IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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

OPPOSITION TO MOTION FOR LEAVE TO FILE REPLY

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.

Respectfully, this Court should deny Respondents' Motion for Leave to File Reply ("Motion") for several compelling reasons.

First, the Motion is not authorized by NRAP 40A(e), which requires *the Court* to request a reply.

Second, Respondents misrepresent to this Court that the Appellants made a "troubling" representation of the law that justifies a reply. This is because the 2011 "sworn statement" requirement to which Respondents now cite only applied to *nonbinding* arbitration, which was never at issue in this dispute.

Third, while no "sworn statement" requirement in NRS 38.330 applies in this case, the first time Respondents relied on this statutory provision was in their petition for rehearing. This violated NRAP 40(c)(1), which provides that "no point may be raised for the first time on rehearing." NRAP 40A(c) also prohibits new arguments, so Respondents' Motion and proposed reply are similarly improper and violate the spirit of Rule 40A(c).

Finally, Respondents' Motion is part of a pattern of delay and raising late arguments in this case. Respondents have requested and been granted six extensions in this appeal already. Respondents' improper attempt to secure the "last word," while contravening NRAP 40A(c), NRAP 40(c)(1), and NRAP 40A(e), will only necessitate further delay. Accordingly, this Court should deny the Motion.

NRAP 40A(e) Does Not Authorize a Motion for Leave to File Reply

NRAP 40A(e), which governs petitions for en banc reconsideration, states that: "[n]o answer to a petition for en banc reconsideration **or reply to an answer shall be filed unless requested by the court**." (Emphasis supplied.) The rule is clear. It does **not** state that a reply is prohibited unless "authorized" or "allowed" by the court. The rule states that a reply to an en banc petition is prohibited unless "**requested**" by the court. (Emphasis supplied.) This court certainly did not request a reply in this case. Respondents' Motion is therefore procedurally not authorized by the rules and should be denied.

Respondents' "Sworn Statement" Argument is Meritless Because Non-Binding Arbitration Was Never at Issue in this Case

Respondents contend that Appellants misrepresented "that when they filed their complaint, they were not required to include a sworn statement that they had attempted arbitration in accordance with NRS 38.300-.60." ("Motion at 1.) Respondents then cite to 1995 Nev. Stat. 1418, AB 152, § 5(4) and 2011 Nev. Stat. 802, AB 317, §4(5) for the argument that "[a]ny complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated." (Motion at 1.) Yet, Respondents leave out the most critical part of both provisions. The full provision provides as follows: "If all the parties have agreed to *nonbinding arbitration*, any party to the arbitration may,

within 30 days after a decision and award have been served upon the parties, commence a civil action in the proper court concerning the claim which was submitted for arbitration. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated . . . ." See 1995 Nev. Stat. 1418, AB 152, § 5(4) and 2011 Nev. Stat. 802, AB 317, §4(5) (emphasis supplied). *Nonbinding arbitration was never at issue in this case.* Respondents have never argued that the parties agreed to nonbinding arbitration, so no "sworn statement" requirement from 2011 could apply. Additionally, Respondents conveniently fail to point out that they filed their actions first in this case, and due to this – and their other unscrupulous behavior – they were estopped from trying to rely on NRS 38.310. Accordingly, additional briefing – and Respondents' proposed reply – are unnecessary and will only delay resolution of this appeal.

Respondents' Motion Contravenes the Nevada Rules of Appellate Procedure

Respondents have had fair notice of the deficiency of their "sworn statement" argument since the proceedings in district court. Nevertheless, Respondents waited until their petition for rehearing to first raise the issue of NRS 38.330, and did so in violation of NRAP 40(c)(1). Now they seek to contravene NRAP 40A(e) so they can file nothing more than a "last word" reply that also

makes new arguments in violation of NRAP 40A(c). This is improper, and the Court should deny the Motion.

Indeed, in the district court, Respondents filed a motion to dismiss and a reply, arguing that under **NRS 38.325 [not NRS 38.330]**, Appellants were required to include a "sworn statement" in their complaints. 1 A. App. 127 (motion); 5 A. App. 957 (reply). Appellants pointed out in their opposition that NRS 38.325's "sworn statement" requirement was not applicable because it was enacted in 2013 – after Appellants' operative complaint was filed. Respondents never argued that any "sworn statement" requirement in NRS 38.330 applied to this case – despite having fair notice from Appellants' opposition.

Later, in Appellants' opening brief, they proactively addressed the inapplicability of NRS 38.325's "sworn statement" requirement in detail. See Appellants' Opening Brief at p.48, fn.7. This gave Respondents fair notice of Appellants' contention that NRS 38.325 is not applicable. Yet, Respondents' answering brief never even addressed or cited NRS 38.325 or NRS 38.330. Respondents merely stated, falsely (since they filed their complaints first) – that Appellants "initiate[d]" suit and "forg[o]t to include a sworn statement that the claims had been mediated." Answering Brief at p.69. Accordingly, Appellants' opening brief *again* informed Respondents that the "sworn statement" requirement

was inapplicable, and Respondents essentially conceded this point by completely failing to address NRS 38.325 or NRS 38.330 in their answering brief.

For the first time in this appeal, after the panel already ruled against Respondents and reversed the district court's order of dismissal, Respondents cited NRS 38.330 in their Petition for Rehearing. (Petition for Rehearing at p. 17.) This argument was expressly prohibited by NRAP 40(c)(1), which provides that "no point may be raised for the first time on rehearing." The panel correctly denied rehearing. Regardless, that particular statutory provision only required a "sworn statement" for *nonbinding* arbitration, and is therefore inapplicable to Appellants' operative complaint (or Respondents' *first-filed* complaints).

As the Court can see, Respondents' Motion is misleading and cannot justify leave to file a "last word" reply that is not authorized under NRAP 40A(e). This is even more true since Respondents' Motion is based on arguments that were raised in plain violation of NRAP 40(c)(1) and NRAP 40A(c).

No Further Briefing is Warranted in this Case

Respondents have already sought a stunning six extensions of time for their filings in this case: three extensions for their answering brief, two extensions for their petition for rehearing, and one extension for their en banc petition. Respondents' present Motion is nothing more than an improper attempt to seek the last word in contravention of the Nevada Rules of Appellate Procedure. Allowing

Respondents a reply, especially in light of the procedural posture of this appeal, would only cause unnecessary delay.

If the Court is Inclined to Consider the Reply, Appellants Should Be Allowed To File a Response, Due to Principles of Fairness

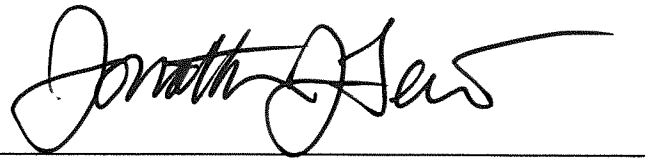
This Court should not grant Respondents' Motion and consider their "last word" reply. Enough briefing has been submitted to the Court for a decision on the petition for en banc reconsideration, and new arguments in violation of the Nevada Rules of Appellate Procedure are simply not warranted.

However, because Respondents submitted their proposed reply brief to the Court – but did not provide Appellants with a courtesy copy – Appellants have been placed in the unfair position of not knowing what other new, improper or inaccurate arguments Respondents raised in their proposed 2,330-word reply. As was shown above (and in Appellants' answer to petition for en banc reconsideration), Respondents have demonstrated a pattern of improperly raising late new arguments in this appeal. Accordingly, while the Court should deny Respondents' Motion, if the Court is somehow inclined to consider the reply, fairness would require that the Appellants be afforded the opportunity to file a sur-reply response.

For the above reasons, the Court should deny the Motion and resolve Respondents' petition for en banc reconsideration as it stands – fully briefed. But

if the Court allows the reply, Appellants should be given an opportunity to respond to it.

Dated: this 25th day of October, 2018.



Robert L. Eisenberg, Esq.
Jarrad C. Miller, Esq.
Jonathan Joel Tew, Esq.
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, over the age of eighteen, and not a party to the within action. I further certify that on October 25, 2018, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Robert L. Eisenberg, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, NV 89509
Attorneys for Appellants

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

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

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

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

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

Theresa W. Stovak

An Employee of Robertson, Johnson, Miller & Williamson