

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE STUART YOUNT, individually,
and in his capacity as owner of GEORGE
YOUNT IRA,

Appellant,

vs.

CRISWELL RADOVAN, LLC; CR CAL
NEVA, LLC; ROBERT RADOVAN;
WILLIAM CRISWELL; CAL NEVA LODGE,
LLC; POWELL COLEMAN AND ARNOLD
LLP; DAVID MARRINER; and MARRINER
REAL ESTATE, LLC,

Respondents.

No 74275

Electronically Filed
Nov 29 2017 09:49 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

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

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

1. Judicial District County Second Department 7
County Washoe Judge Patrick Flanagan
District Ct. Case No. CV16-00767

2. Attorney filing this docketing statement:

Attorney Daniel F. Polsenberg, Joel D. Henriod, and Abraham G. Smith

Telephone 702-949-8200

Firm LEWIS ROCA ROTHGERBER CHRISTIE LLP

Address 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Attorney Richard G. Campbell, Jr. Telephone 775-686-2446

Firm THE LAW OFFICE OF RICHARD G. CAMPBELL, JR. INC.

Address 200 South Virginia Street, 8th Floor
Reno, Nevada 89501

Client(s) George Stuart Yount, individually and in his capacity as owner of
George Yount IRA

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

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

Attorney Martin A. Little and Alexander Villamar Telephone (702) 257-1483

Firm HOWARD & HOWARD

Address 3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169

Client(s) Criswell Radovan, LLC; CR Cal Neva, LLC; Robert Radovan; William
Criswell; Cal Neva Lodge, LLC; and Powell, Coleman and Arnold LLP

Attorney Andrew N. Wolf Telephone (775) 831-3666

Firm INCLINE LAW GROUP, LLP

Address 264 Village Boulevard, Suite 104
Incline Village, Nevada 89451

Client(s) David Marriner and Marriner Real Estate, LLC

(List additional counsel on separate sheet if necessary)

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

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Modification |
| | <input checked="" type="checkbox"/> Other disposition (specify):
Order awarding damages |

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

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

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

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to

this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

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

This action arises from a dispute over shares in a real estate development project. Plaintiff sued the defendant developers for fraud and conversion (among other claims) to obtain a refund of his \$1 million investment, upon learning that defendants did not give him the type of shares that he was promised. The district court dismissed plaintiff's second amended complaint and entered judgment in favor of the defendants.

This appeal is from the district court's amended order awarding monetary damages to the defendants based on their affirmative defense of unclean hands.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1. Whether there was a legal basis or substantial evidence for a decision adverse to plaintiff, including to exonerate defendants from any damages.

2. Whether there was a basis in equity to award damages to defendants for unclean hands.

3. Whether the district court abused its discretion in awarding defendants attorneys' fees and cost.

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

N/A

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

The district court's application of unclean hands implicates important questions about the reach and consistency of Nevada's equity jurisprudence.

13. Assignment to the Court of Appeals or Retention in the Supreme Court.

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

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(10).

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

7 days

Was it a bench or jury trial? Bench

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

No.

TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from 9/15/17
(Exhibit A)**

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

The appeal is premature. To avoid waiver and because the order awarding damages and attorney's fees purports to "amend" an oral ruling dismissing plaintiff's claims, plaintiff files this notice of appeal in an abundance of caution. Pursuant to NRAP 4(a)(6), the notice of appeal from the judgment will be deemed timely upon entry of the district court's order resolving the last of the tolling motions.

17. Date written notice of entry of judgment or order was served N/A

Was service by:

- ☐ Delivery
☐ Mail/electronic/fax

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

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

- ☐ NRCP 50(b) Date of filing N/A
☐ NRCP 52(b) Date of filing N/A
☐ NRCP 59 Date of filing N/A

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

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

N/A

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

N/A

Was service by: N/A

☐ Delivery

☐ Mail/Electronic/Fax

19. Date notice of appeal filed 10/16/17 (Exhibit B)

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

N/A

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

The time limit for filing the notice of appeal from an order after bench trial is governed by NRAP 4(a)(1). Appellant anticipates that a final judgment will be entered, but because the order purports to dispose of all of the parties' claims, appellant files this appeal out of an abundance of caution, which practice is contemplated in NRAP 4(a)(6).

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

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

Plaintiff does not believe the "amended order" filed by the district court constitutes a final judgment under NRAP 3A(b)(1). That rule will be the basis for the appeal once a final judgment is entered.

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

(a) Parties:

George Stuart Yount, individually and in his capacity as owner of
George Yount IRA
Criswell Radovan, LLC
CR Cal Neva, LLC
Robert Radovan
William Criswell
Cal Neva Lodge, LLC
Powell, Coleman and Arnold, LLP
David Marriner
Marriner Real Estate, LLC

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

N/A

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

Plaintiff George Stuart Yount sued for breach of contract, breach of duty, fraud, negligence, conversion, punitive damages, and fraud under NRS 90.570 in the offer, sale and purchase of a security (Exhibit C).

David Marriner and Marriner Real Estate, LLC answered and filed a cross-claim for indemnity, contribution and declaratory relief regarding the apportionment of fault against Criswell Radovan, LLC, Robert Radovan, William Criswell and Powell, Coleman and Arnold LLP (Exhibit D).

The September 15, 2017 "Amended Order" (Exhibit A) resolves all claims.

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

☒ Yes

☐ No

25. If you answered “No” to question 23, complete the following: N/A

- (a) Specify the claims remaining pending below:
- (b) Specify the parties remaining below:
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?
 - ☐ Yes
 - ☐ No
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?
 - ☐ Yes
 - ☐ No

26. If you answered “No” to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

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

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

VERIFICATION

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

George Stuart Yount, individually, and in
his capacity as owner of George Yount IRA
Name of appellant

Abraham G. Smith
Name of counsel of record

/s/ Abraham G. Smith
Signature of counsel of record

November 28, 2017
Date

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that this “Docketing Statement” was filed electronically with the Nevada Supreme Court on the 28th day of November, 2017. Electronic service of the foregoing “Docketing Statement” shall be made in accordance with the Master Service List as follows:

MARTIN A. LITTLE
ALEXANDER VILLAMAR
HOWARD & HOWARD
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169

ANDREW N. WOLF
INCLINE LAW GROUP, LLC
264 Village Boulevard, Suite 104
Incline Village, Nevada 89451

ROBERT L. EISENBERG
6005 Plumas Street, Suite 300
Reno, Nevada 89509

Dated this 28th day of November, 2017

/s/ Abraham G. Smith

An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A TO
DOCKETING
STATEMENT

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

GEORGE STUART YOUNT,
Individually and in his Capacity as
Owner of GEORGE YOUNT IRA,

Case No.: CV16-00767

Dept. No.: 7

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a
Nevada limited liability company; CR
CAL NEVA, LLC, a Nevada limited
liability company; ROBERT
RADOVAN; WILLIAM CRISWELL;
CAL NEVA LODGE, LLC, a Nevada
limited liability company; POWELL,
COLEMAN and ARNOLD, LLP;
DAVID MARRINER; MARRINER
REAL ESTATE, LLC, a Nevada
limited liability company; and DOES
1-10,

Defendants.

AMENDED ORDER

On September 8, 2017, after hearing testimony and taking evidence in a seven-day bench trial, this Court dismissed Plaintiff's Second Amended Complaint, dismissed the crossclaims by Defendants David Marriner and Marriner Real Estate, LLC as moot and entered judgment against Plaintiff and in favor of Defendants. In its oral ruling, the Court awarded damages on Defendants' counterclaim.

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1 Upon further consideration, the Court is concerned that its oral recitation of
2 damages maybe subject to misinterpretation and thus hereby amends its previous
3 Order as follows:

- 4 1. WILLIAM CRISWELL ("Criswell"), is awarded \$1.5 million in compensatory
5 damages, two years' salary, management fees (if applicable), attorney's fees
6 and costs of suit;
- 7 2. ROBERT RADOVAN ("Radovan"), is awarded \$1.5 million in compensatory
8 damages, two years' salary, management fees (if applicable), attorney's fees
9 and costs of suit;
- 10 3. DAVID MARRINER; is awarded \$1.5 million in compensatory damages¹,
11 attorney's fees and costs of suit;
- 12 4. POWELL, COLEMAN AND ARNOLD, LLP ("PCA"), is awarded its attorney's
13 fees and costs of suit;²
- 14 5. CRISWELL RADOVAN, LLC (Criswell Radovan), is awarded its lost
15 Development Fees,³ attorney's fees and costs of suit;
- 16 6. CR CAL NEVA, LLC ("CR Cal Neva"), is awarded its lost Development Fees,⁴
17 attorney's fees, and costs of suit;
- 18 7. CAL NEVA LODGE, LLC, is awarded its attorney's fees and costs of suit;⁵
- 19 8. MARRINER REAL ESTATE, LLC, is awarded its attorney's fees, and costs.⁶

20 IT IS SO ORDERED this 15 day of September, 2017.

21 
22 PATRICK FLANAGAN
23 District Judge
24

25 ¹ These damages include both lost commissions (Ex. 1) and loss of business good will.

26 ² There was no testimony or evidence of damages to PCA produced at trial.

27 ³ Less that which has been earned and paid up to \$1.2 million in the aggregate. (Ex. 3, p. 8)

28 ⁴ Less that which has been earned and paid up to \$1.2 million in the aggregate. (Ex. 3, p.8)

⁵ There were no damages sought on behalf of this project development entity.

⁶ Only to the extent that they are not duplicative of any award or fees to David Marriner individually.

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 15 day of September, 2017, I electronically filed the following with the Clerk of
5 the Court by using the ECF system which will send a notice of electronic filing to
6 the following:

7 Richard G. Campbell, Jr., Esq., attorney for Plaintiff George Stuart Yount;
8 Andrew N. Wolf, Esq., Attorney for Defendants David Marriner and Marriner
9 Real Estate, LLC; and
10 Martin A. Little, Esq., attorney for Defendants Criswell Radovan, LLC; CR
11 Cal Neva, LLC; Robert Radovan; William Criswell; Cal Neva Lodge, LLC;
12 Powell, Coleman, and Arnold, LLP.

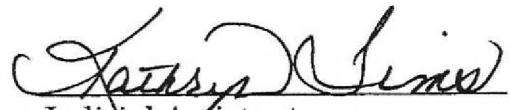
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EXHIBIT B TO
DOCKETING
STATEMENT

\$2515

Daniel F. Polsenberg
Nevada Bar No. 2376
Joel D. Henriod
Nevada Bar No. 8492
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
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Richard G. Campbell, Jr.
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THE LAW OFFICE OF RICHARD G. CAMPBELL, JR. INC.
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Phone (775) 686-2446
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RCampbell@RGCLawOffice.com

*Attorneys for Plaintiff
George Stuart Yount*

DISTRICT COURT
WASHOE COUNTY, NEVADA

GEORGE STUART YOUNT, individually
and in his capacity as owner of
GEORGE YOUNT IRA,

Plaintiff,

vs.

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limited liability company; CR CAL
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WILLIAM CRISWELL; CAL NEVA
LODGE, LLC, a Nevada limited
liability company; POWELL, COLEMAN
AND ARNOLD, LLP; DAVID MARRINER;
MARRINER REAL ESTATE, LLC, a
Nevada limited liability company;
and DOES 1-10,

Defendants.

Case No. CV16-00767

Dept. No. 7

NOTICE OF APPEAL

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 16th day of October, 2017, I served the
3 foregoing "Notice of Appeal" on counsel by the Court's electronic filing system to
4 the persons and addresses listed below:

5 MARTIN A. LITTLE	ANDREW N. WOLF
6 ALEXANDER VILLAMAR	INCLINE LAW GROUP, LLC
7 HOWARD & HOWARD	264 Village Boulevard, Suite 104
3800 Howard Hughes Parkway, Suite 1000	Incline Village, Nevada 89451
8 Las Vegas, Nevada 89169	

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11 /s/ Adam Crawford
12 An Employee of Lewis Roca Rothgerber Christie LLP
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INDEX OF EXHIBITS

EXHIBIT NO.	DESCRIPTION	NUMBER OF PAGES
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EXHIBIT 1

EXHIBIT 1

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

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20 IT IS SO ORDERED this 15 day of September, 2017.

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22 PATRICK FLANAGAN
23 District Judge
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⁶ Only to the extent that they are not duplicative of any award or fees to David Marriner individually.

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 15 day of September, 2017, I electronically filed the following with the Clerk of
5 the Court by using the ECF system which will send a notice of electronic filing to
6 the following:

7 Richard G. Campbell, Jr., Esq., attorney for Plaintiff George Stuart Yount;
8 Andrew N. Wolf, Esq., Attorney for Defendants David Marriner and Marriner
9 Real Estate, LLC; and
10 Martin A. Little, Esq., attorney for Defendants Criswell Radovan, LLC; CR
11 Cal Neva, LLC; Robert Radovan; William Criswell; Cal Neva Lodge, LLC;
12 Powell, Coleman, and Arnold, LLP.

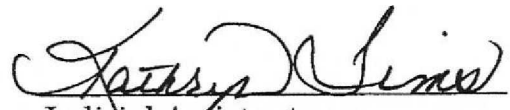
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EXHIBIT C TO
DOCKETING
STATEMENT

CODE 1090
DOWNEY BRAND LLP
RICHARD G. CAMPBELL, JR. (Bar No. 1832)
100 West Liberty, Suite 900
Reno, NV 89501
Telephone: 775-329-5900
Facsimile: 775-997-7417

Attorneys for Plaintiff

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

GEORGE STUART YOUNT, Individually
and in his Capacity as Owner of GEORGE
STUART YOUNT IRA,

Plaintiff,

v.

CRISWELL RADOVAN, LLC, a Nevada
limited liability company; CR Cal Neva,
LLC, a Nevada limited liability company;
ROBERT RADOVAN; WILLIAM
CRISWELL; CAL NEVA LODGE, LLC, a
Nevada limited liability company;
POWELL, COLEMAN and ARNOLD
LLP; DAVID MARRINER; MARRINER
REAL ESTATE, LLC, a Nevada limited
liability company; NEW CAL-NEVA
LODGE, LLC, a Nevada limited liability
company; and DOES 1-10,

Defendants.

CASE NO. CV16-00767

DEPT NO. B7

SECOND AMENDED COMPLAINT
(Exemption from Arbitration Requested)

PLAINTIFF GEORGE STUART YOUNT, individually and in his capacity as owner of
the GEORGE STUART YOUNT IRA (hereinafter "Plaintiff"), for their Complaint against
Defendants CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL

1 NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM
2 CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL,
3 COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a
4 Nevada limited liability company; and, NEW CAL-NEVA LODGE, LLC, a Nevada limited
5 liability company (hereinafter "Defendants") and DOES 1 through 10, inclusive, allege as
6 follows:

7 **PARTIES**

8 1. Plaintiff George Stuart Yount is an individual who resides in Crystal Bay, Nevada.

9 2. The George Stuart Yount IRA is an IRA owned by George Stuart Yount, for which
10 Premiere Trust, Inc., serves as custodian.

11 3. Defendant Criswell Radovan, LLC ("Criswell Radovan") is a Nevada limited
12 liability company whose managers are Sharon Criswell, William Criswell and Robert Radovan,
13 and upon information and belief is the owner of CR Cal Neva, LLC.

14 4. Defendant CR Cal Neva, LLC ("CR") is a Nevada limited liability company
15 whose managing member is William Criswell, and upon information and belief is owned by
16 William Criswell, Robert Radovan and/or Criswell Radovan.

17 5. Defendant Robert Radovan ("Radovan") is an individual residing, upon
18 information and belief, in Napa, California, and doing business in Nevada both individually and
19 through various entities, including Defendants.

20 6. Defendant William Criswell ("Criswell") is an individual residing, upon
21 information and belief, in Napa, California, and doing business in Nevada both individually and
22 through various entities, including Defendants.

23 7. Defendant Cal Neva Lodge, LLC ("CNL") is a Nevada limited liability company
24 whose manager is Robert Radovan.

25 8. Powell, Coleman and Arnold LLP ("Powell Coleman") is a law firm located in
26 Dallas, Texas, who has and continues to represent CR and CNL as to the financing and
27 development of the Cal Neva Lodge located in Nevada and California (as referred herein, the
28 "Cal Neva Lodge", or "Project").

1 9. Defendant David Marriner ("Marriner") is an individual residing in Incline
2 Village, Nevada, and acting as an agent and/or broker for CNL, CR, Criswell Radovan, LLC, and
3 the Cal Neva Lodge, who was being paid a percentage of any money from investors he brought to
4 the project.

5 10. Marriner Real Estate, LLC ("Marriner Real Estate") is a Nevada limited liability
6 company whose manager is David Marriner, and upon information and belief is solely owned by
7 David Marriner which has acted as an agent and/or broker for CNL, CR, Criswell Radovan, LLC,
8 and Cal Neva Lodge.

9 11. Defendant New Cal-Neva Lodge, LLC ("NCNL") is a Nevada limited liability
10 company whose managing member is Cal Neva Lodge, LLC.

11 12. Plaintiff is ignorant of the true names and capacities of the DOES named herein as
12 DOES 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names.
13 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.
14 Plaintiff is informed and believes, and thereon alleges, that each of these fictitiously named DOE
15 Defendants was, and continues to be, responsible in some manner for the acts or omissions herein
16 alleged.

17 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

18 13. On or about February 18, 2014, David Marriner, acting individually and as
19 Marriner Real Estate, collectively hereafter "Marriner," met with Plaintiff and told him about the
20 new owners and developers of the Cal Neva Lodge, primarily Radovan and Criswell and their
21 related entities, including Defendants, who were looking for investors to help fund a newly
22 formed Nevada LLC that would acquire, remodel and reopen the Cal Neva Lodge. Marriner
23 acted as and represented that he was the agent and broker for the new owner and their myriad
24 legal entities. Thereafter, for a period of several months, Marriner acting individually and as the
25 owner of Marriner Real Estate, kept in contact with Plaintiff and made numerous representations
26 about the Project, the development of the Cal Neva Lodge and Radovan and Criswell's successful
27 development history. Specifically, Marriner told Yount that Criswell and Radovan had a
28 successful track record in developing high end hotel/resort properties. Marriner also provided

1 marketing and promotional materials related to the Project, and tours of the Cal Neva Lodge, all
2 intended to induce Plaintiff to become an investor in the Project and Cal Neva Lodge.

3 14. On or about July 22, 2015, Marriner represented to Yount that the project was on
4 schedule, and would open in December 2015, and sent to Yount via e-mail with an attached
5 construction progress report that did not disclose that the project was substantially over budget,
6 was in need of a cash infusion and that the General Contractor, Penta, had not been paid, facts
7 which Marriner was aware of.

8 15. During July, August, September and October 2015, prior to October 12 when
9 Younts sent \$1,000,000 to the escrow holder for shares in the offering under the Private
10 Placement Memo, Marriner knew that the general contractor and subcontractors on the job were
11 not being paid, but did not disclose this to Yount.

12 16. Prior to Yount's investment, Marriner knew that the developers had requested
13 \$1,000,000 from another investor, Les Busick, to meet the immediate needs of the project to keep
14 Penta from leaving the job. This was not disclosed to Yount.

15 17. On July 14, 2015, Marriner sent Yount an investor list that should \$1,500,000
16 available under the \$20,000,000 Private Placement Memo. Marriner knew that prior to Yount's
17 investment in October 2015 that the \$20,000,000 cap on funds that could be raised under the
18 Private Placement Memo had been fully met yet failed to inform Yount of this fact, and that
19 Yount could no longer be included in the investor group under the Private Placement Memo.

20 18. On or about July 25, 2015, Radovan sent an email to Plaintiff providing numerous
21 documents and other information related to the Project and development of the Cal Neva Lodge,
22 including financial information showing that the project was on budget and on time, with the
23 intent to induce the Plaintiff into purchasing a "Founders Unit" in CNL for \$1,000,000, as CNL
24 was serving as the primary development vehicle for the Project.

25 19. Plaintiff was later provided a "Subscription Booklet" that included Subscription
26 Instructions, a member signature page, a certificate of nonforeign status, investor instruction to
27 escrow and wire transfer information and an IRS form W-9. Plaintiff was also informed that by
28 both Marriner and Radovan there was still \$1,500,000 of Founders Units available for purchase of

1 the \$20,000,000 of Founders Units authorized under the Subscription Agreement and related
2 offering materials. Plaintiff reviewed the Subscription Booklet, and based on the information
3 contained therein and the representations made by Radovan, Criswell, Marriner, and their
4 respective agents and entities, including Defendants, decided to purchase a Founders Unit in the
5 amount of \$1,000,000. Plaintiff elected to utilize funds held by the George Stuart Yount IRA of
6 Plaintiff for the purchase of such Founders Unit.

7 20. On or about October 12, 2015, Plaintiff, as owner of the George Stuart Yount IRA,
8 and Deborah Erdman as Trust Officer for Premier Trust Inc., as the custodian of the George
9 Stuart Yount IRA, signed and delivered the Subscription Agreement. On October 13, 2015,
10 Criswell, as president of CR signed the Acceptance of Subscription as manager of CNL. On
11 October 15, 2015, Premier Trust Inc. on behalf of the George Stuart Yount IRA, wired the
12 amount of \$1,000,000 to the trust account of Powell Coleman, the designated escrow holder for
13 subscription funds under the Subscription Agreement. Pursuant to the Subscription Agreement
14 the \$1,000,000 was to be deposited into the account of CNL.

15 21. On or about December 12, 2015, a meeting of members and investors in the
16 Project was held at the Fairwinds Lodge near the Cal Neva Lodge. At that meeting, for the first
17 time, Plaintiff was informed of several issues that Marriner and/or the developers had not
18 disclosed or were incorrectly represented to him prior to his investment, primarily that the Project
19 was substantially over budget, Penta had not been paid, and the Cal Neva Lodge was not going to
20 open as scheduled.

21 22. The revelations at the December 12, 2015 meeting caused great concern to the
22 Plaintiff and the members and investors. Additionally, at that time, the bank statements of CNL
23 did not reflect that the \$1,000,000 had been deposited into any CNL account.

24 23. On or about January 22, 2016, Plaintiff received a Capitalization Table for CNL
25 indicating that his \$1,000,000 investment was not in CNL, but was within the \$2,000,000 equity
26 investment of CR in CNL. Plaintiff immediately responded that was in error and that his intent
27 all along, and the terms of the Subscription Agreement, provided for his purchase of a Founders
28 Unit under the Subscription Agreement as was evidenced by the fully executed Subscription

1 Agreement delivered by Plaintiff to CNL. Plaintiff had never entered into any verbal or written
2 agreement to buy any portion of the CR's Founder's Units in CNL. Plaintiff then requested that
3 the Capitalization Table be corrected to reflect that he was a holder of a \$1,000,000 Founders
4 Unit in CNL, as provided by the Subscription Agreement.

5 24. Based on these series of events, Plaintiff then started inquiring into the
6 whereabouts of his \$1,000,000.

7 25. On or about February 2, 2016, Plaintiff received an email from Bruce Coleman, a
8 partner of Powell Coleman, with attached documents, apparently drafted by Powell Coleman,
9 consisting of an Assignment of Interest in Limited Liability Company (backdated to October 13,
10 2015), Resolution of Members of CNL approving such assignment, and a Purchase Agreement
11 for CR to repurchase from Plaintiff the one-half of CR's equity position in CNL, which was
12 asserted by Powell Coleman to have been transferred to Plaintiff for \$1,000,000, which
13 agreement also classified Plaintiff's \$1,000,000 as a loan from Plaintiff to CR. Basically these
14 assignment documents set forth that the Subscription Agreement had been erroneously executed
15 and that the parties actually intended for the Plaintiff to purchase an interest in CR's Founder
16 Units in CNL, which was neither the intent nor agreement of the parties. Plaintiff responded to
17 Mr. Coleman expressly representing that it was never his intent, nor the agreement of the parties,
18 to purchase any portion of CR's interest in CNL, and that the only agreement and intent was to
19 purchase a Founders Unit in CNL in accordance with the Subscription Agreement, as evidenced
20 by his signed Subscription Agreement.

21 26. On or about March 16, 2016, Plaintiff sent an email to Mr. Coleman inquiring as
22 to the whereabouts of his \$1,000,000. After a series of emails between Plaintiff and Mr.
23 Coleman, Mr. Coleman disclosed that the \$1,000,000 had been transferred to CR on October 14,
24 2015, because "I was told by CR that it had sold 50% of its \$2m interest in Cal Neva Lodge, LLC
25 to you for \$1m and that the payment would be transferred through my trust account. At the time
26 of this transaction Cal Neva Lodge had already sold all of the shares it was authorized to sell
27 under the terms of its Operating Agreement, so I had no reason to question the sale of a portion of
28 CR's interest to you." As of March 16, 2016, Mr. Coleman, upon Plaintiff's information and

1 belief, had in his possession the executed Subscription Agreement of October 13, 2015 with
 2 attached escrow instructions. Those escrow instructions directed that Powell Coleman was the
 3 escrow holder and specifically set forth that the \$1,000,000 from Plaintiff be retained in the
 4 escrow account until such time as certain conditions were met, at which time the funds were to be
 5 deposited into CNL. Plaintiff then asked Mr. Coleman for any documentation demonstrating that
 6 CR had sold 50% of its interest to him and authorizing that the payment would be transferred
 7 through his trust account. No such documentation was ever provided by Mr. Coleman.

8 27. Plaintiff has made repeated demands on Criswell and Radovan and their respective
 9 entities, including Defendants, for repayment of his \$1,000,000 and has yet to be repaid.

10 **FIRST CAUSE OF ACTION**

11 **(Breach of Contract against CR Cal Neva LLC; Cal Neva Lodge, LLC; Criswell 12 Radovan, LLC; and New Cal-Neva Lodge, LLC)**

13 28. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the
 14 allegations in paragraphs 1 through 27 above.

15 29. The Subscription Agreement Plaintiff signed on October 13, 2015, which was
 16 countersigned by Criswell on October 14, 2015, was a binding contract which required the
 17 Plaintiff's \$1,000,000 to be held in escrow and then either deposited into the account of CNL if
 18 certain conditions were met, and if not, returned to the Plaintiff. If, as represented by counsel for
 19 CNL, the authorized capital of CNL, the terms of the offering, or the operating agreement for
 20 CNL prohibited the purchase by the Plaintiff, then the \$1,000,000 should have been returned to
 21 the Plaintiff as directed in the Subscription Agreement. The \$1,000,000 was not returned to
 22 Plaintiff; it was instead deposited into an account of CR without any authorization by Plaintiff or
 23 any agreement for such a transfer. The actions by CR and its agents and/or attorneys constituted
 24 a breach of the Subscription Agreement causing damage to the Plaintiff in an amount in excess
 25 \$1,000,000.

26 **SECOND CAUSE OF ACTION**

27 **(Breach of Duty Against Defendant Powell Coleman and Arnold LLP)**

28 30. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the
 29 allegations in paragraphs 1 through 29 above.

31. Powell Coleman is the designated escrow holder for investor purchases under the Subscription Agreement for shares of CNL. As such, Powell Coleman had a duty, fiduciary, statutory or otherwise, (1) to comply with all provisions of the Subscription Agreement and the Investor's Instructions to Escrow and Wire Transfer Information, a copy of which is attached to this Complaint and incorporated herein as **Exhibit 1**, and (2) to insure that Plaintiff's \$1,000,000 was only released from escrow upon specific instructions from the Plaintiff.

32. On or about October 14, 2015, Powell Coleman received a wire transfer for \$1,000,000 into their trust account from Premier Trust Inc., on behalf of and as custodian of the George Stuart Yount IRA.

33. On October 15, 2015, Powell Coleman negligently distributed and transferred Plaintiff's \$1,000,000 to CR without Plaintiff's consent and without any documentation evidencing that the \$1,000,000 was for a purchase agreement between CR and Plaintiff and that payment was to go through the Powell Coleman Trust Account. Such transfer of Plaintiff's \$1,000,000 was a breach of the duty that Powell Coleman, as an escrow holder, had to Plaintiff. Such breach of duty has caused Plaintiff damages in excess of \$1,000,000.

THIRD CAUSE OF ACTION

(Fraud Against Defendants William Criswell; Robert Radovan; CR Cal Neva, LLC; Criswell Radovan, LLC; Cal Neva Lodge, LLC; David Marriner; Marriner Real Estate, LLC; and, New Cal-Neva Lodge, LLC)

34. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the allegations in paragraphs 1 through 33 above.

35. Defendants, William Criswell, Robert Radovan, CR Cal Neva, LLC, Criswell Radovan, LLC, Cal Neva Lodge, LLC and New Cal-Neva Lodge, LLC knowingly made fraudulent misrepresentations or material omissions of fact to Plaintiff intended to induce Plaintiff into contributing \$1,000,000 to obtain a Founders Unit in CNL. Such fraudulent misrepresentations include, but are not limited to, that the Cal Neva Lodge would open on or near the end of 2015; that the Project was only slightly over budget; that a refinancing of the \$6,000,000 mezzanine financing with a \$15,000,000 loan was in place or imminent; that the developers had a successful track record of developing similar projects; that the developers would

1 not receive distributions or other payments related to the Project until after the preferred returns
2 and equity investments were paid or returned to the investors; and, that there was \$1,500,000 left
3 under the offering authorized and contemplated by the Subscription Agreement and related
4 offering documents for purchase of a Founders Unit by Plaintiff.

5 36. On or about February 18, 2014, David Marriner, acting individually and as
6 Marriner Real Estate, collectively hereafter "Marriner," met with Plaintiff and told him about the
7 new owners and developers of the Cal Neva Lodge, primarily Radovan and Criswell and their
8 related entities, including Defendants, who were looking for investors to help fund a newly
9 formed Nevada LLC that would acquire, remodel and reopen the Cal Neva Lodge. Marriner
10 acted as and represented that he was the agent and broker for the new owner and their myriad
11 legal entities. Thereafter, for a period of several months, Marriner acting individually and as the
12 owner of Marriner Real Estate, kept in contact with Plaintiff and made numerous representations
13 about the Project, the development of the Cal Neva Lodge and Radovan and Criswell's successful
14 development history. Specifically, Marriner told Yount that Criswell and Radovan had a
15 successful track record in developing high end hotel/resort properties. Marriner also provided
16 marketing and promotional materials related to the Project, and tours of the Cal Neva Lodge, all
17 intended to induce Plaintiff to become an investor in the Project and Cal Neva Lodge.

18 37. Prior to Plaintiff signing the Subscription Agreement, there was also a material
19 omission by Defendants, Robert Radovan, CR Cal Neva, LLC, Criswell Radovan, LLC, and Cal
20 Neva Lodge, LLC, and Defendants failed to disclose, that CNL's liabilities exceeded its assets,
21 and that Project was in fact in need of capital because the general contractor and numerous sub-
22 contractors had not been paid. Plaintiff was not aware of the inaccuracy of the representations by
23 Defendants, or the material omissions by Defendants, and was never informed prior to his
24 investment that the Project was in serious financial trouble, that the offering contemplated by the
25 Subscription Agreement and related offering documents was fully subscribed, and that the
26 offering limit of \$20,000,000 had already been met when he signed the Agreement.

27 38. On or about July 22, 2015, Marriner represented to Yount that the project was on
28 schedule, and would open in December 2015, and sent to Yount via e-mail with an attached

1 construction progress report that did not disclose that the project was substantially over budget,
2 was in need of a cash infusion and that the General Contractor, Penta, had not been paid, facts
3 which Marriner was aware of.

4 39. During July, August, September and October 2015, prior to October 12 when
5 Younts sent \$1,000,000 to the escrow holder for shares in the offering under the Private
6 Placement Memo, Marriner knew that the general contractor and subcontractors on the job were
7 not being paid, but did not disclose this to Yount.

8 40. Prior to Yount's investment, Marriner knew that the developers had requested
9 \$1,000,000 from another investor, Les Busick, to meet the immediate needs of the project to keep
10 Penta from leaving the job. This was not disclosed to Yount.

11 41. On July 14, 2015, Marriner sent Yount an investor list that should \$1,500,000
12 available under the \$20,000,000 Private Placement Memo. Marriner knew that prior to Yount's
13 investment in October 2015 that the \$20,000,000 cap on funds that could be raised under the
14 Private Placement Memo had been fully met yet failed to inform Yount of this fact, and that
15 Yount could no longer be included in the investor group under the Private Placement Memo.

16 42. Plaintiff justifiably relied on the representations by Defendants and would not have
17 made the investment had he known the true status and details of the Project or CNL. Plaintiff
18 suffered damages from Defendants' fraud in excess of \$1,000,000.

19 **FOURTH CAUSE OF ACTION**
20 **(Negligence Against Defendant Powell, Coleman and Young LLP)**

21 43. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the
22 allegations in paragraphs 1 through 42 above.

23 44. Defendant Powell Coleman had a duty as attorneys serving as escrow holder of
24 Plaintiff's \$1,000,000 to insure that distribution of that amount was done in accordance with the
25 Subscription Agreement and Plaintiff's authorized and intended use for such funds. Powell
26 Coleman's transfer of those funds to its client, CR, without any express written authorization
27 from Plaintiff, was the proximate cause of Plaintiff's damages that are in excess of \$1,000,000.

28 ///

FIFTH CAUSE OF ACTION

**(Conversion against CR Cal Neva, LLC; William Criswell; Robert Radovan;
Criswell Radovan, LLC; and New Cal-Neva Lodge, LLC)**

45. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the allegations in paragraphs 1 through 44 above.

46. Defendants wrongfully exercised dominion over Plaintiff's \$1,000,000 when it instructed their attorneys, Powell Coleman, to transfer Plaintiff's \$1,000,000 out of Powell Coleman's trust account and into the possession of Defendants. Plaintiff had never authorized such transfer, nor executed any documents allowing such transfer, and such act to direct the transfer of funds was in derogation of Plaintiff's ownership of such funds. Such Conversion caused Plaintiff damages in excess of \$1,000,000.

SIXTH CAUSE OF ACTION

(Punitive Damages against all Defendants)

47. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the allegations in paragraphs 1 through 46 above.

48. Defendants Criswell Radovan, CR, Criswell, Radovan, Marriner and Marriner Real Estate's actions were fraudulent and in conscious disregard of Plaintiff's rights with the express malicious intent of causing harm to Plaintiff, and as such Plaintiff should be entitled to punitive damages.

49. Defendant Powell Coleman was specifically engaged in the business of administering escrows in Nevada and acting as an escrow agent for a Nevada business transaction, involving a Nevada property and holding money for residents of Nevada, without having procured a Nevada license to act as an escrow agent. As such Nevada Revised Statute 645A.222(2) authorizes an action for an award of punitive damages.

SEVENTH CAUSE OF ACTION

**(Claim for Fraud under NRS 90.570 in the Offer, Sale and Purchase of a Security against
Defendants William Criswell; Robert Radovan; CR Cal Neva, LLC; Criswell Radovan,
LLC; Cal Neva Lodge, LLC; David Marriner; and Marriner Real Estate, LLC)**

50. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the allegations in paragraphs 1 through 49 above.

1 51. Defendants, Robert Radovan, CR Cal Neva, LLC, Criswell Radovan, LLC, Cal
2 Neva Lodge, LLC, David Marriner, and Marriner Real Estate, LLC knowingly made fraudulent
3 misrepresentations and/or material omissions of fact to Plaintiff intended to induce Plaintiff into
4 contributing \$1,000,000 to obtain a Founders Unit in CNL. Such fraudulent misrepresentations
5 include, but are not limited to, that the Cal Neva Lodge would open on or near the end of 2015;
6 that the Project was only slightly over budget; that a refinancing of the \$6,000,000 mezzanine
7 financing with a \$15,000,000 loan was in place or imminent; that the developers had a successful
8 track record of developing similar projects; that the developers would not receive distributions or
9 other payments related to the Project until after the preferred returns and equity investments were
10 paid or returned to the investors; and, that there was \$1,500,000 left under the Subscription
11 Agreement and related offering documents for purchase of a Founders Unit by Plaintiff.

12 52. On or about February 18, 2014, David Marriner, acting individually and as
13 Marriner Real Estate, collectively hereafter "Marriner," met with Plaintiff and told him about the
14 new owners and developers of the Cal Neva Lodge, primarily Radovan and Criswell and their
15 related entities, including Defendants, who were looking for investors to help fund a newly
16 formed Nevada LLC that would acquire, remodel and reopen the Cal Neva Lodge. Marriner
17 acted as and represented that he was the agent and broker for the new owner and their myriad
18 legal entities. Thereafter, for a period of several months, Marriner acting individually and as the
19 owner of Marriner Real Estate, kept in contact with Plaintiff and made numerous representations
20 about the Project, the development of the Cal Neva Lodge and Radovan and Criswell's successful
21 development history. Specifically, Marriner told Yount that Criswell and Radovan had a
22 successful track record in developing high end hotel/resort properties. Marriner also provided
23 marketing and promotional materials related to the Project, and tours of the Cal Neva Lodge, all
24 intended to induce Plaintiff to become an investor in the Project and Cal Neva Lodge.

25 53. Prior to Plaintiff signing the Subscription Agreement, there was also a material
26 omission by Defendants, William Criswell, Robert Radovan, CR Cal Neva, LLC, Criswell
27 Radovan, LLC, Cal Neva Lodge, LLC, and who failed to disclose, that CNL's liabilities exceeded
28 its assets, and that Project was in fact in need of capital because the general contractor and

1 numerous sub-contractors had not been paid. Plaintiff was not aware of the inaccuracy of the
2 representations by Defendants, or the material omissions by Defendants, and was never informed
3 prior to his investment that the Project was in serious financial trouble, that the offering
4 contemplated by the Subscription Agreement and related offering documents was fully
5 subscribed, and that the offering limit of \$20,000,000 had already been met when he signed the
6 Agreement.

7 54. On or about July 22, 2015, Marriner represented to Yount that the project was on
8 schedule, and would open in December 2015, and sent to Yount via e-mail with an attached
9 construction progress report that did not disclose that the project was substantially over budget,
10 was in need of a cash infusion and that the General Contractor, Penta, had not been paid, facts
11 which Marriner was aware of.

12 55. During July, August, September and October 2015, prior to October 12 when
13 Younts sent \$1,000,000 to the escrow holder for shares in the offering under the Private
14 Placement Memo, Marriner knew that the general contractor and subcontractors on the job were
15 not being paid, but did not disclose this to Yount.

16 56. Prior to Yount's investment, Marriner knew that the developers had requested
17 \$1,000,000 from another investor, Les Busick, to meet the immediate needs of the project to keep
18 Penta from leaving the job. This was not disclosed to Yount.

19 57. On July 14, 2015, Marriner sent Yount an investor list that should \$1,500,000
20 available under the \$20,000,000 Private Placement Memo. Marriner knew that prior to Yount's
21 investment in October 2015 that the \$20,000,000 cap on funds that could be raised under the
22 Private Placement Memo had been fully met yet failed to inform Yount of this fact, and that
23 Yount could no longer be included in the investor group under the Private Placement Memo.
24 Plaintiff justifiably relied on the representations by Defendants, Robert Radovan, CR Cal Neva,
25 LLC, Criswell Radovan, LLC, Cal Neva Lodge, LLC, David Marriner, and Marriner Real Estate,
26 LLC and would not have made the investment had he known the true status and details of the
27 Project or CNL. Plaintiff suffered damages from Defendants' fraud in excess of \$1,000,000.

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For damages against Defendants in excess of \$1,000,000;
2. For punitive damages provided for by law;
3. For interest on the judgment as provided by law;
4. An award of attorneys' fees as provided for by law and under NRS 645A.222 and NRS 90.660(3);
5. Costs of the suit herein incurred; and,
6. For other such relief as the Court may deem just and proper.

DATED: September 27, 2016.

DOWNEY BRAND LLP

By: 

RICHARD G. CAMPBELL, JR.
Attorney for Plaintiff

DOWNEY BRAND LLP

VERIFICATION

STATE OF Nevada
COUNTY OF Washoe ss.


I, GEORGE STUART YOUNT, declare:

I am the Plaintiff in the above-entitled action.

I have read the foregoing SECOND AMENDED COMPLAINT on file herein and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

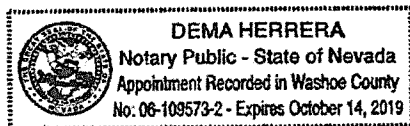
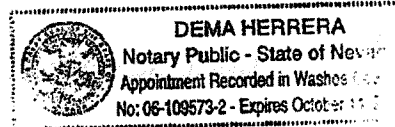
DATED this 27th day of September, 2016.


GEORGE STUART YOUNT

Subscribed and sworn to before me,
this 27 day of September, 2016.


NOTARY PUBLIC

Commission Expires: Oct 14, 2019



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SECOND JUDICIAL DISTRICT COURT

COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, filed in this case:
SECOND AMENDED COMPLAINT;

☒ Document does not contain the social security number of any person

- OR -

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

- or -

☐ For the administration of a public program

- or -

☐ For an application for a federal or state grant

Dated: September 27, 2016.

DOWNEY BRAND LLP

By: Danielle L. Blecker

PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 100 West Liberty, Suite 900, Reno, Nevada 89501. On September 21, 2016, I served the following document(s):

SECOND AMENDED COMPLAINT

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ **BY HAND:** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada addressed as set forth below.
- ☐ **BY EMAIL:** by causing the document(s) to be electronically served.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by Reno Carson Messenger Service of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY E-MAIL/ELECTRONIC FILING SYSTEM:** by causing the document(s) to be electronically served via the court's electronic filing system to the following attorneys associated with this case.

Martin A. Little
Jolley Urga Woodbury & Little
3800 Howard Hughes Parkway, 16h Floor
Las Vegas, Nevada 89169

Andrew N. Wolf
Incline Law Group, LLC
264 Village Blvd, Suite 104
Incline Village, NV 89451

Ali P. Hamidi
Cox, Castle & Nicholson LLP
555 California Street, 10th Floor
San Francisco, CA 94104-1513

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 21, 2016, at Reno, Nevada.



EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	LENGTH
1	Subscription Agreement	14 pages

EXHIBIT D TO
DOCKETING
STATEMENT

1 **CODE: 1137**

2 ANDREW N. WOLF (#4424)
3 JEREMY L. KRENEK (#13361)
4 Incline Law Group, LLP
264 Village Blvd., Suite 104
Incline Village, Nevada 89451
(775) 831-3666

5 Attorneys for Defendants DAVID MARRINER and
6 MARRINER REAL ESTATE, LLC

7
8 IN THE SECOND JUDICIAL DISTRICT COURT OF
9 THE STATE OF NEVADA IN AND FOR THE
10 COUNTY OF WASHOE

11 GEORGE STUART YOUNT, Individually
12 and in his Capacity as Owner of GEORGE
STUART YOUNT IRA,

13 Plaintiff,

14 v.

15 CRISWELL RADOVAN, LLC, a Nevada
16 limited liability company; CR Cal Neva,
LLC, a Nevada limited liability company;
17 ROBERT RADOVAN; WILLIAM
CRISWELL; CAL NEVA LODGE, LLC, a
18 Nevada limited liability company;
19 POWELL, COLEMAN and ARNOLD
LLP; DAVID MARRINER; MARRINER
20 REAL ESTATE, LLC, a Nevada limited
liability company; and DOES 1-10,

21 Defendants.
22

CASE NO. CV16-00767

DEPT NO. B7

23
24 **DEFENDANTS DAVID MARRINER's and MARRINER REAL**
25 **ESTATE, LLC's ANSWER TO SECOND AMENDED COMPLAINT AND CROSS-**
CLAIM FOR INDEMNITY, CONTRIBUTION AND DECLARATORY RELIEF RE
APPORTIONMENT OF FAULT

26 COMES NOW, Defendants DAVID MARRINER and MARRINER REAL ESTATE,
27 LLC (hereafter collectively "MARRINER" or "Defendants") and hereby answer the *SECOND*
28 *AMENDED COMPLAINT* filed by Plaintiff GEORGE STUART YOUNT, individually and in his

1 capacity as owner of the GEORGE STUART YOUNT IRA (hereafter "Plaintiff"), on September
2 27, 2016 (hereinafter, the "Complaint"). The paragraph numbers below correspond to the
3 paragraph numbers of the Complaint.

4 **PARTIES**

5 1. Admit.

6 2. Defendants are without knowledge or information sufficient to form a belief as to
7 the truth of such allegations, and Defendants accordingly deny such allegations.

8 3. Admit the allegations regarding the place of organization of Criswell Radovan,
9 LLC, and the identity of its currently listed managers. Defendants are without knowledge or
10 information sufficient to form a belief as to the truth of the remaining allegations, and Defendants
11 accordingly deny such allegations.

12 4. Admit the allegations regarding the place of organization of CR Cal Neva, LLC.
13 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
14 remaining allegations, and Defendants accordingly deny such allegations.

15 5. Admit.

16 6. Admit.

17 7. Admit.

18 8. Defendants are without knowledge or information sufficient to form a belief as to
19 the truth of such allegations, and Defendants accordingly deny such allegations.

20 9. Admit that Marriner Real Estate, LLC, was engaged as a consultant for Cal Neva
21 Lodge, LLC ("CNL"), per a written Real Estate Consulting Agreement dated February 13, 2014,
22 and that David Marriner is the sole member and manager of Marriner Real Estate, LLC. Deny
23 that Marriner was engaged as an agent of CR, Criswell-Radovan, LLC, or any defendant than
CNL.

24 10. Admit that Marriner Real Estate, LLC, was engaged as a consultant for Cal Neva
25 Lodge, LLC ("CNL"), per a written Real Estate Consulting Agreement dated February 13, 2014,
26 mentioned above.

27 11. Admit.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of such allegations, and Defendants accordingly deny such allegations.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13. Paragraph 13 contains numerous allegations, which for sake of clarity are broken out into the following subparagraphs, a, b, c, et seq.

- a. At all times relevant to this lawsuit, Marriner was acting solely in his capacity as manager of and on behalf of Marriner Real Estate, LLC, pursuant to the consulting agreement with CNL mentioned above.
- b. Marriner believes he first discussed the subject project with Plaintiff on or about February 18, 2014.
- c. Admit that Marriner initially informed Plaintiff about the new owners and developers of the Cal Neva Lodge, primarily Radovan and Criswell and their related entities, who were looking for investors to help fund a newly formed Nevada LLC that would acquire, remodel and reopen the Cal Neva Lodge.
- d. Plaintiff initially expressed little or no interest in investing in the project.
- e. In June and July, 2015, Plaintiff expressed interest in visiting and ultimately investing in the project, at which time, Marriner provided Plaintiff a copy of the private placement memorandum and other documents related to the project and the investment generated by CNL and/or Criswell-Radovan, and put Plaintiff in touch with Criswell-Radovan.
- f. Thereafter, Plaintiff obtained substantially all further information regarding the Cal Neva Lodge project directly from Criswell-Radovan and other agents of CNL, and relied solely upon Criswell-Radovan, CNL and Plaintiff's own investigation in making his investment. Marriner is informed and believes, and thereon alleges, that Plaintiff did not rely on material information generated by Marriner in making his investment.

- 1 g. Marriner denies that he acted as an agent for, or held himself out as an
2 agent of any entity other than CNL.
- 3 h. Admit that Marriner provided a tour of the project to Plaintiff.
- 4 i. Admit that Marriner provided Plaintiff information generated by CNL and
5 Criswell-Radovan regarding the project.
- 6 j. Admit that Marriner informed Plaintiff that Criswell-Radovan were
7 involved in other large-scale, high-end hotel projects, and believed this was
8 true.
- 9 k. Marriner denies the remainder of this paragraph.

10 14. Admit that in July, 2015, Marriner believed that the project was on schedule and
11 that the project was expecting to open in December 2015. Admit that in July, 2015, Marriner sent
12 Plaintiff a construction progress report generated by CNL and/or Criswell-Radovan. During the
13 time period of July 22 – July 29, 2015, Plaintiff believed and stated that the project was
14 substantially over budget and communicated extensively via telephone and email with Robert
15 Radovan regarding the status of the project and in regard to the numerous questions Plaintiff had
16 posed regarding the project and the proposed investment in the project (including the numerous
17 questions contained in Plaintiff's various emails dated from July 16 to July 26, 2015). From
18 August 3, 2015, and thereafter until his investment funded in October, 2015, Plaintiff advised
19 Marriner that Plaintiff would obtain all further information pertinent to his investment directly
20 from Robert Radovan, CNL, Criswell-Radovan and others, that Plaintiff was relying upon the
21 investigation and analysis of his own accountants, and that Plaintiff would not be seeking
22 information from Marriner, and that Plaintiff was handling the transaction directly with Criswell-
23 Radovan. Marriner denies the remaining allegations.¹

23 ¹ On August 3, 2015, in response to an email from Marriner asking if Plaintiff had any more questions, Plaintiff sent
24 Marriner an email which states, "I've been dealing directly with Robert, thanks. He will be taking questions from my
25 CPA [Ken Tratner] early this week. More soon." On August 8, 2015, Plaintiff sent Robert Radovan an email
26 (copied to Marriner) which states, "I believe the ball is in your court to respond to Ken's questions & requests for
27 further information, Robert?????" Subsequent correspondence in this time period indicates that Plaintiff and his CPA
28 relied on information generated by Robert Radovan, Criswell-Radovan, and/or CNL, that Plaintiff worked directly
with Robert Radovan, Criswell-Radovan, and/or CNL to execute and fund his investment. Plaintiff's execution and
funding of his investment was thereafter delayed for approximately two months until October, 2015. On October 10,
2015, before Plaintiff executed his investment subscription documents on October 12, 2016, or funded the investment
on October 14, 2015, Plaintiff was advised that the opening of the Cal-Neva Lodge would be delayed until the Spring
or early Summer of 2016.

1 15. Denied.

2 16. Marriner is without knowledge or information sufficient to form a belief as to the
3 truth of these allegations, and accordingly denies such allegations. However, Marriner admits
4 that due to a delay in Plaintiff's ability to fund his investment, and uncertainty over whether
5 Plaintiff would actually invest in the project, CNL obtained additional funding from Mr. Busick.
6 At that time, Plaintiff was working directly with Criswell-Radovan, their attorneys, and Plaintiff's
7 IRA sponsor/trustee to execute and fund his investment. Marriner did not conceal or suppress
8 any material information.

9 17. Marriner is without knowledge or information sufficient to form a belief as to the
10 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
11 conceal or suppress any material information. See answers to paragraphs 13-16, above.

12 18. Marriner is without knowledge or information sufficient to form a belief as to the
13 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
14 conceal or suppress any material information. See answers to paragraphs 13-16, above.

15 19. Marriner is without knowledge or information sufficient to form a belief as to the
16 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
17 conceal or suppress any material information. See answers to paragraphs 13-16, above.

18 20. Marriner is without knowledge or information sufficient to form a belief as to the
19 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
20 conceal or suppress any material information. See answers to paragraphs 13-16, above.

21 21. Admit the meeting took place on December 12, 2015, as alleged, deny the
22 remaining allegations. Marriner did not misrepresent, conceal or suppress any material
23 information. See answers to paragraphs 13-16, above.

24 22. Marriner is without knowledge or information sufficient to form a belief as to the
25 truth of these allegations, and accordingly denies such allegations.

26 23. Marriner is without knowledge or information sufficient to form a belief as to the
27 truth of these allegations, and accordingly denies such allegations.

28 24. Marriner is without knowledge or information sufficient to form a belief as to the
truth of these allegations, and accordingly denies such allegations.

1 25. Marriner is without knowledge or information sufficient to form a belief as to the
2 truth of these allegations, and accordingly denies such allegations.

3 26. Marriner is without knowledge or information sufficient to form a belief as to the
4 truth of these allegations, and accordingly denies such allegations.

5 27. Marriner is without knowledge or information sufficient to form a belief as to the
6 truth of these allegations, and accordingly denies such allegations.

7
8 **FIRST CLAIM FOR RELIEF**
9 **(BREACH OF CONTRACT AGAINST CR CAL NEVA LLC; CAL-NEVA LODGE, LLC;**
10 **CRISWELL RADOVAN, LLC; and NEW CAL-NEVA LODGE, LLC)**

11 Response to Paragraphs 28-29: This Claim for relief is not asserted against Marriner who
12 therefore does not respond to these allegations.

13 **SECOND CLAIM FOR RELIEF**
14 **(BREACH OF DUTY AGAINST DEFENDANT POWELL COLEMAN**
15 **AND ARNOLD LLP)**

16 Response to Paragraphs 30-33: This Claim for relief is not asserted against Marriner who
17 therefore does not respond to these allegations.

18 **THIRD CLAIM FOR RELIEF**
19 **(FRAUD AGAINST DEFENDANTS WILLIAM CRISWELL, ROBERT RADOVAN;**
20 **CR CAL NEVA, LLC; CRISWELL RADOVAN, LLC; CAL NEVA LODGE, LLC;**
21 **DAVID MARRINER; MARRINER REAL ESTATE, LLC; AND NEW**
22 **CAL-NEVA LODGE, LLC)**

23 34. See responses to Paragraphs 1-33, above.

24 35. Marriner is without knowledge or information sufficient to form a belief as to the
25 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
26 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
27 above.

28 36. Marriner is without knowledge or information sufficient to form a belief as to the
truth of these allegations, and accordingly denies such allegations. However, Marriner did not
misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
above.

1 37. Marriner is without knowledge or information sufficient to form a belief as to the
2 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
3 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
4 above.

5 38. Marriner is without knowledge or information sufficient to form a belief as to the
6 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
7 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
8 above.

9 39. Marriner is without knowledge or information sufficient to form a belief as to the
10 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
11 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
12 above.

13 40. Marriner is without knowledge or information sufficient to form a belief as to the
14 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
15 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
16 above.

17 41. Marriner is without knowledge or information sufficient to form a belief as to the
18 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
19 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
20 above.

21 42. Marriner is without knowledge or information sufficient to form a belief as to the
22 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
23 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
24 above.

25 **FOURTH CLAIM FOR RELIEF**
26 **(NEGLIGENCE AGAINST DEFENDANT POWELL, COLEMAN AND YOUNG, LLP)**

27 43. Response to Paragraphs 43-44: This Claim for relief is not asserted against
28 Marriner who therefore does not respond to these allegations.

1
2 **FIFTH CLAIM FOR RELIEF**
3 **(CONVERSION AGAINST CR CAL NEVA, LLC; WILLIAM CRISWELL; ROBERT**
4 **RADOVAN; CRISWELL RADOVAN, LLC; AND NEW CAL-NEVA LODGE, LLC)**

5 Response to Paragraphs 45-46: This Claim for relief is not asserted against Marriner who
6 therefore does not respond to these allegations.

7 **SIXTH CLAIM FOR RELIEF**
8 **(PUNITIVE DAMAGES AGAINST ALL DEFENDANTS)**

9 47. See response to Paragraphs 1-46, above.

10 48. Denied.

11 49. Defendants are without knowledge or information sufficient to form a belief as to
12 the truth of such allegations, and Defendants accordingly deny such allegations.

13 **SEVENTH CAUSE OF ACTION**
14 **(CLAIM FOR FRAUD UNDER NRS 90.570 IN THE OFFER, SALE AND PURCHASE OF**
15 **A SECURITY AGAINST DEFENDANTS WILLIAM CRISWELL, ROBERT RADOVAN;**
16 **CR CAL NEVA, LLC; CRISWELL RADOVAN, LLC; CAL NEVA LODGE, LLC;**
17 **DAVID MARRINER; AND MARRINER REAL ESTATE, LLC)**

18 50. See response to Paragraphs 1-49, above.

19 51. Marriner is without knowledge or information sufficient to form a belief as to the
20 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
21 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
22 above.

23 52. Marriner is without knowledge or information sufficient to form a belief as to the
24 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
25 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
26 above.

27 53. Marriner is without knowledge or information sufficient to form a belief as to the
28 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
above.

1 54. Marriner is without knowledge or information sufficient to form a belief as to the
2 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
3 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
4 above.

5 55. Marriner is without knowledge or information sufficient to form a belief as to the
6 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
7 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
8 above.

9 56. Marriner is without knowledge or information sufficient to form a belief as to the
10 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
11 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
12 above.

13 57. Marriner is without knowledge or information sufficient to form a belief as to the
14 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
15 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
16 above.

17 **AFFIRMATIVE DEFENSES**

18 1) **First Affirmative Defense.** One or more claims for relief asserted in Plaintiff's
19 action fails to state a claim for relief against Marriner.

20 2) **Second Affirmative Defense.** Plaintiff's action is barred by Plaintiff's reliance
21 upon his own independent investigation.

22 3) **Third Affirmative Defense.** Plaintiff's action is barred by Plaintiff's reliance
23 upon the actions, advice and communications of others.

24 4) **Fourth Affirmative Defense.** Plaintiff's action is barred by Marriner's good faith
25 reliance upon actions and information provided by others.

26 5) **Fifth Affirmative Defense.** Plaintiff's action is barred by the terms and conditions
27 of the documents evidencing Plaintiff's investment, including the Private Placement
28 Memorandum and related documents and information received therewith which were accepted

1 and approved by Plaintiff, and which together comprise Plaintiff's consent, waiver, release and/or
2 assumption of risk.

3 6) **Sixth Affirmative Defense.** Plaintiff's damages, if any, and his claims against
4 Marriner, if ultimately proven, were caused by the lack of due care, acts, errors, omissions, and
5 communications of others.

6 7) **Seventh Affirmative Defense.** Plaintiff's damages, if any, and his claims against
7 Marriner, if ultimately proven, were caused by Plaintiff's own lack of due care.

8 Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC reserve the
9 right to assert other affirmative defenses not currently known to exist, which are discovered after
10 the filing of this answer. No waiver is intended or implied.

11 **PRAYER**

12 Wherefore, Defendants pray for a judgment as follows:

- 13 1) that Plaintiff take nothing by this action;
14 2) for costs, expert witness fees and attorney's fees as may be allowed by law.
15 3) for such other relief that the court deems to be fair, just and equitable.

16 **Affirmation:** The undersigned hereby affirms that the foregoing document does not
17 contain the social security number of any person.

18 Dated: October 24, 2016.

19 INCLINE LAW GROUP, LLP

20 By: 

21 ANDREW N. WOLF (#4424)

22 Attorneys for Defendants DAVID MARRINER
23 and MARRINER REAL ESTATE, LLC
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1 DAVID MARRINER; MARRINER REAL
2 ESTATE, LLC, a Nevada limited liability
company,

3 Cross-claimant,

4 v.

5 CRISWELL RADOVAN, LLC, a Nevada
6 limited liability company; ROBERT
7 RADOVAN; WILLIAM CRISWELL;
POWELL, COLEMAN and ARNOLD LLP,

8 Cross-claim defendants.
9

10 **CROSS-CLAIM FOR INDEMNITY, CONTRIBUTION AND DECLARATORY RELIEF**
11 **RE APPORTIONMENT OF FAULT AGAINST DEFENDANTS / CROSS-CLAIM**
12 **DEFENDANTS CRISWELL RADOVAN, LLC, a Nevada limited liability company;**
13 **ROBERT RADOVAN; WILLIAM CRISWELL; and POWELL, COLEMAN and**
ARNOLD LLP

14 COMES NOW, Defendants DAVID MARRINER and MARRINER REAL ESTATE,
15 LLC (hereafter collectively "MARRINER" or "Defendants") and for a cross-claim against
16 defendants CRISWELL RADOVAN, LLC, a Nevada limited liability company; ROBERT
17 RADOVAN; WILLIAM CRISWELL; and POWELL, COLEMAN and ARNOLD LLP, hereby
18 allege and plead as follows.

19 **FIRST CLAIM FOR RELIEF**
(EQUITABLE INDEMNITY AGAINST ALL CROSS-CLAIM DEFENDANTS)

20 1. Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC
21 (hereafter collectively "MARRINER") are named as co-defendants in the above-entitled action
22 with defendants CRISWELL RADOVAN, LLC, a Nevada limited liability company; ROBERT
23 RADOVAN; WILLIAM CRISWELL; POWELL, COLEMAN and ARNOLD LLP.

24 2. MARRINER denies all claims and liability alleged in the *SECOND AMENDED*
25 *COMPLAINT* filed by Plaintiff GEORGE STUART YOUNT, individually and in his capacity as
26 owner of the GEORGE STUART YOUNT IRA (hereafter "Plaintiff"), on September 27, 2016
27 (hereinafter, the "Complaint"). The Complaint alleges damages arising as a result of a transaction
28 described in the Complaint. Said Complaint, for purposes of its allegations only, is incorporated

1 by reference herein as though fully set forth at length. MARRINER denies all claims and liability
2 alleged in the Complaint.

3 3. MARRINER is informed and believes and thereon alleges that based on the
4 matters alleged in Plaintiff's COMPLAINT, MARRINER and each of the cross-claim defendants
5 acted in various capacities as agent for the defendant CAL NEVA LODGE, LLC, a Nevada
6 limited liability company, in conjunction with the alleged transaction which is the subject of
7 Plaintiff's lawsuit.

8 4. MARRINER is incurring and has incurred attorney's fees, court costs, and other
9 costs in connection with defending said Complaint, the exact amount of which is unknown at this
10 time. When the same has been ascertained, MARRINER will seek leave of court to amend this
11 Cross-claim to set forth the true nature and amount of said costs and expenses.

12 5. If MARRINER is held liable and responsible to Plaintiff for damages as alleged in
13 the Complaint, it will be solely due to the alleged conduct of Cross-claim defendants, and each of
14 them, as herein alleged, in regard to which MARRINER's fault, if any, is only passive. Therefore,
15 MARRINER is entitled to be fully indemnified by said Cross-claim defendants, and each of them
16 should such liability arise.

17 6. MARRINER is entitled to equitable indemnification by said Cross-claim
18 defendants, and each of them for any sum or sums for which he may be adjudicated liable to
19 Plaintiff, with costs of defense, costs of suit, and reasonable attorney's fees incurred therefrom.
20 Such indemnification should be complete if Marriner is found to be without fault or if his liability
21 as compared to the liability of others is only passive.

22 WHEREFORE, MARRINER prays for judgment as set forth below.

23 **SECOND CLAIM FOR RELIEF**
24 **(CONTRIBUTION AGAINST ALL CROSS-CLAIM DEFENDANTS)**

25 7. MARRINER refers to Paragraphs 1 through 6, above, and incorporates the same
26 herein by reference as though fully set forth here at length.

27 8. MARRINER contends that he is in no way legally responsible for the events
28 giving rise to the Plaintiff's causes of action, or legally responsible in any other manner for the
damages allegedly sustained by the Plaintiff. However, if as a result of the matters alleged in

1 Plaintiff's Complaint, MARRINER is held liable for all or any part of the claim asserted against
2 him by the Plaintiff, Cross-claim defendants, and each of them, to the extent that their fault was a
3 proximate cause of Plaintiff's damages and/or losses, are responsible for said damages and/or
4 losses in proportion to each Cross-claim defendants' comparative negligence or other legal fault
5 and MARRINER is entitled to contribution based on such proportionate liability.

6 9. By reason of the foregoing, MARRINER is entitled to contribution in proportion
7 to fault from Cross-claim defendants, and each of them, for all liability, costs, fees, expenses,
8 settlements and judgments paid by and incurred by MARRINER in connection with this
9 litigation.

10 WHEREFORE, MARRINER prays for judgment as set forth below.

11 **THIRD CLAIM FOR RELIEF**
12 **(DECLARATORY RELIEF RE APPORTIONMENT OF FAULT AGAINST ALL**
13 **CROSS-CLAIM DEFENDANTS)**

14 10. MARRINER refers to Paragraphs 1 through 9, above, and incorporates the same
15 herein as though set forth here in full.

16 11. An actual controversy has arisen between MARRINER and Cross-claim
17 defendants, and each of them, with respect to the rights, obligations and duties of the parties: (a)
18 MARRINER contends that he is without fault, responsibility or blame for any of the damages
19 which the Plaintiff may have suffered, and that if any such damages are proven by Plaintiff, it
20 would be the result of acts or omissions of the Cross-claim defendants and not the MARRINER.
21 MARRINER therefore contends that he is entitled to indemnity and/or contribution from Cross-
22 claim defendants, and each of them. (b) MARRINER is informed and believes and thereon
23 alleges that the Cross-claim defendants, and each of them contend to the contrary.

24 WHEREFORE, MARRINER prays for judgment as follows:

25 1) For a declaration of MARRINER's rights and duties vis-à-vis the Cross-claim
26 defendants.

27 2) For an order of the court declaring and determining the percentage of fault, if any,
28 as between MARRINER and the various Cross-claim defendants, for damages and losses

1 allegedly caused to Plaintiff, and determining which of such liabilities, if any, are joint and/or
2 several and the amount or amounts thereof.

3 3) For an order that MARRINER is entitled to be fully (or partially) indemnified by
4 Cross-claim defendants, and each of them, for any and all liability, payment, settlement and/or
5 judgment incurred by MARRINER as a result of this action.

6 4) For a judgment requiring contribution in favor of MARRINER against Cross-
7 claim defendants, and each of them, based upon the relative percentage of fault of each party.

8 5) For attorney's fees, court costs, investigative costs and other expenses incurred in
9 the defense of the complaint according to proof; and

10 6) For such other and further relief as the court may deem just and proper.

11 **Affirmation:** The undersigned hereby affirms that the foregoing document does not
12 contain the social security number of any person.

13 Dated: October 24, 2016.

14 INCLINE LAW GROUP, LLP

15 By: 

16 ANDREW N. WOLF (#4424)

17 Attorneys for Defendants DAVID MARRINER
18 and MARRINER REAL ESTATE, LLC
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Incline Law Group, LLP, and that on this day, I caused to be served, a true and correct copy of:

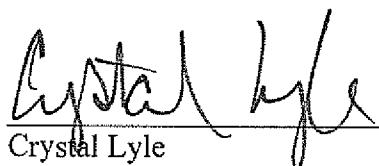
**DEFENDANTS DAVID MARRINER's and MARRINER REAL
ESTATE, LLC's ANSWER TO SECOND AMENDED COMPLAINT AND CROSS-
CLAIM FOR INDEMNITY, CONTRIBUTION AND DECLARATORY RELIEF RE
APPORTIONMENT OF FAULT**

UPON:

Richard G. Campbell, Jr. DOWNEY BRAND LLC 100 West Liberty, Suite 900 Reno, NV 89501 Telephone: 775-329-5900 Facsimile: 775-997-7417	Attorney for Plaintiff George Stuart Yount, Individually and in his capacity as Owner of George Stuart Yount IRA
Martin A. Little JOLLEY URGAL WOODBURY & LITTLE 3800 Howard Hughes Parkway, 16 th Floor Las Vegas, NV 89169 Telephone: 702-699-7500 Facsimile: 702-699-7555	Attorney for Defendants Criswell Radovan, LLC, CR CAL NEVA LLC, Robert Radovan, William Criswell, Cal Neva Lodge, LLC, Powell, Coleman and ARNOLD, LLP

VIA: Washoe County Eflex e-filing system: A true and correct copy of the foregoing document(s) was (were) electronically served via the court's electronic filing system to the above named attorneys associated with this case. If the any of the above named attorneys (and all of their listed co-counsel within the same firm) are not registered with the court's e-filing system, then a true and correct paper copy of the above-named document(s) was(were) served on the attorney via U.S.P.S. first class mail with first-class postage prepaid, to the attorney's address listed above, on this date.

Date: October 27, 2016.


Crystal Lyle