applies to all of the Plaintiffs' claims – including those of intentional misrepresentation, deceptive trade practices – and as to the Plaintiffs' claim for punitive damages. Typically, fraud and the right to punitive damages must be established by clear and convincing evidence. However, the Nevada Supreme Court has made clear that a non-offending party need only establish a *prima facie* case *by substantial evidence*, which is – as was noted above – a much slighter burden of proof than otherwise required. Foster, 227 P.3d at 1050.

Next, because this Court has entered a default, the facts alleged in the Plaintiffs' SAC are deemed admitted. Order at 3:5-8. Thus, during the hearing, "the district court shall consider the allegations deemed admitted to determine whether the non-offending party has established a prima facie case for liability." Id.

Finally, the Court has noted that it will allow the Defendants to object to patent and fundamental defects, consistent with Nevada Supreme Court precedent. Order at 3:24-26. The Defendants will also be allowed to cross-examine the Plaintiffs' witnesses; however, the Defendants will not be allowed to present their own evidence or witnesses. Order at 5:3-8.

C. What Constitutes A Patent and Fundamental Defect

As was noted above, the Nevada Supreme Court has found that offending parties forfeit the right to object to all but the most patent and fundamental defects. However, the Nevada

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Supreme Court has not yet defined what a "patent and fundamental defect" is. Case law in other jurisdictions, while only constituting persuasive authority, is instructive on this subject.

A patent defect is one that is "obvious," "plainly visible," or easily detectible by an ordinary person upon reasonable inspection. See Clark v. Allen, 796 N.E.2d 965, 969 (Ohio Ct. App. 2003) ("A patent defect is an open and observable defect that an ordinary prudent person would discover upon reasonable inspection."); S Dev. Co. v. Pima Capital Mgmt. Co., 31 P.3d 123, 129 (Ariz. Ct. App. 2001) ("Black's Law Dictionary defines a 'patent defect' as one that 'is plainly visible or which can be discovered by such an inspection as would be made in the exercise of ordinary care and prudence.'").

Indeed, patent defects are often contrasted with latent defects, which are not readily apparent and would not be discovered by an ordinary person using reasonable diligence. Wagner v. State of California, 86 Cal. App. 3d 922, 927 (Cal. App. 3d Dist. 1978) ("A patent defect is one which can be discovered by such an inspection as would be made in the exercise of ordinary care and prudence. This is contrasted with a latent defect, one which is hidden and which would not be discovered by a reasonably careful inspection.") (internal citations omitted)); see also Preston v. Goldman, 720 P.2d 476, 476-77, 483-85 (Cal. 1986) (patent defect is one discoverable by ordinary care inspection, while a latent defect is hidden and would not be so discovered); Ebasco Servs. v. Pac. Intermountain Express Co., 398 F. Supp. 565, 568 (S.D.N.Y. 1975) ("It is clear that an unobservable defect is a latent defect while a readily apparent defect is a patent defect.")

Similarly, the Nevada Supreme Court has not yet defined what constitutes a fundamental defect. While more difficult to define, case law in various contexts describe fundamental defects as being "profound," fatal to an action, or defects of the type that would result in a complete miscarriage of justice. See, e.g., Bartels v. Rural Mut. Ins. Co., 687 N.W.2d 84, 88-89 (Wis. Ct. App. 2004) ("A fundamental defect is 'fatal to the action'") (citations omitted); DeDonato v. State, 819 S.W.2d 164, 168 (Tex. Crim. App. 1991) ("[g]enerally, a fundamental defect is one that is so profound that it renders the charging instrument invalid, voiding any conviction obtained as a result of the prosecution based on the charging instrument."); Martin v. Sec'y,

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Dep't of Corr., 2008 U.S. Dist. LEXIS 71669, 25 (M.D. Fla. June 19, 2008) ("a fundamental defect [is one] which inherently results in a complete miscarriage of justice") (citations omitted).

Based on the above, and Nevada Supreme Court precedent which demonstrates that district courts aggressively restrict offending parties' rights of participation, it appears that a patent and fundamental defect must be "obvious" to an ordinary person and "fatal" to what someone is trying to prove.

In other words, the offending party should not be able to object to something that is "debatable." Objection should only be allowed if something is obviously or plainly wrong to an ordinary person upon reasonable inspection. Accordingly, to the extent that the Defendants in this case seek to proffer expert-level arguments to controvert the Plaintiffs' prima facie case for liability and damages, such arguments would far exceed an objection to a patent and fundamental defect. Expert-level disagreement clearly does not fit in a prove-up hearing on case-terminating sanctions. While the Defendants might perceive this as unfair, or argue that it impairs their due process rights, they should not forget that they already permanently prejudiced the Plaintiffs' due process rights, and ability to fully establish their damages, through their discovery abuses. As the Nevada Supreme Court has noted, "[t]he most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong created." Foley v. Morse & Mowbray, 109 Nev. 116, 121, 848 P.2d 519, 520 (1993).

Again, the Supreme Court is only concerned with non-offending parties seeking exorbitant damages that are not grounded in reality, and district courts rubber stamping the non-offending parties damages requests.

D. Damages Need Not Be Mathematically Certain

The Plaintiffs need not prove damages with mathematical certainty. As the Nevada Supreme Court has noted:

> The rule against the recovery of uncertain damages generally is directed against uncertainty as to the existence or cause of damage rather than to measure or extent. However, if there is evidence that damage resulted from the defendant's wrongful act and a reasonable method for ascertaining the extent of damage is offered through testimony, the fact that some uncertainty exists as to the actual amount of damage sustained, does not preclude recovery. It is sufficient if the

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> evidence adduced will permit the jury to make a fair and reasonable approximation.

Bader v. Cerri, 96 Nev. 352, 357, 609 P.2d 314, 318 (1980) (overruled on other grounds in Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 608, 5 P.3d 1043, 1049-1050 (2000); accord, Eastman Kodak Co. v. Southern Photo Materials, Co., 273 U.S. 359, 379 (1927) ("a defendant whose wrongful conduct has rendered difficult the ascertainment of the precise damages suffered by the plaintiff, is not entitled to complain that they cannot be measured with the same exactness and precision as would otherwise be possible."); Bigelow v. RKO Radio Pictures, Inc., 327 U.S. 251, 265 (1946) ("[t]he most elementary conceptions of justice and public policy require that the wrongdoer shall not object to the plaintiff's reasonable estimate of the cause of the injury and of its amount, supported by evidence, because not based on more accurate data which the wrongdoer's misconduct has rendered unavailable"); Foley v. Morse & Mowbray, 109 Nev. 116, 121, 848 P.2d 519, 520 (1993) ("The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong created"); Topaz Mutual Co. v. Marsh, 108 Nev. 845, 853, 839 P.2d 606, 611 (1992) (same).

E. The Plaintiffs' Second Amended Complaint and Evidence Establishes a Prima Facie Case for All of Their Claims

The Plaintiffs have asserted twelve (12) causes of action: (1) Petition for Appointment of a Receiver; (2) Intentional and/or Negligent Misrepresentation; (3) Breach of Contract; (4) Quasi-Contract/Equitable Contract/Detrimental Reliance as to Defendant MEI-GSR; (5) Breach of the Implied Covenant of Good Faith and Fair Dealing; (6) Consumer Fraud/Nevada Deceptive Trade Practices Act; (7) Declaratory Relief; (8) Conversion; (9) Demand for Accounting; (10) Specific Performance Pursuant to NRS 116.112, Unconscionable Agreement; (11) Unjust Enrichment/Quantum Meruit against Defendant Gage Village Development; and (12) Tortious Interference with Contract and/or Prospective Business Advantage.

The Plaintiffs' Petition for Appointment of Receiver is no longer at issue due to the Court's orders granting same.

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i. **Intentional and/or Negligent Misrepresentation**

a. Fraud / Intentional Misrepresentation

The elements of fraudulent or intentional misrepresentation are:

> (1) A false representation made by the defendant; (2) defendant's knowledge or belief that its representation was false or that defendant has an insufficient basis of information for making the representation; (3) defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the plaintiff as a result of relying on the misrepresentation.

Barmettler v. Reno Air, Inc., 114 Nev. 441, 446-47, 956 P.2d 1382, 1386 (1998). As will be shown herein, the Defendants persistently and intentionally misrepresented critical information. The Defendants also committed fraud by omission.

With respect to the false representation element, the suppression or omission "'of a material fact which a party is bound in good faith to disclose is equivalent to a false representation, since it constitutes an indirect representation that such fact does not exist.'" Nelson v. Heer, 123 Nev. 217, 163 P.3d 420 (Nev. 2007) (quoting Midwest Supply, Inc. v. Waters, 89 Nev. 210, 212-13, 510 P.2d 876, 878 (1973).

1. *A False Representation Made by the Defendants*

- Defendant MEI-GSR made affirmative representations to Plaintiffs regarding the use, rental and maintenance of the Individual Unit Owners' GSR Condo Units. SAC at ¶ 155 (deemed admitted); see, e.g., Greene Report at p.6 (Defendants issued false monthly Account Statements and purposefully underpaid Plaintiffs); see, e.g., Hearing Ex. (hereinafter "Ex.") 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false); Ex. 239 at 20:5-22 (Ken Vaughan, Senior Vice President of Hotel Operations, admitting that the GSR knowingly rented plaintiffs' units that were not in the rental program due to business demand, and kept 100% of the proceeds, while reporting no revenue or room usage on the monthly statements) with invoice showing no usage but a bill for fees); compare Exhibit 233, IUO-GSR 4438-4440 (Email between GSR employee and plaintiff wherein GSR employee represents that the Meruelo Group has been paying all of the same monthly fees as the other individual unit owners; this

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representation was false) with IUO-GSR 4374 – 4385 (Defendant Gage Village Commercial Development "past-due total $1,225,729"; Defendant MEI-GSR Holdings, LLC "past due total $1,782,932.").

- Defendant MEI-GSR made affirmative representations to certain Plaintiffs in order to induce them to sell their units. See, e.g., Ex. 247, Deposition of Susan Ragusa, at 35:8-20 (admitting to using false statements to induce plaintiffs to sell units, in her words "[j]like a car salesman") see also 37-38 (claiming the existence of a great short sale attorney when no such person existed); see also, Ex. 150-216 (false monthly account statements); Greene Report at p.6.

2. *The Defendants Knew the Representation Was False*

- The evidence demonstrates that these representations were false. SAC at ¶ 156 (deemed admitted); see, e.g., Greene Report at p.6-9 (Defendants underreported income for units in the rental program and rented units not in the rental program and kept all of the proceeds); Ex. 239, Deposition of Kent Vaughan, at 20:5-22 (admitting use of rooms without reporting income); See, e.g., Ex. 247, Deposition of Susan Ragusa, at 35:8-20 (admitting to using false statements to induce plaintiffs to sell units, in her words "[j]like a car salesman"); see also p.37-38 (claiming the existence of a great short sale attorney when no such person existed.); Ex. 232(d) (email wherein a condominium owner caught defendant using plaintiffs' unit without consent); Ex. 233, IUO-GSR 4484 (email wherein a condominium owner caught defendant using plaintiff's unit without consent).
- 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. SAC at ¶ 157 (deemed admitted); see, e.g., Id.; Ex. 232A & Ex. 233 (emails admitting to "stolen" rooms); Ex. 247, Deposition of Susie Ragusa; Ex. 233 at 4438-4440 (false claim that fees were being paid for Defendants' units) and 4376-4384 (internal emails showing non-payment of HOA dues); 232(b) & (c) (email exchanges between Defendants' employees concerning Defendants' practice of providing complimentary use (referred to

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in the email as "comp") of units owned by Plaintiffs in violation of the governing "agreements" – demonstrating that in just one month a unit was comped eight (8) times.)

3. *The Defendants Intended to Induce the Plaintiffs to Act or Refrain from Acting Upon the Misrepresentation*

- 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. Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false). Singer v. AT&T Corp., 185 F.R.D. 681, 691 (S.D. Fla. 1998) (representations made in billing statements are presumptively relied upon).[1]
- SAC at ¶ 158 (deemed admitted);[2] see, e.g., Id.; Ex. 247, Deposition of Susie Ragusa, at 37-38.

4. *The Plaintiffs Justifiably Relied Upon the Misrepresentations*

- Plaintiffs justifiably relied upon the affirmative representations of Defendant MEI-GSR in the monthly statements created by Defendant MEI-GSR for the rental of their GSR Condo Units. SAC at ¶ 159 (deemed admitted);[3] see, e.g., Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees

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[1] Engalla v. Permanente Medical Group, Inc., 938 P.2d 903, 907 (Cal. 1997) (a defendants' intent to induce reliance on defendants' misrepresentations can be inferred from the agreements themselves). See, e.g., Ex. 1, 2, 5, 245.

[2] The Defendants may argue that the Court cannot accept the allegation of intent to induce reliance as established. However, the Nevada Rules of Civil Procedure allow intent to be averred generally and not with particularity. See NRCP 9(b) ("Malice, intent, knowledge, and other condition of mind of a person may be averred generally.") Accordingly, the Court may accept this allegation as true as to all individual Plaintiffs since it is a well-pleaded allegation. Order at 3:5-8.

[3] Reliance is also a condition of mind that may be averred generally. Herremans v. BMW of N. Am., LLC, 2014 U.S. Dist. LEXIS 145957, 29-31 (C.D. Cal. Oct. 3, 2014) (reliance is a condition of the mind that may be averred generally); accord, Lee Myles Assocs. Corp. v. Paul Rubke Enters., 557 F. Supp. 2d 1134, 1143 (S.D. Cal. 2008) (concluding that Rule 9(b)'s heightened pleading requirements did not apply to allegations of reliance because the rule states that "conditions of mind . . . may be averred generally"). Accordingly, this Court may find that reliance is established as admitted as to all Plaintiffs.

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associated with their units; these reports were knowingly false);[4] Ex. 233 at 4438-4440; Application at Ex. 2.

- The agreements themselves provide that the Plaintiffs will rely on the statements. See, e.g., Unit Rental Agreement at Section 9(c) (providing for payment of rent to Owner) and 9(d) (promise to provide accurate books of account and payment of rent); Unit Rental Agreement at Section 4 and 4(a) (promising to use good faith efforts to rent Plaintiffs' units). Moreover, reliance should be inferred from the agreements themselves. See, e.g., Engalla v. Permanente Medical Group, Inc., 938 P.2d at 907.

5. *The Plaintiffs Were Harmed (Damages)*

- 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. SAC at ¶ 160 (deemed admitted); see, e.g., Greene Report at p.3-4 (GSR has consistently underpaid revenues to the Plaintiffs ($442,591.83))[5]; GSR has been renting units of owners that did not have rental agreements with the GSR ($3,274,452.84); GSR has consistently provided units to hotel guests without charge (complimentary) or at discounted rates, without appropriate compensation to the Plaintiffs (discounted rooms without credits: $1,399,630.44; discounted rooms with credits: $31,269.44; complimentary units: $96,084.96)); Exhibit 4 to Greene Report.
- Plaintiffs are further informed and believe, and thereon allege, that said representations were made by Defendant MEI-GSR with the intent to commit oppression directed toward Plaintiffs by intentionally devaluing there GSR Condo Units. SAC at ¶ 161 (deemed admitted).

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[4] Reliance can be presumed from the account statements – which are representations by the Defendants concerning the usage of the Plaintiffs' units, the amounts owed to the Defendants, or the amounts owed to the Plaintiffs. This is true because the Plaintiffs have no access to the Defendants internal data – they have to rely upon the Defendants to report income and expenses relating to their units. Although there is nothing on point under Nevada law, courts in other contexts will infer reliance in investor contexts. See, e.g., Anixter v. Home-Stake Prod. Co., 77 F.3d 1215, 1226, (10th Cir. Okla. 1996) ("With respect to actionable omissions, investor reliance will be presumed.")

[5] Plaintiffs herein frequently refer to the cumulative total of Plaintiffs' damages for the various damages categories. However, each of the Plaintiffs' specific damages has been calculated on a per unit basis. See Exhibit 1 to Application; Greene Report at Exhibit 4.2.

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6. *Remedy for those Plaintiffs Who Sold Their Units on the Basis of Fraud*

Those Plaintiffs who sold their units due to fraud request that the Court order the Defendants to deed back those units. See Awada v. Shuffle Master, Inc., 123 Nev. 613, 622, 173 P.3d 707, 713 (2007) ("A party to a contract may seek a rescission of that contract based on fraud in the inducement."); Application at Exhibit 2 (showing the particular Plaintiffs that sold their units due to the Defendants' fraud, which include units: 1981 (Plaintiff Barry Hay), 1987 (Plaintiff Barry Hay), 2354 (Plaintiff Henry Nunn), and 1979 (Plaintiff Garth Williams).[6]

b. Negligent Misrepresentation

Nevada courts have adopted the following definition of negligent misrepresentation:

> One who, in the course of his business, profession or employment, or in any other action in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

Bill Stremmel Motors v. First Nat'l Bank, 94 Nev. 131, 134, 575 P.2d 938, 940 (1978) (quoting Restatement (Second) of Torts § 552 (1977)); Barmettler, 114 Nev. at 449, 956 P.2d at 1387.

The manner in which the Defendants falsely represented information indicates that their conduct was intentional. Yet, at the very least, it is clear that the Defendants had no reasonable basis to make the representations set forth above.

One who:

1. *In the course of his business, profession or employment, or in any other action in which he has a pecuniary interest supplies false information for the guidance of others in their business transactions*

   See, e.g., Greene Report at p.6 (Defendants issued false monthly Account Statements and purposefully underpaid Plaintiffs); Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated

[6] Plaintiffs concede that upon the return of the unit via deed, the purchase price paid by the Defendants would need to be refunded.

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with their units; these reports were knowingly false); compare Exhibit 233, IUO-GSR 4438-4440 (Email between GSR employee and plaintiff wherein GSR employee represents that the Meruelo Group has been paying all of the same monthly fees as the other individual unit owners; this representation was false) with IUO-GSR 4374 – 4385 (Defendant Gage Village Commercial Development "past-due total $1,225,729"; Defendant MEI-GSR Holdings, LLC "past due total $1,782,932."); Ex. 239 at 20:5-22 (Ken Vaughan, Senior Vice President of Hotel Operations, admitting that the GSR knowingly rented plaintiffs' units that were not in the rental program due to business demand, and kept 100% of the proceeds, while reporting no revenue or room usage on the monthly statements) with invoice showing no usage but a bill for fees).

2. *is subject to liability for **pecuniary loss** caused to them*

The Plaintiffs' pecuniary loss is set forth in subsection **II.E.i.b.5,** below.

3. *by their **justifiable reliance** upon the information*

See, e.g., Ex. 1, 2, 5, 245; Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false).

4. *if he fails to exercise reasonable care or competence in obtaining or communicating the information.*

See, e.g., Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false); Ex. 239 at 20:5-22 (Ken Vaughan, Senior Vice President of Hotel

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Operations, admitting that the GSR knowingly rented plaintiffs' units that were not in the rental program due to business demand, and kept 100% of the proceeds, while reporting no revenue or room usage on the monthly statements) with invoice showing no usage but a bill for fees); compare Exhibit 233, IUO-GSR 4438-4440 (Email between GSR employee and plaintiff wherein GSR employee represents that the Meruelo Group has been paying all of the same monthly fees as the other individual unit owners; this representation was false) with IUO-GSR 4374 – 4385 (Defendant Gage Village Commercial Development "past-due total $1,225,729"; Defendant MEI-GSR Holdings, LLC "past due total $1,782,932."); see, e.g., Ex. 247, Deposition of Susan Ragusa, at 35:8-20 (admitting to using false statements to induce plaintiffs to sell units, in her words "[j]like a car salesman") see also 37-38 (claiming the existence of a great short sale attorney when no such person existed); see generally Greene Report.

5. Pecuniary loss

See, e.g., Greene Report at p.3-4 (GSR has consistently underpaid revenues to the Plaintiffs ($442,591.83)); GSR has been renting units of owners that did not have rental agreements with the GSR ($3,274,452.84); GSR has consistently provided units to hotel guests without charge (complimentary) or at discounted rates, without appropriate compensation to the Plaintiffs (discounted rooms without credits: $1,399,630.44; discounted rooms with credits: $31,269.44; complimentary units: $96,084.96)).

It is important to point out here that the Plaintiffs believe that the Defendants' misrepresentations were intentional. Accordingly, this cause of action is only asserted as a viable alternative theory pursuant to NRCP 8(a)(2). See NRCP 8(a)(2) ("Relief in the alternative or of several different types may be demanded.") If the Plaintiffs prevail on their Fraudulent Misrepresentation claim, their cause of action for Negligent Misrepresentation will be moot.

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Should they not prevail on their Intentional Misrepresentation claim, the Defendants will likely argue that this cause of action is barred by the economic loss doctrine since the Plaintiffs have alleged breach of contract. However, as is noted in the Greene Report, Plaintiffs without rental agreements suffered damages in the amount of $3,274,452.84 due to the GSR's renting of their units. Accordingly, the Plaintiffs would still be entitled to $3,274,452.84 under this cause of action. (See Greene Report at p.3-4.)

ii. Breach of Contract

A claim for breach of contract involves the following elements: "(1) the existence of a valid contract; (2) a breach by the defendant; and (3) damages as a result of the breach." Cohen-Breen v. Gray TV Group, Inc., 661 F. Supp. 2d 1158, 1171 (D. Nev. 2009).

a. Existence of a Valid Contract

The Plaintiffs entered into a Unit Maintenance Agreement and Unit Rental Agreement with Defendant MEI-GSR. (SAC at ¶¶ 1-99, 107, 116, 133 (deemed admitted); see, e.g., Ex. 1, 2, 5, 245; Greene Report at 5-6; Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false). The Plaintiffs also entered into the 7th Amendment to Condominium Declaration of CC&Rs ("CC&Rs") with the Defendants. Ex.1.

b. Breach by the Defendants

Defendant MEI-GSR has breached the Unit Rental Agreement by:

- underpaying revenue due under the agreement. See, e.g., Greene Report at p.3; Unit Rental Agreement at Section 9(c) (providing for payment of rent to Owner) and 9(d) (promise to provide accurate books of account and payment of rent); Unit Rental Agreement at Section 4 and 4(a) (promising to use good faith efforts to rent Plaintiffs' units)
- comping Plaintiffs' units to gaming customers in violation of the plain language of the Unit Rental Agreement. See, e.g., Greene Report at p.3; Unit Rental Agreement 11 ("In an effort to continue to promote rental of the Unit and to familiarize representatives of corporate customers, travel agencies and promoters,

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airlines and other organizations with the Hotel, the Company may, for up to five (5) nights per year, provide complimentary use of the Unit without charge or expense . . . .")[7]

- over-comping Plaintiffs' units. See, e.g., Greene Report at p.3; 232 at B & C; Unit Rental Agreement 11 ("In an effort to continue to promote rental of the Unit and to familiarize representatives of corporate customers, travel agencies and promoters, airlines and other organizations with the Hotel, the Company may, for up to five (5) nights per year, provide complimentary use of the Unit without charge or expense . . . .")

Defendant MEI-GSR and/or the Grand Sierra Resort Unit Owners' Association ("GSRUOA") have breached the Unit Maintenance Agreement and the CC&Rs.

- 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. SAC at ¶ 118 (deemed admitted). The Defendants were required to maintain a separate account for Hotel Fees in a Hotel Reserve. See, e.g., Greene Report at p.3; CC&Rs at Article 6.10(b) ("[t]he Declarant shall segregate and maintain a special reserve account to be used solely for making capital expenditures and paying for the costs of deferred maintenance in connection with the components listed on Exhibit E ("Hotel Reserve").) The Defendants breached this provision by failing to maintain a separate account and depositing the Hotel Fees into the general Grand Sierra Resort bank account. See Exhibit 240, Deposition of Terry Vavra, at 27:2-16 (acknowledging that reserve

[7] The Defendants may claim that the Unit Rental Agreement allows them to comp Plaintiff-owned units to gaming customers. However, the plain language of the contract makes clear that they cannot. Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004) ("when a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written; the court may not admit any other evidence of the parties' intent because the contract expresses their intent . . . . Ambiguous terms should be construed against the party who drafted them.") Moreover, in interpreting the particular term of the contract which governs complimentary room usage, all of the words therein should be given effect, and as the Defendants construe paragraph 11, it would render much of the term's language superfluous and meaningless.

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payments are deposited into the general Grand Sierra Resort bank account, along with gaming revenue).

- 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. SAC at ¶ 119 (deemed admitted); see, e.g., Greene Report at pp.3-4.
- Defendants MEI-GSR and Gage Development have failed to pay proportionate capital reserve contribution payments in connection with their Condo Units. SAC at ¶ 120 (deemed admitted); Greene Report at 3-4.
- 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. SAC at ¶ 121 (deemed admitted); CC&Rs (Ex. 1 at 34-43) requires the preparation of annual budgets with detailed itemization and utilizing the services of "independent reserve study." This simply did not occur. See, e.g., Greene Report, at pp. 3-4; 29-34; Unit Maintenance Agreement 4(b) (unit owners are required to pay monthly fees for the **FF&E Reserve**); CC&Rs at Article 6.2 ([t]he Association shall segregate and maintain a special reserve account to be used solely for the repair, replacement and restoration of the major components of the Common Elements (the "**Capital Reserve**").) CC&Rs at Article 6.9(b) ("[t]he owner of the Shared Facilities Unit shall segregate and maintain a special reserve account to be used solely for making capital expenditures and paying for the costs of deferred maintenance in connection with the Shared Facilities Unit (the "**Shared Facilities Reserve**").)
- 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.). SAC at ¶ 122 (deemed admitted); Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units;

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these reports were knowingly false); Schedule A to Unit Maintenance Agreement; Unit Rental Agreement at Section 1(f); Unit Rental Agreement Section 9(b)(ii).

- Defendants MEI-GSR and Gage Village have failed to pay proportionate Daily Use Fees for the use of Defendants' GSR Condo Units. SAC at ¶ 123 (deemed admitted).
- Defendant MEI-GSR has failed to properly account for the contracted "Hotel Fees" and "Daily Use Fees." SAC at ¶ 124 (deemed admitted); see, e.g., Greene Report at pp.3-4; CC&Rs at Article 6.10(b) ("[t]he Declarant shall segregate and maintain a special reserve account to be used solely for making capital expenditures and paying for the costs of deferred maintenance in connection with the components listed on Exhibit E ("**Hotel Reserve**").)
- 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. SAC at ¶ 125 (deemed admitted); CC&Rs at Article 6.10(a) (preparation of an annual estimate of the Hotel Expenses).
- Defendant GSRUOA has breached the CC&Rs by foreclosing on certain Plaintiff units for failing to pay UOA dues, the validity of which is disputed in this litigation, yet refusing to foreclose on Defendant MEI-GSR and Gage Village's units, even though those Defendants also failed to pay UOA dues. Ex. 233 at 4374-4384 (internal email invoice showing millions of dollars in unpaid HOA dues for Defendant owned units).

c. Damages

- Due to Defendant MEI-GSR and/or the GSRUOA's breach of the Unit Maintenance Agreement and the CC&Rs, the Plaintiffs have been damaged. See, e.g., Greene Report at p.3-4 (GSR has improperly calculated and assessed hotel reserves ($1,706,798.04); GSR has improperly collected assessments

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($77,338.31); GSR has failed to account for and fund the FF&E Reserve, Shared Facilities Reserve, and Hotel Reserve ($8,379,191.00).)

- Breach of the Unit Rental Agreement: GSR has consistently underpaid revenues to the Plaintiffs ($442,591.83)); GSR has consistently provided units to hotel guests without charge (complimentary) or at discounted rates, without appropriate compensation to the Plaintiffs (discounted rooms without credits: $1,399,630.44; discounted rooms with credits: $31,269.44; complimentary units: $96,084.96). See, e.g., Greene Report at p.3-4.[8]
- The Plaintiffs whose units were foreclosed on in bad faith were damaged by losing their units. The units that were wrongfully foreclosed on include: 1911 (Plaintiff Melvin Chea), 1917 (Plaintiff Pravesh Chopra), 1701 (Plaintiff Pravesh Chopra), 1940 (Plaintiff Elizabeth Mecua), and 2041 (Plaintiff Weiss Family Trust).[9] See, e.g., Application at Ex. 2.

iii. Quasi-Contract/Equitable Contract/Detrimental Reliance

"The essential elements of quasi contract are a benefit conferred on the defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof." Unionamerica Mtg. v. McDonald, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981) (quoting Dass v. Epplen, 162 Colo. 60, 424 P.2d 779, 780 (1967)).

1. A benefit conferred on the defendant by plaintiff

- Ex. 232(d) (email wherein a condominium owner caught defendant using plaintiffs' unit without consent);

[8] The award of restitution damages is proper for breach of contract. CBS, Inc. v. Merrick, 716 F.2d 1292, 1296 (9th Cir. 1983) ("When a breach occurs after the execution of the contract, the injured party in a contract action is entitled to both restitution and reliance damages."); Wechsler v. Hunt Health Sys., 330 F. Supp. 2d 383, 425 (S.D.N.Y. 2004) (accord).

[9] Plaintiffs seek an order directing the Defendants to deed the foreclosed units back to the Plaintiffs.

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Ex. 233, IUO-GSR 4484 (email wherein a condominium owner caught defendant using plaintiff's unit without consent); Ex. 239 at 20:5-22 (Ken Vaughan, Senior Vice President of Hotel Operations, admitting that the GSR knowingly rented plaintiffs' units that were not in the rental program due to business demand, and kept 100% of the proceeds, while reporting no revenue or room usage on the monthly statements); Greene Report at p.3-4 (GSR has been renting units of owners that did not have rental agreements with the GSR ($3,274,452.84).

2. *Appreciation by the defendant of such benefit*

Id.

3. *Acceptance and retention by defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof*

Id.

iv. Breach of the Implied Covenant of Good Faith and Fair Dealing

In Nevada, all contracts impose upon the parties thereto an implied covenant of good faith and fair dealing, which prohibits arbitrary or unfair acts by one party that work to the disadvantage of the other. Nelson v. Heer, 123 Nev. 217, 226, 163 P.3d 420, 427 (2007). "When one party performs a contract in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied, damages may be awarded against the party who does not act in good faith." Hilton Hotels Corp. v. Butch Lewis Prods., 107 Nev. 226, 234, 808 P.2d 919, 923-24 (1991).

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a. *Contractual Breach*

1. *The Plaintiffs Had Justified Expectations that Defendant MEI-GSR Would Perform Under the Contracts in Good Faith*

- The Plaintiffs had justified expectations that Defendant MEI-GSR would operate the unit rental program in good faith. See, e.g., Ex. 245; Ex. 1; Ex. 5; Ex. 24; Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false); Unit Rental Agreement at Section 9(c) (providing for payment of rent to Owner) and 9(d) (promise to provide accurate books of account and payment of rent); Unit Rental Agreement at Section 4 and 4(a) (promising to use good faith efforts to rent Plaintiffs' units).
- The Plaintiffs had justified expectations that Defendant MEI-GSR would not operate the unit rental program to its benefit and to the Plaintiffs' financial detriment. Id.
- The Plaintiffs had justified expectations that Defendant MEI-GSR would assess fees under the Unit Maintenance Agreement to effectuate a proper purpose. Id.
- The Plaintiffs had justified expectations that Defendant MEI-GSR would not arbitrarily increase fees under the Unit Maintenance Agreement for its own financial benefit and to the financial detriment of the Plaintiffs. Id.
- The Plaintiffs had justified expectations that the GSRUOA would enforce the CC&Rs equally against all Individual Condo Owners. Id.

2. *Defendant MEI-GSR Performed Under the Contracts in a Manner that Was Unfaithful to the Purpose of the Contract*

- The Defendants have 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. SAC at ¶ 126 (deemed admitted); Ex. 246; Ex. 233 at 4474-4475 (email exchange between GSR employees and their attorney regarding plan to increase the Daily Use Fees by the maximum amount possible under the Unit Maintenance Agreement); Ex. 233 at IUO-GSR 004392, 004516, 004522, 004492,

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004488, 004442-4443 (emails among Defendants' employees demonstrating scheme to get back units); Greene Report at p.6.

- 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. SAC at ¶ 128 (deemed admitted); see, e.g., Ex. 247; Ex. 240 at p.75; Ex. 238 at p.30.
- 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. SAC at ¶ 134 (deemed admitted); see, e.g., Greene Report at p.3.
- Defendant MEI-GSR has rented the Individual Condo Units for as little as $0.00 to $25.00 a night. SAC at ¶ 135 (deemed admitted); see, e.g., Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false).
- 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). see, e.g., Id.; SAC at ¶ 136 (deemed admitted).
- 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. SAC at ¶ 137 (deemed admitted); see, e.g., Greene Report at 12.
- 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,

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and Defendant Gage Village's Condo Units. SAC at ¶ 139 (deemed admitted); see, e.g., Ex. 246 at 14 to 21.

- Such prioritization effectively devalues the units owned by the Individual Unit Owners. SAC at ¶ 140 (deemed admitted); see, e.g., Id.
- 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, 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. SAC at ¶ 141 (deemed admitted); see, e.g., Ex. 246 at 6; see, e.g., Ex. 233 at IUO-GSR 004392, 004516, 004522, 004492, 004488, 004442-4443 (emails among Defendants' employees demonstrating scheme to get back units).
- 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. SAC at ¶ 186 (deemed admitted); SAC at ¶ 157 (deemed admitted); see, e.g., Id.; Ex. 232A & Ex. 233 (emails admitting to "stolen" rooms); Ex. 247, Deposition of Susie Ragusa; Ex. 233 at 4438 (false claim that fees were being paid for Defendants' units) and 4376-4384 (internal emails showing non-payment of HOA dues); see, e.g., Greene Report at p.6 (Defendants issued false monthly Account Statements and purposefully underpaid Plaintiffs); see, e.g., Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false); compare Exhibit 233, IUO-GSR 4438-4440 (Email between GSR employee and plaintiff wherein GSR employee represents that the Meruelo Group has been paying all of the same monthly fees as the other individual unit owners; this representation was false) with IUO-GSR 4374 – 4385 (Defendant Gage Village Commercial Development "past-due total $1,225,729"; Defendant MEI-GSR Holdings, LLC "past due total $1,782,932.")
- The Defendants canceled the original Unit Rental Agreement, which provided for the equal rotation of the condominium units. Ex. 4. The Defendants then provided a new

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contract with unfavorable terms which the Plaintiffs could only accept on a take it or leave it basis. Ex. 5.

- The Defendants canceled the original Unit Rental Agreement in bad faith because a fair unit rental program is essential to its investment purpose and because the Plaintiffs must rely upon the Defendants to operate the program to effectuate that purpose. See Dalton Properties v. Jones, 100 Nev. 422, 424, 683 P.2d 30, 31, 1984 Nev. LEXIS 401, 4 (Nev. 1984) (where a special element of reliance exists, a party must only terminate a contract in good faith).

3. The Plaintiffs Suffered Damages

- GSR has instituted a preferential "rotation system" for rental of GSR-owned hotel rooms and condominium units, to the detriment of individual condominium unit owners ($1,290,049.69). See, e.g., Greene Report at p.3-4.

b. Tortious Breach

Tortious breach of the implied covenant of good faith and fair dealing is established where: (1) a special relationship exists characterized by elements of public interest, adhesion, and fiduciary responsibility, or reliance; (2) the aggrieving party was in the superior or entrusted position; (3) the aggrieving party has engaged in grievous and perfidious misconduct. Great Am. Ins. Co. v. General Builders, Inc., 113 Nev. 346, 354-356, 934 P.2d 257, 263-264, (1997). Tort liability for breach of the implied covenant of good faith and fair dealing is appropriate where "'the party in the superior or entrusted position' has engaged in 'grievous and perfidious misconduct.'" State, University and Community College System v. Sutton, 120 Nev. 972, 989, 103 P.3d 8, 19 (2004). One of the underlying rationales for extending tort liability in the described kinds of cases is that ordinary contract damages do not adequately compensate the victim because they do not require the party in the superior or entrusted position, such as the insurer, the partner, or the franchiser, to account adequately for grievous and perfidious misconduct; and contract damages do not make the aggrieved, weaker, "trusting" party "whole." K Mart Corp. v. Ponsock, 103 Nev. 39, 49, 732 P.2d 1364, 1371 (Nev. 1987) (overruled on other grounds by Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 111 S.Ct. 478 (1990)).

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Furthermore, a successful plaintiff is entitled to compensation for all of the natural and probable consequences of the wrong, including injury to the feelings from humiliation, indignity and disgrace to the person. State, University and Community College System v. Sutton, 120 Nev. 972, 989, 103 P.3d 8, 19 (Nev. 2004).

1. A special relationship exists between the Plaintiffs and the Defendants characterized by elements of public interest, adhesion, and fiduciary responsibility, or reliance

- A special relationship existed between the Plaintiffs and the Defendants characterized by elements of adhesion, financial responsibility and reliance. see, e.g., Ex. 1, 2, 5; Ex. 245.
- The Defendants were expected to operate the Unit Rental Program to effectuate its investment purpose. See, e.g., Ex. 1, 2, 5, 24, 25 & 245; Unit Rental Agreement at Section 9(c) (providing for payment of rent to Owner) and 9(d) (promise to provide accurate books of account and payment of rent); Unit Rental Agreement at Section 4 and 4(a) (promising to use good faith efforts to rent Plaintiffs' units).
- The Defendants were entrusted to properly account for income owed to the Plaintiffs. see, e.g., Id.
- The Defendants were entrusted to properly assess fees under the Unit Maintenance Agreement. Id.

2. The Defendants were in the superior or entrusted position

- The Defendants maintain exclusive control over the Unit Rental Program. See, e.g., Ex. 1, 2, 245; 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false); Greene Report at p.5.
- The Plaintiffs have no input whatsoever in how the Unit Rental Program is operated, what fees they are charged, and the selective enforcement of the agreements to the detriment of the Plaintiffs. see, e.g., Id.

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3. *The Defendants engaged in grievous and perfidious misconduct*

- 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. SAC at ¶ 186 (deemed admitted); SAC at ¶ 157 (deemed admitted); see, e.g., Id.; Ex. 232; Ex. 233 (emails admitting to "stolen" rooms); Ex. 247, Deposition of Susie Ragusa; Ex. 233 at 4438 (false claim that fees were being paid for Defendants' units) and 4376-4384 (internal emails showing non-payment of HOA dues); Ex. 233 at 4438-4440; Greene Report at 3-4; Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false).
- The Defendants comped Plaintiffs' units as part of their scheme to force Plaintiffs out of their units so they could buy them back. See, e.g., Greene Report at p.3; Unit Rental Agreement 11 ("In an effort to continue to promote rental of the Unit and to familiarize representatives of corporate customers, travel agencies and promoters, airlines and other organizations with the Hotel, the Company may, for up to five (5) nights per year, provide complimentary use of the Unit without charge or expense . . . .").
- 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, 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. See, e.g., Id. SAC at ¶ 141 (deemed admitted); see also, Ex. 233 at IUO-GSR 004392, 004516, 004522, 004492, 004488, 004442-4443 (emails among Defendants' employees demonstrating scheme to get back units).

4. *Damages*

- Greene Report at p.3-4 (GSR has instituted a preferential "rotation system" for rental of GSR-owned hotel rooms and condominium units, to the detriment of individual condominium unit owners ($1,290,049.69)).

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- Greene Report at p.3-4 (GSR has consistently provided units to hotel guests without charge (complimentary) or at discounted rates, without appropriate compensation to the Plaintiffs (discounted rooms without credits: $1,399,630.44; discounted rooms with credits: $31,269.44; complimentary units: $96,084.96)

v. Consumer Fraud/Nevada Deceptive Trade Practices Act

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

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

NRS Chapter 598 identifies certain activities which constitute deceptive trade practices. Many of those activities occurred in MEI-GSR's dealings with Plaintiffs. For example, NRS § 598.0915 states that: "[a] person engages in a 'deceptive trade practice' if, in the course of his or her business or occupation, he or she: . . . 15. [k]nowingly makes any other false representation in a transaction." NRS § 598.092 states that "[a] person engages in a 'deceptive trade practice' when in the course of his or her business or occupation he or she: 5. [a]dvertises or offers an opportunity for investment and: . . . c) [m]akes any untrue statement of a material fact or omits to state a material fact which is necessary to make another statement, considering the circumstances under which it is made, not misleading." Finally, NRS § 598.0923 provides that: "[a] person engages in a 'deceptive trade practice' when in the course of his or her business or occupation he or she knowingly: . . .2. [f]ails to disclose a material fact in connection with the sale or lease of goods or services."

In the present case, the Defendants provided the services of renting and maintaining the Plaintiffs' units.

Deceptive Trade Practices Pursuant to NRS § 598.0915(15)

1. The Defendants made representations to the Plaintiffs in the course of business

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

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(deemed admitted); see, e.g., Greene Report at p.6 (Defendants issued false monthly Account Statements and purposefully underpaid Plaintiffs); see, e.g., Hearing Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false).

- Defendant MEI-GSR made affirmative representations to certain Plaintiffs in order to induce them to sell their units. See, e.g., Ex. 247, Deposition of Susan Ragusa, at 37-38.

2. Those representations were false and made knowingly

- Plaintiffs are now informed and believe, and thereon allege, that these representations were false. SAC at ¶ 156 (deemed admitted); see, e.g., Greene Report at p.9, fn. 11; Ex. 239, Deposition of Kent Vaughan, at 20-32 (admitting use of rooms without reporting income); Ex. 232(b) & (c) (email exchanges between Defendants' employees concerning Defendants' practice of providing complimentary use (referred to in the email as "comp") of units owned by Plaintiffs in violation of the governing "agreements" – demonstrating that in just one month a unit was comped eight (8) times).
- 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. SAC at ¶ 157 (deemed admitted); see, e.g., Id.; Ex. 232; Ex. 233 (emails admitting to "stolen" rooms); Ex. 232(b) & (c) (email exchanges between Defendants' employees concerning Defendants' practice of providing complimentary use (referred to in the email as "comp") of units owned by Plaintiffs in violation of the governing "agreements" – demonstrating that in just one month a unit was comped eight (8) times.)

3. Damages

GSR has consistently underpaid revenues to the Plaintiffs ($442,591.83)); GSR has been renting units of owners that did not have rental agreements with the GSR ($3,274,452.84); GSR has consistently provided units to hotel guests without charge (complimentary) or at discounted rates, without appropriate compensation to the Plaintiffs (discounted rooms without credits:

$1,399,630.44; discounted rooms with credits: $31,269.44; complimentary units: $96,084.96). See Greene Report at p.3-4.

Deceptive Trade Practices Pursuant to NRS § 598.092(5)

1. *The Defendants offered an opportunity for investment*

   see, e.g., Ex. 1, Ex. 2, Ex. 5; Ex. 24; 245; and 246 at 6.

2. *When offering that opportunity, the Defendants made untrue statements of a material fact*

   see, e.g., Ex. 24 and Greene Report.

3. *Damages*

GSR has consistently underpaid revenues to the Plaintiffs ($442,591.83)); GSR has been renting units of owners that did not have rental agreements with the GSR ($3,274,452.84); GSR has consistently provided units to hotel guests without charge (complimentary) or at discounted rates, without appropriate compensation to the Plaintiffs (discounted rooms without credits: $1,399,630.44; discounted rooms with credits: $31,269.44; complimentary units: $96,084.96).

Deceptive Trade Practices Pursuant to NRS § 598.0923

1. *The Defendants in the course of business knowingly failed to disclose material facts in connection with the provision of services*

- Defendant MEI-GSR made affirmative representations to Plaintiffs regarding the use, rental and maintenance of the Individual Unit Owners' GSR Condo Units. SAC at ¶ 155 (deemed admitted); see, e.g., Greene Report at p.3; at p.6 (Defendants issued false monthly Account Statements and purposefully underpaid Plaintiffs); see, e.g., Hearing Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false); Greene Report at 13-14 (knowingly and intentionally comping units in violation of the unit rental agreements and to the detriment of the Plaintiffs); Ex. 239, Deposition of Kent Vaughan, at p. 20-32. (admitting use of rooms without reporting income).

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2. *Damages*

- GSR has consistently underpaid revenues to the Plaintiffs ($442,591.83)); GSR has been renting units of owners that did not have rental agreements with the GSR ($3,274,452.84); GSR has consistently provided units to hotel guests without charge (complimentary) or at discounted rates, without appropriate compensation to the Plaintiffs (discounted rooms without credits: $1,399,630.44; discounted rooms with credits: $31,269.44; complimentary units: $96,084.96). See, e.g., Greene Report at p.3-4.

vi. Declaratory Relief

NRS § 30.030 provides that courts "shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." Declaratory relief is available when the following conditions exist:

> (1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectable interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

Knittle v. Progressive Cas. Ins. Co., 112 Nev. 8, 10, 908 P.2d 724, 725 (1996) (quoting Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)). The parties agree that they are embroiled in a justiciable controversy between adverse persons that is ripe for judicial determination. Accordingly, the Court should declare the parties' respective rights, responsibilities and obligations, and then dispense all appropriate relief. Further, if necessary to declare such appropriate relief, the Plaintiffs may seek leave to amend the SAC. See Hamlett v. Reynolds, 114 Nev. 863, 866, 963 P.2d 457, 459 (1998) ("when default has been entered due to a party's failure to comply with court orders and there has been some evidence presented to support the proposed amendment, a district court may, at its discretion, grant a party leave to amend.")

a. Wrongful Foreclosure

- The Defendants, through their control of the GSRUOA, have wrongfully foreclosed on Plaintiff-owned units during the pendency of this litigation. See, e.g., Application

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Sections on Specific Performance/Unconscionable Agreement & Wrongful Foreclosure; Application at Exhibit 2.

b. Units Sold Based Upon Fraud

- Various Plaintiffs, as demonstrated in Exhibit 2 to this Application, sold their units based upon the material representations in the false monthly account statements. See, e.g., Greene Report; Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false). Those Plaintiffs are entitled to the return of their units upon the refund of the purchase price to the Defendants. The units that were sold due to fraud include units: 1981 (Plaintiff Barry Hay), 1987 (Plaintiff Barry Hay), 2354 (Plaintiff Henry Nunn), and 1979 (Plaintiff Garth Williams). See Exhibit 2 to Application.

c. Defendants' Must Pay Their Share of the Reserve Fees

See Application at Section II.G & II.E.ix (Specific Performnce Pursuant to NRS 116.1112, Unconscionable Agreement)

vii. Conversion

a. The Defendants' are liable for conversion

"Conversion" is:

- a distinct act of dominion wrongfully exerted over another's personal property
- in denial of, or inconsistent with his title or rights therein or
- in derogation, exclusion, or defiance of such title or rights.

Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 5 P.3d 1043, 1048 (2000).

The Defendants are liable for conversion because they wrongfully rented out Plaintiffs' units that were not part of the unit rental program, and then exercised dominion over that profit, which should have gone to the Plaintiffs. See, e.g., Ex. 246 at 3. Because a claim for conversion of cash is proper under Nevada law, this Court should award the Plaintiffs the damages set forth below. See Larson v. B.R. Enters., Inc., 104 Nev. 252, 757 P.2d 354 (1988); Hester v. Vision Airlines, Inc., 687 F.3d 1162, 1171.

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b. Damages

- GSR has been renting units of owners that did not have rental agreements with the GSR ($3,274,452.84). Greene Report at p.3-4.

viii. Demand for Accounting

An "accounting" is an equitable remedy which allows the court to determine the extent of a misallocation of expenses and the damages resulting therefrom when there is fiduciary relationship between the parties. In re Maxim Integrated Products, Inc., Deriv. Lit., 574 F. Supp. 2d 1046 (N.D.Cal.,2008) (citing Carlson v. Hallinan, 925 A.2d 506, 538 n. 211-12 (Del.Ch.2006)).

ix. Specific Performance Pursuant to NRS 116.1112, Unconscionable Agreement

- 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. SAC at ¶ 106 (deemed admitted).
- All of the Individual Unit Owners: hold an interest in, own, or have owned, one or more GSR Condo Units. SAC at ¶ 107 (deemed admitted)
- Defendants Gage Village and MEI-GSR own multiple GSR Condo Units. SAC at ¶ 108 (deemed admitted)
- Defendant MEI-GSR owns the Grand Sierra Resort and Casino. SAC at ¶ 109 (deemed admitted).
- 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). SAC at ¶ 110 (deemed admitted).
- 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). SAC at ¶ 111 (deemed admitted).

- 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. SAC at ¶ 112 (deemed admitted).
- 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. SAC at ¶ 113 (deemed admitted).
- 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. SAC at ¶ 114 (deemed admitted).
- Further, the Nevada Division of Real Estate requires a developer to sell off the units, exit and turn over the control and management to the owners. SAC at ¶ 115 (deemed admitted).
- 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). SAC at ¶ 116 (deemed admitted).
- 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. SAC at ¶ 117 (deemed admitted).

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- 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. SAC at ¶ 118 (deemed admitted).
- 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. SAC at ¶ 119 (deemed admitted).
- Defendants MEI-GSR and Gage Development have failed to pay proportionate capital reserve contribution payments in connection with their Condo Units. SAC at ¶ 120 (deemed admitted).
- 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. SAC at ¶ 121 (deemed admitted).
- 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.). SAC at ¶ 122 (deemed admitted).
- Defendants MEI-GSR and Gage Village have failed to pay proportionate Daily Use Fees for the use of Defendants' GSR Condo Units. SAC at ¶ 123 (deemed admitted).
- Defendant MEI-GSR has failed to properly account for the contracted "Hotel Fees" and "Daily Use Fees." SAC at ¶ 124 (deemed admitted).
- 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. SAC at ¶ 125 (deemed admitted).
- 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. SAC at ¶ 126 (deemed admitted).
- 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

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default under Section 12 of the Agreement, which provides lien and foreclosure rights pursuant to Section 6.10(f) of the CC&R's. SAC at ¶ 127 (deemed admitted).

- 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. SAC at ¶ 128 (deemed admitted).
- 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. SAC at ¶ 129 (deemed admitted).
- 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. SAC at ¶ 130 (deemed admitted).
- 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. SAC at ¶ 131 (deemed admitted).

The Plaintiffs request that Court declare that:

- The Grand Sierra Resort Unit Rental Agreement is unconscionable pursuant to NRS § 116.1112 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.
- The Unit Maintenance Agreement and the CC&Rs are unconscionable pursuant to NRS § 116.1112 because of the inequitable allocation of fees to the Individual Unit Owners and a failure to pay by Defendants for units they retain.
- The Defendants wrongfully foreclosed on Plaintiffs' units during the pendency of this litigation and that they be required to deed back unit numbers 1911 (Plaintiff Melvin

Chea), 1917 (Plaintiff Pravesh Chopra), 1701 (Plaintiff Pravesh Chopra), 1940 (Plaintiff Elizabeth Mecua), and 2041 (Plaintiff Weiss Family Trust). See Application at Ex. 2.

- The Defendants fraudulently induced the sale of Plaintiff unit numbers 1981 (Plaintiff Barry Hay), 1987 (Plaintiff Barry Hay), 2354 (Plaintiff Henry Nunn), and 1979 (Plaintiff Garth Williams). See Application at Exhibit 2.

x. Unjust Enrichment/Quantum Meruit against Defendant Gage Village Development

The Nevada Supreme Court has "said many times that equity does not favor a person being unjustly enriched. Unjust enrichment occurs whenever a person has and retains a benefit which in equity and good conscience belongs to another." Mainor v Nault, 120 Nev. 750, 763, 101 P.3d 308, 317 (2004).

Under Nevada law, the elements of an unjust enrichment claim are: "(1) a benefit conferred on the defendant by the plaintiff; (2) appreciation of the benefit by the defendant; and (3) acceptance and retention of the benefit by the defendant (4) in circumstances where it would be inequitable to retain the benefit without payment." Kennedy v. Carriage Cemetery Services, Inc., 727 F. Supp. 2d 925, 932 (D. Nev. 2010) (citing Leasepartners Corp., Inc. v. Robert L. Brooks Trust, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997)). see, e.g., Ex. 246 at 3-4.

Gage Village is another limited liability company owned by Alex Meruelo, who also owns Defendant MEI-GSR. As part of the Defendants' overall scheme to promote their own economic interests and devalue the Plaintiffs' units, Gage Village has been unjustly enriched. Further, all of the Defendants have been unjustly enriched by the collective conduct of the Defendants, e.g., they have not paid proportionate fees and have enjoyed the increase in revenue as a result of the nefarious conduct.

- Ex. 239 at 20:5-22 (Ken Vaughan, Senior Vice President of Hotel Operations, admitting that the GSR knowingly rented plaintiffs' units that were not in the rental program due to business demand, and kept 100% of the proceeds, while reporting no revenue or room usage on the monthly statements) with invoice showing no usage but a bill for fees)

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- GSR has been renting units of owners that did not have rental agreements with the GSR ($3,274,452.84). Greene Report at p.3-4.

xi. Tortious Interference with Contract and/or Prospective Business Advantage

To prove tortious interference with Contract, a Plaintiff must establish:

- a valid and existing contract;
- the defendant's knowledge of the contract;
- intentional acts intended or designed to disrupt the contractual relationship;
- actual disruption of the contract; and
- resulting damage.

J.J. Indus., LLC v. Bennett, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003); Hilton Hotels Corp. v. Butch Lewis Productions, Inc., 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993); Sutherland v. Gross, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989); Wichinsky v. Mosa, 109 Nev. 84, 88, 847 P.2d 727 (1993).

a. A Valid and Existing Contract

- Some of the Individual Unit Owners have retained the services of a third party to market and rent their GSR Condo Unit(s). SAC at ¶ 142 (deemed admitted); see, e.g., Ex. 6; 246 at 9-10 and Ex. 232.

b. Defendants' Knowledge of the Contract

- see, e.g., Greene Report at 9-10; Ex. 232A (email exchange titled "Down and Dirty" regarding the Defendants' unauthorized use/theft of condo unit revenue and the practice of hiding the misappropriation when the third party booking agent, IHAP, booked a reservation for the unit on a night when the Defendants, in their own words, "stole" the unit); Ex. 232E-F (email exchanges regarding withholding payment to IHAP).

c. Intentional Acts Intended to or Designed to Disrupt the Contractual Relationship

- 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. See, e.g., Id.; SAC at ¶ 143 (deemed admitted); Ex. 233 at IUO-GSR 004389 (email indicating the GSR's desire

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to eliminate IHAP); Ex. 233 at IUO-GSR 004542-004544 (email from Tim Smith to Terry Vavra and Kent Vaughan suggesting they raise fees to eliminate IHAP).

d. Actual Disruption of the Contract

- Id.; see, e.g., Greene Report at 9-10 (noting that IHAP was not successful due to the Defendants' actions).

e. Resulting Damage

- See, e.g., Greene Report at 11 (GSR has been renting units of owners that did not have rental agreements with the GSR ($3,274,452.84)).

In order to establish tortious interference with prospective business advantage, a Plaintiff must establish:

- a prospective contractual relationship between the plaintiff and a third party;
- knowledge by the defendant of the prospective relationship;
- intent to harm the plaintiff by preventing the relationship;
- the absence of privilege or justification by the defendant; and
- actual harm to the plaintiff as a result of the defendant's conduct.

Wichinsky v. Mosa, 109 Nev. 84, 88, 847 P.2d 727 (1993); Leavitt v. Leisure Sports, Inc., 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987).

When MEI-GSR terminated the original unit rental agreement and offered the new, inequitable unit rental agreement to the Plaintiffs, many opted not to sign the new agreement. Instead, they looked for a third party to rent their units. Shortly thereafter, Kristopher Kent created a limited liability company called IndyHAP (Independent Hotel Assistance Program) in order to help individual condo unit owners rent their rooms. Many of the Plaintiffs joined IndyHAP. see, e.g., Id.

MEI-GSR perceived IndyHAP as a threat to its own economic interests, and, accordingly, took steps to undermine and shut IndyHAP down (which it ultimately succeeded in doing). In order to disrupt IndyHAP's arrangement with the Plaintiffs, MEI-GSR: (1) charged "Resort Fees" to IndyHAP guests, while waiving such fees for their own guests; (2) blocked IndyHAP from working with Online Travel Agencies, such as priceline.com, expedia.com, and Travelocity.com; and (3) booked Plaintiffs' units without their permission, such that IndyHAP guests would not be able to use the unit. see, e.g., Id.

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xii. **Wrongful Foreclosure of Units**

Incredibly, during the pendency of this litigation – which directly puts at issue the fees being charged by the Defendants – the Defendants foreclosed on units owned by certain Plaintiffs on the basis of unpaid fees. Even more outrageous, the foreclosure occurred without notice to the Plaintiffs' counsel. After becoming aware of the foreclosure, Plaintiffs filed lis pendens on the subject units.

"An action for the tort of wrongful foreclosure will lie if the trustor or mortgagor can establish that at the time the power of sale was exercised or the foreclosure occurred, no breach of condition or failure of performance existed on the mortgagor's or trustor's part which would have authorized the foreclosure or exercise of the power of sale." Collins v. Union Fed. S&L Ass'n, 99 Nev. 284, 304, 662 P.2d 610, 623 (1983).

In this case, Defendants undertook a pattern of actions in an attempt to create justification for foreclosing on units. See, e.g., Ex. 241, Deposition of Melvin Cheah.

The Defendants conspired to abandon certain provisions of the CC&Rs and to only selectively enforce the CC&Rs to the benefit of the GSR and to the detriment of Plaintiffs in this action. Id.

Critically, the evidence demonstrates that:

- Defendants MEI-GSR and Gage Village failed to pay fees required by the CC&Rs. See, e.g., Ex. 233 at 4374-4384.
- Defendant GSRUOA did not foreclose upon any of the Defendant controlled units.
- Yet, Defendant GSRUOA, in conspiracy with the other Defendants, foreclosed upon certain Plaintiff-owned units. (See Application, Ex. 2.)
- The Defendants foreclosed upon these units during the pendency of the lawsuit, in violation of Nevada Ethics Rule 4.2. (See Rule 4.2. Communication With Person Represented by Counsel. In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer

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knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.)

Because the Defendants improperly foreclosed upon the Plaintiffs' units, those sales should be voided – especially since the units are controlled by the Defendants in this action – and the units returned to the particular plaintiffs. Hackett v. Onewest Bank FSB, 2012 U.S. Dist. LEXIS 171203, 8 (D. Nev. Dec. 3, 2012) (when a party prevails on a claim for wrongful foreclosure, voiding the sale is the appropriate remedy).

F. Punitive Damages Analysis

i. The Plaintiffs are Entitled to Punitive Damages

One of the most critical aspects of this case is punitive damages. The Plaintiffs should recover punitive damages on many of its claims, including, but not limited to: (1) fraud / intentional misrepresentation; (2) tortious breach of the implied covenant of good faith and fair dealing; (3) conversion; (4) violation of the Nevada Deceptive Trade Practices Act; and (5) conspiracy.[10]

The availability of punitive damages is governed by statute. NRS § 42.005(1) provides that "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant." However, the Nevada Supreme Court has held that a Plaintiff need only prove damages by establishing a prima facie case by substantial evidence. Foster, 227 P.3d at 1050 (noting that a nonoffending party must establish its right to damages by substantial evidence). Accordingly, while the Plaintiffs will establish punitive damages by clear and convincing evidence, they are not required to do so due to the Defendants' egregious discovery misconduct. NRS § 42.001 defines "oppression, fraud or malice" and "conscious disregard" as follows:

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[10] Plaintiffs believe they have properly narrated a claim for conspiracy. This is particularly true since it is irrefutable that the GSRUOA only foreclosed on third-party units it claimed were in default, yet did not foreclose on the numerous GSR-owned units that were in default. The SAC alleged that the GSR controlled the GSRUOA to the determinant of the Plaintiffs. Clearly, the GSRUOA – an independent entity – acted at the control of the GSR to commit misconduct and both entities are liable for conspiracy. If necessary, however, the Plaintiffs will seek leave to amend at the prove-up hearing on damages.

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1. "Conscious disregard" means the **knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences.**

2. "Fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the person **with the intent to deprive another person of his or her rights or property or to otherwise injure another person.**

3. "Malice, express or implied" means **conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights** or safety **of others.**

4. "Oppression" **means despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person.**

The Defendants in this action are unquestionably guilty of oppression, fraud and malice. This is true with respect to each of the Plaintiffs' intentional tort claims, as shown below:

a. Fraud / Intentional Misrepresentation

- See, e.g., Greene Report at p.6 (Defendants issued false monthly Account Statements and purposefully underpaid Plaintiffs); see, e.g., Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false); compare Exhibit 233, IUO-GSR 4438-4440 (Email between GSR employee and plaintiff wherein GSR employee represents that the Meruelo Group has been paying all of the same monthly fees as the other individual unit owners; this representation was false) with IUO-GSR 4374 – 4385 (Defendant Gage Village Commercial Development "past-due total $1,225,729"; Defendant MEI-GSR Holdings, LLC "past due total $1,782,932."); Ex. 239 at 20:5-22 (Ken Vaughan, Senior Vice President of Hotel Operations, admitting that the GSR knowingly rented plaintiffs' units that were not in the rental program due to business demand, and kept 100% of the proceeds, while reporting no revenue or room usage on the monthly statements) with invoice showing no usage but a bill for fees).

b. Tortious Breach of the Implied Covenant of Good Faith & Fair Dealing

- 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. SAC at ¶ 186 (deemed admitted); SAC at ¶ 157 (deemed admitted); see, e.g., Id.; Ex. 232; Ex. 233 (emails admitting to "stolen" rooms); Ex. 247, Deposition of Susie

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Ragusa; Ex. 233 at 4438 (false claim that fees were being paid for Defendants' units) and 4376-4384 (internal emails showing non-payment of HOA dues); Ex. 233 at 4438-4440; Greene Report at 3-4; Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false).

- 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, 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. See, e.g., Id. SAC at ¶ 141 (deemed admitted).

c. Consumer Fraud / Nevada Deceptive Trade Practices Act

- See, e.g., Greene Report at p.6 (Defendants issued false monthly Account Statements and purposefully underpaid Plaintiffs); see, e.g., Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with their units; these reports were knowingly false); compare Exhibit 233, IUO-GSR 4438-4440 (Email between GSR employee and plaintiff wherein GSR employee represents that the Meruelo Group has been paying all of the same monthly fees as the other individual unit owners; this representation was false) with IUO-GSR 4374 – 4385 (Defendant Gage Village Commercial Development "past-due total $1,225,729"; Defendant MEI-GSR Holdings, LLC "past due total $1,782,932."); Ex. 239 at 20:5-22 (Ken Vaughan, Senior Vice President of Hotel Operations, admitting that the GSR knowingly rented plaintiffs' units that were not in the rental program due to business demand, and kept 100% of the proceeds, while reporting no revenue or room usage on the monthly statements) with invoice showing no usage but a bill for fees).

d. Conversion

- See, e.g., Greene Report at p.6 (Defendants issued false monthly Account Statements and purposefully underpaid Plaintiffs); see, e.g., Ex. 150-216 (each of the plaintiffs received monthly account statements purporting to represent the usage and fees associated with

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their units; these reports were knowingly false); Ex. 239 at 20:5-22 (Ken Vaughan, Senior Vice President of Hotel Operations, admitting that the GSR knowingly rented plaintiffs' units that were not in the rental program due to business demand, and kept 100% of the proceeds, while reporting no revenue or room usage on the monthly statements) with invoice showing no usage but a bill for fees).

e. Tortious Interference with Contract

- 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. See, e.g., Id.; SAC at ¶ 143 (deemed admitted); Ex. 233 at IUO-GSR 004389 (email indicating the GSR's desire to eliminate IHAP); Ex. 233 at IUO-GSR 004542-004544 (email from Tim Smith to Terry Vavra and Kent Vaughan suggesting they raise fees to eliminate IHAP).
- see, e.g., Greene Report at 9-10; Ex. 232A (email exchange titled "Down and Dirty" regarding the Defendants' unauthorized use/theft of condo unit revenue and the practice of hiding the misappropriation when the third party booking agent, IHAP, booked a reservation for the unit on a night when the Defendants, in their own words, "stole" the unit); Ex. 232E-F (email exchanges regarding withholding payment to IHAP).

Since the Defendants in this action are limited liability companies, to establish a right to punitive damages, the Plaintiffs must meet the requirements of NRS 42.007, which provides:

> **NRS 42.007 Exemplary and punitive damages: Limitations on liability by employer for wrongful act of employee; exception.**
> 1. Except as otherwise provided in subsection 2, in an action for the breach of an obligation in which exemplary or punitive damages are sought pursuant to subsection 1 of NRS 42.005 from an employer for the wrongful act of his or her employee, the employer is not liable for the exemplary or punitive damages unless:
> (a) The employer had advance knowledge that the employee was unfit for the purposes of the employment and employed the employee with a conscious disregard of the rights or safety of others;
> (b) The employer expressly authorized or ratified the wrongful act of the employee for which the damages are awarded; or
> (c) The employer is personally guilty of oppression, fraud or malice, express or implied.
> ↪ If the employer is a corporation, the employer is not liable for exemplary or punitive damages unless the elements of paragraph (a), (b) or (c) are met by an officer, director or managing agent of the corporation who was expressly authorized to direct or ratify the employee's conduct on behalf of the corporation.

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In the present case, as was shown immediately above, the officers, directors and managing agents both directed *and* ratified the wrongful acts of their employees. There is simply no doubt that the employer is liable in this case.

i. Calculation of the Amount of Punitive Damages

The damages sought for the various intentional torts for which the Plaintiffs seek punitive damages are as follows:

- Fraudulent Misrepresentation: $5,244,029.51
- Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing: Breach of the Implied Covenant of Good Faith and Fair Dealing: $2,817,034.53
- Deceptive Trade Practices: $5,244,029.51
- Conversion: $3,274,452.84
- Tortious Interference: $3,274,452.84

To calculate the amount of punitive damages, Nevada law requires up to a multiplier of three times the amount of compensatory damages. Thus, the Plaintiffs are seeking punitive damages calculated as follows:

- Fraudulent Misrepresentation: $5,244,029.51 x 3 = $15,732,088.53
- Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing: $2,817,034.53 x 3 = $ 8,451,103.59.
- Deceptive Trade Practices: $5,244,029.51 x 3 = $15,732,088.53
- Conversion: $3,274,452.84 x 3 = $9,823,358.52
- Tortious Interference: $3,274,452.84 x 3 = $9,823,358.52

In sum, the Plaintiffs will respectfully request, at a subsequent proceeding, that the Court award at least $19,602,237.60 in punitive damages.[11]

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[11] The punitive damages amounts for each cause of action include some duplication. Accordingly, to remove duplicative damages categories, the Plaintiffs have requested only $19,602,237.60 total. The amount of any punitive damages award could vary significantly depending on the outcome of the damages prove-up hearing. Thus, precise punitive damages amounts – and their basis – are best left to a subsequent hearing on punitive damages (which is required by statute anyway). See NRS 42.005(3) ("If punitive damages are claimed pursuant to this section, the trier of fact shall make a finding of whether such damages will be assessed. If such damages are to be assessed, a subsequent proceeding must be conducted before the same trier of fact to determine the amount of such damages to

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G. The Defendants' Failure to Fund Reserves

The Defendants' failed to fund the FF&E reserves, shared facilities reserve, and hotel reserve assessments for the units they own. Greene Report at 3 and 36. As such, the Defendants should be required to come into compliance with the various agreements by which they agreed to be bound. Accordingly, the Plaintiffs respectfully request that the Court order the Defendants to fund the reserve accounts in the amount of $8,379,191.00.

Plaintiffs concede that the Defendants undertook a substantial remodel of the units which should have been funded by the reserves. However, no accounting was provided. Accordingly, it is impossible for the Plaintiffs to know the amount that was allocated.

H. The Limitation of Liability and Exclusive Remedy Provisions Have No Application to the Court's Award of Damages

Finally, the Plaintiffs expect the Defendants to rest their hat on the limitation of liability and exclusive remedy clauses of the agreements. As the Court is aware, the Plaintiffs have previously argued that the limitation of liability and exclusive remedy defenses are affirmative defenses which this Court struck. Indeed, there is ample statutory authority and case law to support this conclusion. See Terracciano v. McAlinden Constr. Co., 485 F.2d 304, 307 (2d Cir. N.Y. 1973) ("It is well settled that limitation of liability is an affirmative defense"); accord, Premiere Digital Access, Inc. v. Cent. Tel. Co., 360 F. Supp. 2d 1161, 1168 (D. Nev. 2005) (Defendant has raised in its answer the affirmative defense of the limitation of liability provisions); Cont'l Holdings, Ltd. v. Leahy, 132 S.W.3d 471, 475 (Tex. App. 2003) ("[t]he limitation-of-liability provision in the contract constitutes an affirmative defense"); Normand v. Orkin Exterminating Co., 193 F.3d 908, 910 (7th Cir. 1999) (noting that contractual limitation of liability was raised as an affirmative defense); Estey v. Mackenzie Eng'g, 324 Ore. 372, 375 (Or. 1996) (same); Intercargo Ins. Co. v. Burlington N. Santa Fe R.R., 185 F. Supp. 2d 1103, 1112

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be assessed.") Between the date of the damages hearing and a subsequent proceeding on punitive damages, the Plaintiffs will need to conduct some basic discovery of the Defendants' financial condition, including Defendant MEI-GSR and Defendant AM-GSR. See NRS 42.005 (4) ("Evidence of the financial condition of the defendant is not admissible for the purpose of determining the amount of punitive damages to be assessed until the commencement of the subsequent proceeding to determine the amount of exemplary or punitive damages to be assessed.")

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(C.D. Cal. 2001) (noting that "BNSF is not entitled to summary judgment on the basis of its contractual limitation of liability affirmative defense."); compare Borders v. KRLB, Inc., 727 S.W.2d 357, 360 (Tex. App. 1987) (the assertion that damages are limited by the existence of a liquidated damages clause is a classic avoidance defense that must be affirmatively pled) with Nevada Rule of Civil Procedure, Rule 8(c) ("Affirmative Defenses. In pleading to a preceding pleading, **a party shall set forth affirmatively** accord and satisfaction, arbitration and award, **assumption of risk**, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, **release**, res judicata, statute of frauds, statute of limitations, **waiver**, **and any other matter constituting *an avoidance*** or affirmative defense. . . ." (emphasis supplied)).

Further, even if they were not affirmative defenses, they would be void as against public policy due to the Defendants' intentional misconduct. "An attempted exemption from liability for a future intentional tort . . . **or for a future willful . . . act** is generally held void . . . ." 8 Richard A. Lord Williston on Contracts § 19:24 (4th ed. 2010) (emphasis supplied); *See also* Restatement (Second) of Contracts § 195(1) (1981) ("A term exempting a party from tort liability for harm caused intentionally or recklessly is unenforceable on grounds of public policy."); cf. Manderville v. PCG & S Group, Inc., 146 Cal. App. 4th 1486, 55 Cal. Rptr. 3d 59, 69 (Ct. App. 2007) ("It is well-established in California that a party to a contract is precluded [by statute] from contracting away his or her liability . . . based on intentional misrepresentation.").[12]

Consistent with the above, under Nevada contract law principles, courts may refuse to enforce a provision of a contract that contravenes the state's public policy. Picardi v. Eighth Judicial Dist. Court of Nev., 251 P.3d 723, 726-727 (Nev. 2011); State Farm Mut. Auto. Ins. Co. v. Fitts, 120 Nev. 707, 708, 99 P.3d 1160, 1161 (2004) (considering a certified question regarding the enforceability of a provision in an insurance policy that required an insured to arbitrate or file suit on a claim for uninsured or underinsured motorist coverage that was outside

[12] This line of authority has been recognized in an unpublished opinion of the Nevada Supreme Court. *See* Lawyers Title of Nev., Inc. v. Bonar, 2012 Nev. Unpub. LEXIS 781 (Nev. 2012).

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the statutorily proscribed statute of limitations, this court held that such a provision was "unenforceable and therefore void as against Nevada public policy"); State Farm Mut. Auto. Ins. v. Hinkel, 87 Nev. 478, 481, 488 P.2d 1151, 1153 (1971) (holding that "[a]n insurance company may limit coverage only if the limitation does not contravene public policy"); see also Fisher v. DCH Temecula Imports LLC, 187 Cal. App. 4th 601, 114 Cal. Rptr. 3d 24, 34 (Ct. App. 2010) ("'[P]rivate contracts that violate public policy are unenforceable.'" (quoting Gutierrez Autowest, Inc., 114 Cal. App. 4th 77, 7 Cal. Rptr. 3d 267, 281 (2003))); Restatement (Second) of Contracts § 178(1) (1981) ("A promise or other term of an agreement is unenforceable on grounds of public policy if . . . the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms.").[13]

Accordingly, the limitation of liability and exclusive remedy provisions in the agreements simply have no application in this hearing.

Indeed, the Defendants are likely to claim that because the Plaintiffs' expert did not consider the limitation of liability and exclusive remedy provisions in his expert report, that such an omission constitutes a patent and fundamental defect in the Plaintiffs' prima facie. However, the Defendants' objection would be unwarranted.

The Plaintiffs have advanced legal authority (including the plain language of NRCP 8(c)) demonstrating the inapplicability of those clauses in a *layered analysis.* In other words, the Defendants' argument fails for multiple reasons. Thus, to allow the Defendants to engage in legal debate exceeds a simple objection to a patent and fundamental defect in the Plaintiffs' case. A patent or fundamental defect must be "obvious," and since the Defendants' position on the inapplicability of the limitation of liability clauses is far from obvious – and in fact patently wrong – it does not constitute a valid objection at a prove-up hearing for damages.

III. CONCLUSION

As explained hereinabove, the Plaintiffs are entitled to recover damages in the amount of

[13] Pealing the onion even deeper, the Defendants ignore that the Plaintiffs asserted "unconscionability" as an affirmative defense. Accordingly, had the case proceeded with trial, the Plaintiffs would have shown that the limitation of liability clauses were unconscionable. There is no question that the deviation from an equal rotation system rendered the ridiculously one-sided limitation of liability clauses unconscionable.

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$ 8,318,215.55, exclusive of accrued interest and certain attorneys' fees and costs. See Greene Report at p.35-36; Exhibit 1 to Application. The Plaintiffs also request that the Court find that they are entitled to an award of punitive damages, and then set a subsequent proceeding to determine the amount of those punitive damages in accordance with NRS 42.005(4). The Plaintiffs believe they are entitled to an award of punitive damages in the amount of $19,602,237.60.

The Plaintiffs further request that the Court order the Defendants to fund the reserves in the amount of $8,379,191.00.

Finally, the Plaintiffs ask the Court to order the following declaratory relief that:

(1) The Plaintiff-owned units the Defendants foreclosed on must be returned to those Plaintiffs. Those units include unit numbers: 1911 (Plaintiff Melvin Chea), 1917 (Plaintiff Pravesh Chopra), 1701 (Plaintiff Pravesh Chopra), 1940 (Plaintiff Elizabeth Mecua), and 2041 (Plaintiff Weiss Family Trust) (See Exhibit 2 to Application.)

(2) The units the Plaintiffs sold to Defendants during based upon fraudulent inducement be returned to those Plaintiffs upon return of the purchase price paid by the Defendants. Those units include unit numbers: 1981 (Plaintiff Barry Hay), 1987 (Plaintiff Barry Hay), 2354 (Plaintiff Henry Nunn), and 1979 (Plaintiff Garth Williams). Id.

Accordingly, Plaintiff respectfully requests that the Court enter a Default Judgment in the above-referenced amounts.

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 17th day of March, 2015.

ROBERTSON, JOHNSON, MILLER & WILLIAMSON

By: */s/ Jonathan Joel Tew*
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

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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 17th day of March, 2015, I electronically filed the foregoing **APPLICATION FOR DEFAULT JUDGMENT PURSUANT TO NRCP 55(b)(2)** with the Clerk of the Court by using the ECF system which served the following parties electronically:

H. Stan Johnson, Esq.
Steven B. Cohen, Esq.
Cohen-Johnson, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, NV 89119
Facsimile: (702) 823-3400
Email: sjohnson@cohenjohnson.com
Attorneys for Defendants

I further certify that on the 17th day of March, 2015, I caused to be hand-delivered, a true and correct copy of the foregoing **APPLICATION FOR DEFAULT JUDGMENT PURSUANT TO NRCP 55(b)(2)** on the following parties:

Mark Wray, Esq.
The Law Offices of Mark Wray
608 Lander Street
Reno, NV 89509
Facsimile: (775) 348-8351
Email: mwray@markwraylaw.com
Attorneys for Defendants

/s/ Jonathan Joel Tew
An Employee of Robertson, Johnson, Miller & Williamson

Index of Exhibits

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Reno, Nevada 89501

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Clerk of the Court
Transaction # 4865236 : mpurdy

EXHIBIT "1"

EXHIBIT "1"

EXHIBIT "1"

Last Name	First Name	Last Name	First Name	Entity	Unit	Damage by Unit	Damage by Plaintiff
Akinbodunse	Johnson				1722	$48,216.39	$48,216.39
Alexander	Marie-Anne			as Trustee of Marie-Anne Alexander Living Trust	1902	$82,279.51	$82,279.51
Bhan	Vinod C.	Bhan	Anne C.		1930	$56,229.33	$56,229.33
Browne	Guy P.				2044	$59,570.72	$59,570.72
Brunner	Robert	Brunner	Amy		(2140)	$96,183.41	$96,183.41
Cameron	Gregory A.				1926	$81,252.59	$81,252.59
Chandler	Norman				2104	$87,151.20	$87,151.20
Cheah	Melvin H.				(1911)	$74,683.79	$74,683.79
Cheng	Peter	Cheng	Ellsa		1908	$60,352.77	$60,352.77
Choi	Kl Nam	Choi	Young Ja		2279	$60,561.44	$60,561.44
Chopra	Pravesh				(1917)	$88,093.71	$182,853.20
Ghopra	Pravesh				(1701)	$94,759.49	
Dunlap	John	Dunlap	Jane		1963	$73,523.80	$73,523.80
Fadrilan	Ramon V.	Fadrilan	Faye B.		(1767)	$83,939.92	$221,359.83
Fadrilan	Ramon V.	Fadrilan	Faye B.		(1765)	$66,039.01	
Fadrilan	Ramon V.	Fadrilan	Faye B.		1763	$71,380.90	
Fish	Frederick	Fish, M.D.	Lisa H.		2328	$67,790.68	$137,878.08
Fish	Frederick	Fish, M.D.	Lisa H.		2347	$70,087.40	
Gupta	Ajit	Gupta	Seema		1731	$63,353.24	$192,753.47
Gupta	Ajit	Gupta	Seema		1919	$64,151.34	
Gupta	Ajit	Gupta	Seema		2045	$65,248.89	
Hay	Barry				(1987)	$69,934.62	$311,564.87
Hay	Barry				(1981)	$68,929.26	
Hay	Barry				1802	$85,721.90	
Hay	Barry				2075	$86,979.09	
Henderson	William A.	Henderson	Christine E.		1832	$90,844.23	$90,844.23
Hom	May Anne			as Trustee of May Anne Hom Trust	1756	$89,710.22	$89,710.22
Hurley	Michael				2167	$50,631.70	$50,631.70
Izady	Michael				2337	$59,941.83	$59,941.83
Kaplan	Timothy D.				1874	$89,940.94	$89,940.94
Kossick	Mary A.				1728	$58,949.02	$305,422.68
Kossick	Mary A.				1730	$54,020.54	
Kossick	Mary A.				1945	$70,603.57	
Kossick	Mary A.				2055	$52,603.17	
Kossick	Mary A.				2068	$69,246.38	
Lee	Peter K.	Lee	Monica L.	as Trustee of Lee Family 2002 Revocable Trust Dated 05/23/2002	1905	$71,488.52	$142,475.91
Lee	Peter K.	Lee	Monica L.	as Trustee of Lee Family 2002 Revocable Trust Dated 05/23/2002	1907	$70,987.39	
Lindgren	Darleen				2157	$99,276.59	$99,276.59
Lutz	Richard	Lutz	Sandra		2087	$71,006.74	$71,006.74
Mecham	Doug	Mecham	Christine		1710	$62,892.15	$62,892.15
Mecua	Elizabeth Andres				(1940)	$79,731.69	$79,731.69
Menmuir	Brett				1742	$62,302.83	$62,302.83
Miner, Jr.	William B.				2371	$118,499.63	$118,499.63
Moll	Daniel	Moll	Patricia		1806	$64,862.73	$64,862.73
Nunn	Henry P.	Nunn	D'Arcy		(2354)	$74,156.91	$161,382.96
Nunn	Henry P.	Nunn	D'Arcy		2365	$87,226.05	
Ordover	Lori				1706	$63,879.92	$124,867.71
Ordover	Lori				1708	$60,987.79	
Parker	Loren D.	Parker	Suzanne C.		2179	$87,516.72	$87,516.72
Pederson	Robert R.	Pederson	Lou Ann	as Trustees of Robert Russell Pederson and Lou Ann Pederson 1990 Trust dated March 7, 1990	2359	$87,207.17	$87,207.17
Pederson	Robert R.	Pederson	Lou Ann		1847	$88,953.63	$344,155.97
Pederson	Robert R.	Pederson	Lou Ann		1961	$89,014.86	
Pederson	Robert R.	Pederson	Lou Ann		2261	$87,751.24	

Last Name	First Name	Last Name	First Name	Entity	Unit	Damage by Unit	Damage by Plaintiff
Pederson	Robert R.	Pederson	Lou Ann		2345	$83,436.27	
Pham	Jacquelin				1906	$61,578.61	$61,578.61
Pope	Terry L.	Pope	Nancy D.		1740	$86,575.30	$86,575.30
Quinn	Jeffery James	Quinn	Barbara Rose		1870	$82,820.31	$164,985.76
Quinn	Jeffery James	Quinn	Barbara Rose		1977	$82,165.45	
Raghuram	Rajagopalan (Raj)	Raghuram	Usha		1790	$56,042.86	$56,042.86
Raines	Sandi				1803	$65,413.29	$135,223.48
Raines	Sandi				1805	$69,810.19	
Riche	Kenneth	Riche	Maxine		1865	$94,087.43	$276,835.14
Riche	Kenneth	Riche	Maxine		1975	$91,014.45	
Riche	Kenneth	Riche	Maxine		2357	$91,733.26	
Riopelle	Jeffrey G.				2059	$89,149.87	$89,149.87
Roberts	Laverne				1729	$59,115.78	$59,115.78
Schreifels	Donald				2053	$0.00	$0.00
Shamieh	Elias				2275	$66,595.17	$66,595.17
Shen	DI				1939	$60,303.64	$60,303.64
Sohn	Sang Dae				2475	$59,468.62	$59,468.62
Son	Kwangsoo	Moon	Sooyeun		2189	$58,878.41	$58,878.41
Takaki	Steve W.				1732	$46,608.32	$46,608.32
Taylor	James	Taylor	Ryan		1769	$43,762.92	$109,502.99
Taylor	James	Taylor	Ryan		1775	$65,740.07	
Thomas	Albert				2065	$82,761.59	$82,761.59
Tokutomi	Lori K.				1711	$59,116.73	$59,116.73
Tom	Garret	Tom	Anita		1845	$96,015.86	$192,067.23
Tom	Garret	Tom	Anita		1903	$96,051.37	
Torabkhan	Farhad	Tavakoli	Sahar		2076	$60,870.58	$60,870.58
Truong	Chanh				2389	$71,070.29	$71,070.29
Vagujhelyi	George	Vagujhelyi	Melissa	as Trustees of The George Vagujhelyi and Melissa Vagujhelyi 2001 Family Trust Agreement U/T/A Dated April 13, 2001	1827	$86,267.97	$86,267.97
van der Bokke	Lee	van der Bokke	Madelyn		1971	$63,680.29	$63,680.29
van der Bokke	Lee				2385	$69,087.09	$69,087.09
Wan	Benton				1838	$96,687.85	$96,687.85
Weiss	Irene			as Trustee of Weiss Family Trust	(2041)	$70,375.84	$143,633.56
Weiss	Irene			as Trustee of Weiss Family Trust	2326	$73,257.72	
Williams	Garth A.	Aratani	Pamela Y.		(1979)	$85,473.87	$85,473.87
Williams	Robert A.				1822	$58,600.10	$181,495.57
Williams	Robert A.				1824	$61,424.11	
Williams	Robert A.				1826	$61,471.36	
Windhorst	Duane H.	Windhorst	Marilyn L.		2181	$87,704.42	$87,704.42
Yin	Dominic				1837	$56,542.70	$56,542.70
Yoo	Kuk Hyun (Connie)	Yoo	Sang Soon (Mike)		2283	$64,159.40	$64,159.40
				JL & YL Holdings, LLC	2165	$92,140.35	$92,140.35
				M&Y Holdings, LLC	2169	$92,790.50	$92,790.50
				Nadine's Real Estate Investments, LLC	1886	$61,785.10	$61,785.10
				Shepherd Mountain, LLC	1720	$85,183.21	$1,089,361.76
				Shepherd Mountain, LLC	1755	$83,165.76	
				Shepherd Mountain, LLC	1757	$85,100.41	
				Shepherd Mountain, LLC	1773	$85,274.88	
				Shepherd Mountain, LLC	1778	$82,344.93	
				Shepherd Mountain, LLC	1780	$81,211.43	
				Shepherd Mountain, LLC	1781	$81,828.24	

Last Name	First Name	Last Name	First Name	Entity	Unit	Damage by Unit	Damage by Plaintiff
				Shepherd Mountain, LLC	1791	$81,523.39	
				Shepherd Mountain, LLC	1828	$84,423.11	
				Shepherd Mountain, LLC	1714 1715	$169,179.02	
				Shepherd Mountain, LLC	1749 1750	$170,127.38	
				Silkscape, Inc.	2063	$83,271.44	$83,271.44
				TMI Property Group LLC	1762	$82,778.54	$148,298.51
				TMI Property Group LLC	1770	$65,519.97	
						$8,318,215.55	$8,318,215.55

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EXHIBIT "2"

EXHIBIT "2"

EXHIBIT "2"

Last Name	First Name	Last Name	First Name	Entity	Unit	APN	Documents	Entity
Cheah	Melvin H.				(1911)	(012-511-06)	FORECLOSED/SOLD/SOLD August 28, 2013 ($4,000) *Assessor's Page *Deed, 03/20/2007, 3510861 (to Melvin H and Amanda S Cheah) *Lien, 07/30/2012, 4136518 *Notice of Trustee's Sale, 07/12/2013, 4257687 *Trustee's Deed Upon Sale, 08/28/2013 (to MEI-GSR) *Lis Pendens, 10/07/2013, 4287379 *Grant, Bargain, Sale Deed, 12/22/14, 4420276 (from MEI-GSR Holdings LLC to AM-GSR Holdings LLC)	HOA Foreclosure
Chopra	Pravesh				(1917)	(012-512-01)	FORECLOSED/SOLD June 14, 2013 ($5,200) *Assessor's Page *Deed, 08/26/2010, 3915929 (to Pravesh Chopra) *Deed, 08/26/2010, 3915930 (to Pravesh Chopra) *Lien, 07/30/2012, 4136514 *Notice of Default, 10/30/2012, 4168557 *Notice of Trustee's Sale, 05/22/2013, 4239429 *Trustee's Deed Upon Sale, 06/14/2013, 4247593 (to MEI-GSR) *Release of Lien, 09/10/2013, 4277901 *Lis Pendens, 10/07/2013, 4287378 *Grant, Bargain, Sale Deed, 12/22/14, 4420276 (from MEI-GSR Holdings LLC to AM-GSR Holdings LLC)	HOA Foreclosure
Chopra	Pravesh				(1701)	(012-491-01)	FORECLOSED/SOLD June 14, 2013 ($5,000) *Assessor's Page *Deed, 08/31/2010, 3917401 (to Pravesh Chopra) *Deed, 08/31/2010, 3917402 (to Pravesh Chopra) *Lien, 07/30/2012, 4136520 *Notice of Default, 10/30/2012, 4168556 *Notice of Trustee's Sale, 05/22/2013, 4239425 *Release of Lien, 09/10/2013, 4277900 *Trustee's Deed Upon Sale, 06/14/2013, 4247591 (to MEI-GSR) *Trustee's Deed Upon Sale, 06/14/2013, 4247593 (to MEI-GSR) *Lis Pendens, 10/07/2013, 4287377 *Grant, Bargain, Sale Deed, 12/22/14, 4420276 (from MEI-GSR Holdings LLC to AM-GSR Holdings LLC)	HOA Foreclosure
Hay	Barry				(1981)	(012-515-04)	FORECLOSED/SOLD January 17, 2012 ($12,000) *Assessor's Page *Deed, 05/07/2010, 3879646 (to Barry Hay) *Deed, 01/17/2012, 4075657 (to MEI-GSR) *Lis Pendens, 10/07/2013, 4287374 *Grant, Bargain, Sale Deed, 12/22/14, 4420276 (from MEI-GSR Holdings LLC to AM-GSR Holdings LLC)	Sold to Defendant
Hay	Barry				(1987)	(012-515-07)	FORECLOSED/SOLD January 17, 2012 ($12,000) *Assessor's Page *Deed, 02/10/2010, 3847815 (to Barry Hay) *Deed, 01/17/2012, 4075659 (to MEI-GSR) *Lis Pendens, 10/07/2013, 4287373 *Grant, Bargain, Sale Deed, 12/22/14, 4420276 (from MEI-GSR Holdings LLC to AM-GSR Holdings LLC)	Sold to Defendant
Mecua	Elizabeth Andres				(1940)	(012-513-12)	FORECLOSED/SOLD June 14, 2013 ($4,300) *Assessor's Page *Deed, 05/04/2007, 3528841 (Elizabeth Andres-Mecua) *Lien, 07/30/2012, 4136515 *Notice of Default, 10/16/2012, 4163235 *Notice of Trustee's Sale, 05/22/2013, 4239430 *Trustee's Deed Upon Sale, 06/14/2013, 4247595 (MEI-GSR) *Release of Lien, 09/10/2013, 4277902 *Lis Pendens, 10/07/2013, 4287371 *Grant, Bargain, Sale Deed, 12/22/14, 4420276 (from MEI-GSR Holdings LLC to AM-GSR Holdings LLC)	HOA Foreclosure
Nunn	Henry P.	Nunn	D'Arcy		(2354)	(012-584-22)	FORECLOSED/SOLD February 13, 2012 ($13,000) *Assessor's Page *Deed, 07/26/2010, 3904893 (to Henry and D'Arcy Nunn) *Deed, 02/13/2012, 4083912 (to MEI-GSR) *Lis Pendens, 10/07/2013, 4287370 *Grant, Bargain, Sale Deed, 12/22/14, 4420276 (from MEI-GSR Holdings LLC to AM-GSR Holdings LLC)	Sold to Defendant
				Weiss Family Trust	(2041)	012-553-03	FORECLOSED/SOLD May 3, 2013 ($4,200) *Assessor's Page *Deed, 09/10/2009, 3800775 (to Anna Nalguz and Irene Weiss - Trust) *Lien, 08/17/2012, 4142476 *Notice of Default, 12/18/2012, 4185352 *Release of Lien, 09/10/2013, 4277903 *Lis Pendens, 10/07/2013, 4287368 *Grant, Bargain, Sale Deed, 12/22/14, 4420276 (from MEI-GSR Holdings LLC to AM-GSR Holdings LLC)	HOA Foreclosure
Williams	Garth A.	Aratani	Pamela Y.		(1979)	012-515-03	FORECLOSED/SOLD December 14, 2012 ($12,000) *Assessor's Page *Deed, 02/28/2007, 3503379 (to Garth A. Williams and Pamela Y. Aratani) *Deed, 12/14/2012, 4184730 (to MEI-GSR) *Grant, Bargain, Sale Deed, 12/22/14, 4420276 (from MEI-GSR Holdings LLC to AM-GSR Holdings LLC)	Sold to Defendant

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

Defendants.

Case No. CV12-02222
Dept. No. 10

MOTION TO ALTER OR AMEND JUDGMENT;

MOTION FOR RECONSIDERATION

Plaintiffs, by and through their counsel of record, the law firm of Robertson, Johnson, Miller & Williamson, hereby submit this Motion to Alter or Amend Judgment; Motion for Reconsideration ("Motion"). This Motion is supported by the attached Memorandum of Points and Authorities, all other pleadings and papers on file in this matter, and any oral argument this Honorable Court may choose to hear.

DATED this 26th day of October, 2015.

ROBERTSON, JOHNSON, MILLER & WILLIAMSON

By: _____
Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Plaintiffs respectfully request that this Court revisit a few limited issues – one of which this Court ruled on in its Findings of Fact, Conclusions of Law and Judgment ("Judgment"), and one that was never addressed.[1] (See Exhibit 1.)

First, in its Judgment, the Court awarded Monetary Relief to the Plaintiffs only as to Defendant MEI-GSR Holdings, LLC. The Plaintiffs respectfully aver that AM-GSR Holdings, LLC should also be subject to the Monetary Relief award. Pursuant to this Court's order of January 21, 2015 ("January 2015 Order"), AM-GSR Holdings, LLC was added as a Defendant to the action and "will step [stepped] into the same procedural posture as Defendant MEI-GSR Holdings, LLC such that it will be subject to all of the Court's previous and future orders and be considered as one and the same with Defendant MEI-GSR Holdings, LLC." (See Exhibit 2.) Accordingly, the Plaintiffs respectfully request that the Judgment be amended to provide for the Monetary Relief against MEI-GSR Holdings, LLC and AM-GSR Holdings, LLC, joint and severally.

In addition, Plaintiffs prevailed on their claims for Unjust Enrichment and Tortious Interference with Contract and/or Prospective Business Advantage against Defendant Gage Village Commercial Development, LLC ("Defendant Gage Village"). As such, Defendant Gage Village should be held jointly and severally liable with Defendants MEI-GSR Holdings, LLC and AM-GSR Holdings, LLC for damages flowing from those causes of action, which total $4,152,669.13.

Finally, the Defendants wrongfully procured condo units from the Plaintiffs based upon fraudulent invoices. The Judgment did not address the relief requested by Plaintiffs in their Application for Default Judgment Pursuant to NRCP 55(b)(2), which was filed on March 17, 2015. Accordingly, the Plaintiffs respectfully request that the Court rule on that issue. The Court has the authority to unwind the unit transfers pursuant to NRS 41.600(3), which provides that:

[1] On or about Thursday, October 22, 2015, the parties stipulated that the Judgment was not a final Judgment. Nevertheless, in an abundance of caution, the Plaintiffs provide the legal authority for both a Rule 59(e) motion and a motion for reconsideration pursuant to WDCR 12(8).

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"[i]f the claimant is the prevailing party, the court shall award the claimant: . . . (b) Any equitable relief that the court deems appropriate . . . ." Because the Defendants procured the units based upon fraud, the Court has the authority to order the return of the units under the equitable powers vested to it by statute.

II. FACTUAL AND PROCEDURAL BACKGROUND RELATED TO MOTION

The Plaintiffs filed this lawsuit on August 27, 2012. A First Amended Complaint was filed on September 10, 2012. Defendants filed an Answer and Counterclaim on November 21, 2012. Plaintiffs filed a Second Amended Complaint on March 26, 2013. Defendants filed and Answer to Second Amended Complaint and Counterclaim on May 23, 2013.

On November 22, 2011, Defendants purchased unit #1765 in the amount of $13,000.00, having APN #012-494-07, from Plaintiffs Ramon Fadrilan and Faye Fadrilan. (See Exhibit 3.)

On January 17, 2012, Defendants purchased unit #1981 in the amount of $12,000.00, having APN #012-515-04, from Plaintiff Barry Hay. (See Exhibit 4.)

On January 17, 2012, Defendants purchased unit #1987 in the amount of $12,000.00, having APN #012-515-07, from Plaintiff Barry Hay. (See Exhibit 5.)

On February 13, 2012, Defendants purchased unit #2354 in the amount of $13,000.00, having APN #012-584-22, from Plaintiffs Henry Nunn and D'Arcy Nunn. (See Exhibit 6.)

On December 14, 2012, Defendants purchased unit #1979 in the amount of $12,000.00, having APN #012-515-03, from Plaintiffs Garth Williams and Pamela Aratani. (See Exhibit 7.)

On June 14, 2013, Defendant Grand Sierra Unit Owners Association foreclosed on unit #1917 in the amount of $5,200.00, having APN #012-512-01, from Plaintiff Pravesh Chopra. (See Exhibit 8.)

On June 14, 2013, Defendant Grand Sierra Unit Owners Association foreclosed on unit #1701 in the amount of $5,000.00, having APN #012-491-01, from Plaintiff Pravesh Chopra. (See Exhibit 9.)

On June 14, 2013, Defendant Grand Sierra Unit Owners Association foreclosed on unit #1940 in the amount of $4,300.00, having APN #012-513-12, from Plaintiff Elizabeth Mecua. (See Exhibit 10.)

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On August 28, 2013, Defendant Grand Sierra Unit Owners Association foreclosed on unit #1911 in the amount of $4,000.00, having APN #012-511-06, from Plaintiff Melvin Cheah. (See Exhibit 11.)

On May 3, 2013, Defendant Grand Sierra Unit Owners Association foreclosed on unit #2041 in the amount of $4,200.00, having APN #012-553-03, from Plaintiff Weiss Family Trust. (See Exhibit 12.)

Pursuant to the attached exhibits, all of the above-referenced purchased and foreclosed-on Plaintiff units are currently titled under Defendant AM-GSR Holdings, LLC. (See Exhibit 13, summary of sales, foreclosures and transfers).

On December 22, 2014, Defendant MEI-GSR Holdings, LLC, transferred to non-defendant AM-GSR Holdings, LLC one hundred forty-five (145) condominium units by a certain Grant, Bargain and Sale Deed. (See Exhibit 14.) Plaintiffs discovered the transfer on the Washoe County Recorder's website. On January 13, 2015, Defendants acknowledged to the Court "that AM-GSR would be added to these proceedings and subject to the same procedural posture as MEI-GSR." (See Exhibit 1 at 11:7-9.)

Indeed, pursuant to a Stipulation and Order, the parties agreed and the Court ordered that:

> 1. AM-GSR Holdings, LLC be added as a defendant in this action just as if AM-GSR Holdings, LLC was a named defendant in the Plaintiffs' Second Amended Complaint;
> 2. AM-GSR Holdings, LLC will step into the same procedural posture as Defendant MEI-GSR Holdings, LLC such that it will be subject to all of the Court's previous and future orders and be considered as one and the same with Defendant MEI-GSR Holdings, LLC.

(See Exhibit 2.)

On March 17, 2015, Plaintiffs filed an Application for Default Judgment Pursuant to NRCP 55(b)(2) ("Application"). The Application sought the following relief:

> (1) The Plaintiff-owned units the Defendants foreclosed on must be returned to those Plaintiffs. Those units include unit numbers: 1911 (Plaintiff Melvin Chea), 1917 (Plaintiff Pravesh Chopra), 1701 (Plaintiff Pravesh Chopra), 1940 (Plaintiff Elizabeth Mecua), and 2041 (Plaintiff Weiss Family Trust) (See Exhibit 2 to Application.)
> (2) The units the Plaintiffs sold to Defendants based upon fraudulent inducement be returned to those Plaintiffs upon return of the purchase price paid by the

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Defendants. Those units include unit numbers: 1981 (Plaintiff Barry Hay), 1987 (Plaintiff Barry Hay), 2354 (Plaintiff Henry Nunn), and 1979 (Plaintiff Garth Williams). (Id.)

On October 9, 2015, this Court entered its Judgment. (See Exhibit 1.)

In its Judgment, the Court made the following Findings of Fact:

113. 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). (See Exhibit 1 at 12:1-4.)

115. 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. (See Exhibit 1 at 12:9-11.)

121. MEI-GSR has systematically allocated and disproportionally 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. (See Exhibit 1 at 13:1-3.)

122. MEI-GSR and Gage Development have failed to pay proportionate capital reserve contribution payments in connection with their Condo Units. (See Exhibit 1 at 13:4-6.)

123. MEI-GSR has failed to properly account for, or provide an accurate accounting for the collection and allocation of the collected capital reserve contributions. (See Exhibit 1 at 13:6-7.)

128. 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. (See Exhibit 1 at 13:18-20.)

129. 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. (See Exhibit 1 at 13:21-25.)

130. 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. (See Exhibit 1 at 13:25-14:2.)

132. 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. (See Exhibit 1 at 14:5-6.)

136. MEI-GSR has manipulated the rental of the: (1) hotel rooms owned by Defendant MEI-GSR; (2) GSR Condo Units owned by Defendant MEI-

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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. (See Exhibit 1 at 14:17-20.)

140. 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.

143. 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, 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. (See Exhibit 1 at 15:10-13.)

Further, pursuant to the Judgment, the Court made the following Conclusions of Law: (1) MEI-GSR is liable for breach of the covenant of good faith and fair dealing as set forth in the Fifth Cause of Action (see Exhibit 1 at 18:6-8); (2) MEI-GSR has violated NRS 41.600(1) and (2) (see Exhibit 1 at 18:10); (3) the Unit Maintenance Agreement and Unit Rental Agreements are unconscionable requiring unit owners to pay unreasonable Common Expenses fees, Hotel Expenses Fees, Shared Facilities Reserves and Hotel Reserves not based on reasonable expectation of need (see Exhibit 1 at 19:6-19); (4) the Plaintiffs are entitled to both equitable and legal relief (see Exhibit 1 at 20:10.); (5) disgorgement is a remedy designed to dissuade individuals from attempting to profit from their inappropriate behavior (see Exhibit 1 at 21:8).

III. LEGAL STANDARD

The formal requirements of an NRCP 59(e) motion are minimal. AA Primo Builders, LLC v. Washington, 126 Nev. Adv. Rep. 53; 245 P.3d 1190, 1192 (2010). NRCP 59(e) states that "[a] motion to alter or amend the judgment shall be filed no later than 10 days after service of written notice of entry of the judgment." "It must also satisfy NRCP 7(b) and be 'in writing, . . . state with particularity [its] grounds [and] set forth the relief or order sought.'" Id.

Pursuant to WDCR 12(8), "[a] party seeking reconsideration of a ruling of the Court, other than an order which may be addressed by motion pursuant to NRCP . . . 59 or 60, must file a motion for such relief within 10 days after service of written notice of entry of the order or judgment . . . ."

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IV. LEGAL ARGUMENT

A. AM-GSR, Holdings, LLC and Gage Village Development Should Also be Added to the Judgment

On December 22, 2014, Defendant MEI-GSR Holdings, LLC, transferred to the then non-defendant AM-GSR Holdings, LLC one hundred forty-five (145) condominium units by a certain Grant, Bargain and Sale Deed. (See Exhibit 14.) The Plaintiffs were concerned about the transfer since MEI-GSR appeared to have transferred all of its assets during the pendency of the case to another Alex Meruelo-owned and controlled entity (which upon information and belief is highly-leveraged). The Court subsequently held a hearing on the issue.

In January 2015, the Defendants stipulated to adding AM-GSR Holdings, LLC as an additional defendant to the action. Pursuant to that stipulation, and the Court's order, AM-GSR Holdings, LLC was added as a Defendant and determined to be one and the same with MEI-GSR Holdings, LLC. As such, AM-GSR Holdings, LLC would be subject to any order or judgment against MEI-GSR Holdings, LLC, as if they were one and the same. (See also Judgment at 11:7-12.)

Accordingly, the Plaintiffs respectfully request that the Court add AM-GSR Holdings, LLC to the Monetary Relief section of the Judgment in order to avoid any potential, future confusion as to whether AM-GSR Holdings, LLC is jointly and severally liable for the Plaintiffs' damages and MEI-GSR Holdings, LLC's obligation to fund the reserve accounts.

Finally, since the Plaintiffs alleged causes of action of Unjust Enrichment and Tortious Interference with Contract and/or Prospective Business Advantage against Defendant Gage Village, the Court should amend its Judgment to hold that Defendant jointly and severally liable for the $4,152,669.13 in damages specified in paragraph 2 of the Monetary Relief. *See* Judgment at 21:25-26.

The specific damages for Tortious Interference with Contract/Prospective Economic Advantage amount to $3,674,542.09. (*See* March 25, 2015 Transcript of Proceedings, Day 3, at 481:7-19; March 25, 2015 PowerPoint Presentation ("Closing") slide #69, "Summary of

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Damages Table: Tortious Interference with Contract/Prospective Economic Advantage;" and slide #70, "Damages for Units Without Rental Agreements.")

The specific damages for Unjust Enrichment are $4,152,669.13. (Compare Closing Slide #34, "Damages for Units Without Rental Agreements," with Closing Slide #71, "The Plaintiffs' Other Causes of Action" (noting that Unjust Enrichment is duplicative of Plaintiffs' claim for Quasi-Contract).

Because the damages for Tortious Interference for Contract/Prospective Economic Advantage overlap with those damages for Unjust Enrichment, the Order need only be amended such that Defendant Gage Village is held jointly liable for the $4,152,669.13 figure.

B. Pursuant to NRS 41.600(3)(b), the Court Should Order AM-GSR to Transfer Back the Units that Were Procured Through Fraud

The Court's Judgment, in addition to the evidence presented at the prove-up hearing on damages, demonstrates that the Defendants orchestrated a scheme to devalue the Plaintiffs' units so that they could buy them back at nominal or distressed prices. As part of this scheme, the Defendants rented Plaintiff-owned units without compensation, rented the Plaintiff-owned rooms at low rates, and engaged in other misconduct, and then sent out false invoices to the Plaintiffs concerning the usage of their rooms. The Defendants' actions and false reporting caused the Plaintiffs to owe the Defendants money for the rental of their rooms, when the Plaintiffs' rooms should have been generating income.

As such, many Plaintiffs lost their units to foreclosure because they could not afford the artificially high fees and did not know that the GSR was deliberately depriving them of revenue they could use to pay those fees because the GSR was sending out false invoices.[2]

The Plaintiffs prevailed on their cause of action for Deceptive Trade Practices.[3] Pursuant to NRS 41.600(3)(b), the Court shall award "(b) [a]ny equitable relief that the court deems

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[2] Incredibly, the Defendants foreclosed on certain Plaintiff-owned units during the pendency of the litigation and did not provide notice to the Plaintiffs' counsel. Such conduct violated Nevada Ethics Rule 4.2. (See Rule 4.2. Communication With Person Represented by Counsel. In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.)

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appropriate." Because the Defendants' deceptive trade practices caused certain Plaintiffs to lose their homes, the Court should use its equitable powers to require AM-GSR Holdings, LLC to give those Plaintiffs their units back.[4] This is a particularly appropriate equitable remedy since one of the reasons for the Defendants' misconduct in this case was to drive the Plaintiffs out of the units and reacquire them. Requiring the Defendants to give back the units would provide a strong deterrent effect to any such future misconduct by the Defendants, and strip them of their wrongful gain.

V. CONCLUSION

For the reasons set forth above, the Plaintiffs respectfully request that this Court amend its Judgment.

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 26th day of October, 2015.

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By: _____
Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Plaintiffs

[3] As one example of the Defendants' deceptive trade practices, they knowingly made false representations as part of the unit rental program by sending out false invoices. *See* NRS. 598.0915(15).

[4] AM-GSR Holdings, LLC should deed back the units to those Plaintiffs who lost their units due to foreclosure. The plaintiffs who were forced to sell their units should be entitled to the return of their units upon the refund of the purchase price to the Defendants.

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 October, 2015, I electronically filed the foregoing **MOTION TO ALTER OR AMEND JUDGMENT; MOTION FOR RECONSIDERATION** with the Clerk of the Court by using the ECF system which served the following parties electronically:

H. Stan Johnson, Esq.
Steven B. Cohen, Esq.
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CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date Appellants' Supplemental Appendix – Volume 8 - to Reply Brief was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Gayle Kern	Daniel Polsenberg
H. Johnson	G. Robertson
Jarrad Miller	Jonathan Tew
Joel Henriod	

I further certify that on this date I served a copy of the foregoing by U.S. Mail, postage prepaid, to:

Steven B. Cohen
Cohen Johnson Parker Edwards, LLC
255 E. Warm Springs Road, Suite 100
Las Vegas, NV 89119

DATED: 5/1/17

Vicki Shapiro, Assistant to
Robert L. Eisenberg