



In the Supreme Court of the State of Nevada

Electronically Filed
Mar 19 2018 10:24 a.m.

Elizabeth A. Brown
Clerk of Supreme Court

INDICATE FULL CAPTION:

JAMES A. BOESIGER, an individual
MARIA S. BOESIGER, an individual,

Appellants

vs.

DESERT APPRAISALS, LLC, a Nevada
Limited Liability
Company, and TRAVIS T. GLIKO, an
individual

Respondent

Supreme Court No.: 75198
District Court Case No.: A725567

DOCKETING STATEMENT

GENERAL INFORMATION

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

WARNING

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

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

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

1. **Judicial District:** Eighth Judicial District Department 24
County Clark Judge The Honorable Jim Crockett
District Ct. Docket No. A-15-725567-C

2. **Attorney filing this docket statement:**

Attorney David J. Winterton, Esq. Telephone: (702) 363-0317
Firm: David J. Winterton & Associates Ltd.
Address: 7881 W. Charleston Blvd., Suite 220,
Las Vegas, Nevada 89117
Client(s): James A. and Maria S. Boesiger

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 respondent(s):**

Attorney: Joseph Garin Telephone: (702) 382-1500
Firm: Lipson, Neilson, Cole, Seltzer & Garin, P.C.
Address: 9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Client(s): Desert Appraisals, LLC, a Nevada Limited-Liability Company; Travis T. Gliko, an individual

Attorney: Eric C. Tran, Esq. Telephone: (702) 382-1500
Firm: Lipson, Neilson, Cole, Seltzer & Garin, P.C.
Address: 9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Client(s): Desert Appraisals, LLC, a Nevada Limited-Liability Company; Travis T. Gliko, an individual

(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 |
| X Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Dismissal | <input type="checkbox"/> other (specify): _____ |

- | | |
|---|---|
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) Relief | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Other disposition (Specify): _____ |
| <input type="checkbox"/> Review of agency determination | |

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, including a list of the causes of action pleaded, and the result below:

The Plaintiffs in this case purchased a personal residence that was appraised by the Defendants. The appraisal report used the wrong model for its report, mistaking the house for a more valuable model with larger square footage. Based on the faulty appraisal, Plaintiffs paid a higher purchase price and qualified for a loan greater than the true value of the house. The Plaintiffs only discovered the error when they tried to refinance a year later and got denied. The house could not qualify for refinancing despite an increase in market value because the original purchase price was inflated based on the faulty model and faulty appraisal. The Plaintiffs sued for four causes of action: (1) Professional Negligence by the appraiser, (2) Third-Party Beneficiary to the Contract for the home buyers to the contract for the appraisal between the lender the appraisal company, (3) Negligent Misrepresentation by the appraiser, and (4) Breach of Statutory Duty to Disclose Material Facts by the appraiser.

The Defendants filed a Motion for Summary Judgment claiming (1) an expert witness was required to show any negligence by the appraiser and (2) appraisers do not have any liability to prospective home buyers as third party beneficiaries to the appraisal report produced for their potential lender. Defendants asserted that an expert witness is required for a professional negligence cause of action even where the appraiser made a simple error like using the wrong square footage and wrong model of the builder. They alleged that all negligence claims fail as a matter of law because the Plaintiffs did not designate an expert witness. They alleged that the negligent misrepresentation and breach of statutory duty to

disclose also fail because they derive from the professional negligence claim. As for the third party beneficiary claim, the defendants alleged that summary judgment should be granted because home buyers cannot be third party beneficiaries to the contract between the appraiser and lender, even where the home buyers fund the report, all parties know the home buyers will likely rely on the report to determine a fair purchase price, and the purchase of the home is contingent on the value of the home matching the purchase price to qualify for financing.

The Plaintiffs filed a response that controlling precedent from the Nevada Supreme Court holds that expert witnesses are not required in professional negligence cases except in certain, statutorily-defined medical professions. Plaintiffs also cited numerous persuasive authorities showing potential home buyers can be third-party beneficiaries to appraisal reports under principles of law adopted by Nevada.

Despite the Defendants not presenting any controlling law refuting these sources, the trial court granted summary judgment against Plaintiffs on all four causes of action. The trial court judge abused his discretion in requiring an expert witness for an error that a lay person can understand: using the wrong model and the wrong square footage in valuing the home. The County Assessor has since caught the error and changed the square footage of the home for property assessment. A judge or jury is capable of looking at the change in square footage and seeing the appraiser was negligent without the assistance of expert testimony. The judge also abused his discretion in lumping together the standard of proof for professional negligence with negligent misrepresentation and the breach of the statutory duty to disclose.

9. Issues on appeal. State concisely the principal issue(s) in this appeal:

1. Whether the trial court judge made a mistake of law, or alternatively abused his discretion, when he granted summary judgment against Plaintiffs' professional negligence cause of action based on his opinion that an expert witness was required as a matter of law to establish negligence of a real estate appraiser regardless of the type of error involved, even where the wrong square footage and wrong builder's model were used for the appraisal?
2. Whether the trial court judge made a mistake of law, or alternatively abused his discretion, when he granted summary judgment against Plaintiffs' negligent misrepresentation cause of action based on his opinion that an expert witness was required as a matter of law to establish negligent misrepresentation by a real estate appraiser?
3. Whether the trial court judge made a mistake of law, or alternatively abused his discretion, when he granted summary judgment against Plaintiffs' cause of action for a breach of the statutory duty to disclose under NRS 645C.470 based on his opinion that an expert witness was required as a matter of law to establish the breach of the statutory duty to disclose by a real estate appraiser?
4. Whether the trial court judge made a mistake of law, or alternatively abused his discretion, when he combined the three different causes of action above into one for professional negligence requiring expert testimony to establish duty and breach as a matter of law?
5. Whether the trial court judge made a mistake of law, or alternatively abused

his discretion, in holding that an appraiser cannot be liable to designated home buyers as third party beneficiaries where the contract to perform the appraisal is between the appraiser and the lender; it is used to determine the value of the house to qualify to finance the purchase price of the home; the sale is contingent on qualifying for financing; and the home buyers paid for the appraisal report requested by the lender?

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

Not aware of any other proceedings.

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 (on an attachment, identify the case(s))

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

☒ A substantial issue of first-impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

There is no known published case in Nevada addressing whether an intended home buyer can bring third party beneficiary claims against an appraiser. There is an unpublished opinion stating there can be third party beneficiary claims by home buyers to appraisers based on Nevada's adoption of Restatement (Second) of Torts section 552 on qualifying for a loan at the purchase price; (2) initiates an application for a loan with a lender, (3) pays for the appraisal report organized by the lender with the appraiser, (4) qualifies for a loan at a set amount based on the appraiser's report verifying the house is worth at least as much as the purchase price, and (5) then purchases the home at an inflated price based on the faulty appraisal report that overvalued the property.

To the best of our knowledge, this is a new legal issue or interpretation that has not been addressed by this court or within this court's jurisdiction and there is no binding

authority on the matter. The court stated in an unpublished opinion in 2012 that “Nevada courts have not specifically dealt with claims brought by a borrower against an appraiser that was hired by the lender.” *Copper Sands Realty, LLC*, 2012 U.S. Dist. LEXIS 38054, 11-12.

The Court applied the Restatement (Second) of Torts section 552, which was previously adopted in Nevada, to find liability. The Court concluded “Accordingly, in some circumstances appraisers could owe a duty of care to borrowers.” *Id.* However, no published opinion has addressed this issue. Since there is no controlling case law, the trial court judge here reached the opposite conclusion. He stated that appraisers have no duty to home buyers as a matter of law and granted summary judgment against Plaintiff on such grounds. It is worth noting that other jurisdictions have addressed this issue in similar facts and found liability, like the Supreme Court of Washington, which are addressed in Plaintiffs Opposition to Defendants Motion for Summary Judgment.

Since there are not any published decisions controlling in Nevada on this issue, it is one of first impression.

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 the importance or significance:

The Plaintiff believes that NRAP 17 (a)(10) is why the matter should be heard by the Nevada Supreme Court. To the best of our knowledge, this is a new legal issue or interpretation that has not been addressed by this court or within this court’s jurisdiction and there is no binding authority on the matter. It has been addressed by other jurisdictions, as cited in Plaintiffs’ previous filings, but not in any published decisions controlling in Nevada.

The Plaintiff also believes the case should be retained by the Supreme Court under Rule 17(a)(11). The principal issue of whether an appraiser can be liable to potential home buyers in the sale of a house is a “question of statewide public importance” as it impacts every home buyer. It also impacts the proper pricing and financing of homes to ensure home buyers are not underwater on their homes because of faulty appraisals. Given the huge fluctuations in home prices from improper financing in recent history, the issue of appraisers liability in contributing to incorrect valuations of financed homes is one statewide importance.

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A
Was it a bench or jury trial? N/A

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 January 25, 2018.

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: Not applicable

17. Date written notice of entry of judgment or order served January 25, 2018 .

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),

None

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

☐ NRCP 50(b) Date of filing _____.

☐ NRCP 52(b) Date of filing _____.

☐ NRCP 59 Date of filing _____.

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

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

(c) Date written notice of entry of order resolving motion served _____.

Was service by:

☐ Delivery

☐ Mail/electronic/fax

19. Date notice of appeal was filed: February 16, 2018

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

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other _____

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233b.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

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

The Summary Judgment was a final order of all issues on appeal

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

(a) Parties

1) Plaintiffs

JAMES A. BOESIGER and MARIA S. BOESIGER

2. Defendants.

DESERT APPRAISALS, LLC, a Nevada Limited-Liability Company
TRAVIS T. GLIKO, an individual

(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.

Plaintiffs' Claims	Date of formal Disposition
1) Professional Negligence	January 25, 2018
2) Third-Party Beneficiary Claim to the Contract between the lender and the appraiser	January 25, 2018
3) Negligent Misrepresentation	January 25, 2018
4) Breach of Statutory Duty to Disclose	January 25, 2018

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 below:

X YES
□ NO

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

□ YES
□ NO

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

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

Not Applicable

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 motions(s)
- Orders of NRCP 14(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 of 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.

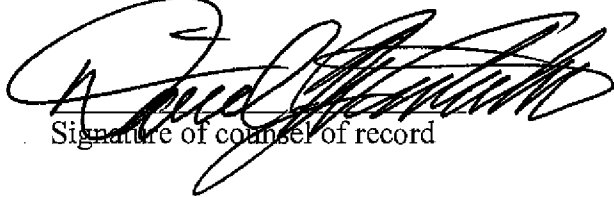
JAMES and MARIA BOESIGER,
Name of appellant

David J. Winterton, Esq.
Name of counsel of record

Date

March 19, 2018

Signature of counsel of record



Clark County, State of Nevada
State and county where signed

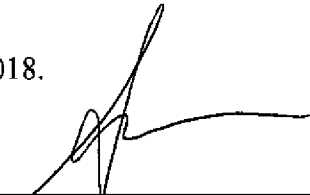
CERTIFICATE OF SERVICE

I certify that on the 19th day of March, 2018, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: if all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dated this 19th day of March, 2018.

Signature



DISTRICT COURT CIVIL COVER SHEET | X

County, Nevada

Case No. _____
(Assigned by Clerk's Office)**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): JAMES A. BOESIGER, an individual, MARIA S. BOESIGER, an individual	Defendant(s) (name/address/phone): DESERT APPRAISALS, LLC a Nevada Limited-Liability Company
Attorney (name/address/phone): DAVID WINTERTON AND ASSOCIATES 1140 N. TOWN CENTER DRIVE, SUITE 120 LAS VEGAS, NEVADA 89144	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

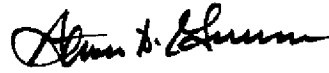
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input checked="" type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

10/02/2015
Date

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

CMP
DAVID J. WINTERTON, ESQ.
Nevada Bar No. 004142
TENNILLE K. PEREIRA, ESQ.
Nevada Bar No. 012467
DAVID J. WINTERTON & ASSOCIATES, LTD.
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david@davidwinterton.com
tennille@davidwinterton.com
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES A. BOESIGER, an individual,
MARIA S. BOESIGER, an individual

Plaintiffs,

vs.

DESERT APPRAISALS, LLC a Nevada
Limited-Liability Company, TRAVIS T.
GLIKO, an individual; DOES I-X inclusive
ROE CORPORATIONS XI-XX inclusive

Defendants.

Case No.: A- 15 - 725567 - C
Dept. No:
I X

[Arbitration Exempt - amount of damages
in excess of \$50,000.00]

Plaintiffs, JAMES A. BOESIGER, an individual, MARIA S. BOESIGER, an individual,
("Plaintiffs") by and through their counsel of record, David J. Winterton & Assoc., Ltd., hereby
submits this complaint against Defendants, DESERT APPRAISALS, LLC a Nevada Limited-
Liability Company, TRAVIS T. GLIKO, an individual ("Defendants") DOES I-X inclusive ROE
CORPORATIONS XI-XX, and represents the following to this Honorable Court:

NATURE OF ACTION

1. This Complaint is for malpractice, third-party beneficiary duty, negligence and breach of
a statutory duty.

DAVID J. WINTERTON & ASSOCIATES, LTD
1140 No. Town Center Drive, Suite 120
Las Vegas, Nevada 89144
Phone: (702) 363-0317

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action under § 6, article 6 of the Nevada Constitution.
3. This Court has jurisdiction over this matter pursuant to N.R.S. 4.370.
4. Venue is proper in this Judicial District under N.R.S. § 13.010 and 13.040.

PARTIES

5. The following are real parties of interest pursuant to N.R.C.P. Rule 17 and have been authorized to bring this cause of action.
6. Plaintiff, JAMES A. BOESIGER, is an individual who at all times relevant herein was a resident of Clark County, State of Nevada.
7. Plaintiff, MARIA S. BOESIGER, is an individual who at all times relevant herein was a resident of Clark County, State of Nevada.
8. Defendant, DESERT APPRAISALS, LLC, is a Nevada Limited-Liability Company who at all times relevant herein was doing business in Clark County, State of Nevada.
9. Defendant, TRAVIS T. GLIKO, is an individual who worked for DESERT APPRAISALS, LLC and who at all times relevant herein was doing business in Clark County, State of Nevada.
10. The true names and capacities of defendants sued herein as DOES 1 through X, inclusive, and each of them, are unknown to Plaintiffs, who therefore sues said defendants by such fictitious names. Plaintiffs will seek to amend this complaint to set forth the true names and capacities of said fictitiously named defendants when the same have been fully ascertained.

////

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////

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11. The true names and capacities of defendant entities sued herein as ROE CORPORATION 1 through X, inclusive, and each of them, are unknown to Plaintiffs, who therefore sues said defendants by such fictitious names. Plaintiffs will seek to amend this complaint to set forth the true names and capacities of said fictitiously named defendants when the same have been fully ascertained.

GENERAL ALLEGATIONS

12. On or about September 26, 2013, the Plaintiff entered into a purchase agreement to acquire a certain piece of property located at 5015 Adrian Fog Avenue, Las Vegas, Nevada 89141. ("Property").

13. The total purchase price was for Three Hundred and Thirty-Seven Thousand Dollars. (\$337,000.00).

14. The Plaintiff was told that the property had over \$3000 sq. ft in the home.

15. The Plaintiff was informed that the houses selling price was based upon the amount of the square ft. that was in the house.

16. The Plaintiff needed to obtain a loan on the Property to acquire their new residence.

17. The Defendants were retained to do an appraisal on the Property.

18. The Defendants did an appraisal on the Property that was completely wrong. The bottom line is that the Defendants used the wrong model to create their appraisal.

19. The house that was really being purchased by the Plaintiff was a different model and that it was four to five hundred square ft. smaller (400 - 500 sq. ft.).

20. If the appraiser had properly completed his appraisal, he would have determined it was the wrong model and it had fewer square feet. The appraisal would have come in smaller and the Plaintiff would not of qualified for such a large loan. It would have been discovered, they were using the wrong model.

21. The sale would not have been closed and there would be no damages to the Plaintiffs.

22. The problem compounds in this case. The Plaintiffs wanted to refinance the Property.

- 1 They went to a lender to get the Property refinanced.
2 23. The same appraiser was then retained to do the appraisal.
3 24. The appraiser did the appraisal and made the exact same error twice.
4 25. The Defendants used the wrong model for the same house.
5 26. Twice the Defendants made the same error and did not catch that it was the wrong model.
6 27. As a result of the negligence of the appraiser, the Plaintiff have been damaged and seek
7 compensation for the damage that has been incurred.

8 **FIRST CAUSE OF ACTION**
9 **(Professional Negligence)**

- 10 28. The Plaintiffs restate and reallege each and every allegation contained in Paragraphs 1
11 through 27 inclusively and incorporates them herein by reference as if fully set forth
12 29. The appraiser came and looked at the Property.
13 30. The appraiser stated the square feet of the gross living area above Grade was 3,002. The
14 floor plan was adequate. There external obsolescence noted and adjusted.
15 31. The appraiser sated "I did analyze the contract for sale for the subject purchase
16 transaction....Arms length sale; analysis of the contract of sale revealed a sale price of
17 \$337,000 which was agreed on 09/26/2013. The contract revealed no seller contributions
18 towards buyers and closing costs."
19 32. The Plaintiff paid for the appraisal.
20 33. The Defendants had a duty to use their professional standard of care in doing the appraisal.
21 34. If the Defendant had used the proper standard of care, they would have learned that they
22 were using the wrong model to do their appraisal. The appraiser went onto the Property
23 and looked at the Property.
24 35. The appraiser stated that the floor plan was adequate. He should have known it was the
25 wrong floor plan.
26 36. The appraisal industry outlines the duty of an appraiser. The Defendants fell below the
27 standard of care.
28

- 1 37. As a result, the Defendants were negligent.
2 38. The harm to the Plaintiff was the direct result of the negligence of the Defendants.
3 39. The Plaintiff suffered damages as a result of the action of the Defendants in excess of
4 \$10,000.
5 40. The Plaintiff are entitled to their attorneys fees and costs in having to pursue this matter.
6 41. If the actions are determined to be deliberate, the Plaintiff is entitled to punitive damages.

7 **SECOND CAUSE OF ACTION**

8 **(Third-Party Beneficiary to the Contract)**

- 9 42. The Plaintiffs restate and reallege each and every allegation contained in Paragraphs 1
10 through 41 inclusively and incorporates them herein by reference as if fully set forth
11 herein.
12 43. Guild Mortgage contracted with the Defendants to do an appraisal of the Property to help
13 the Plaintiff's qualify for a loan.
14 44. There was an offer, acceptance and consideration among the parties. There was a valid
15 contract.
16 45. The purpose of the contract was to help the Plaintiff obtain a loan to acquire the
17 Property and to refinance the Property.
18 46. The purpose was to provide the lender/client with an accurate and adequate support
19 opinion of the market value of the subject property to make a loan to the Plaintiff.
20 47. The Plaintiff would benefit from the appraisal because it would determine the value to
21 see if the Plaintiff would qualify for a loan on that size of Property.
22 48. The appraiser sated "I did analyze the contract for sale for the subject purchase
23 transaction....Arms length sale; analysis of the contract of sale revealed a sale price of
24 \$337,000 which was agreed on 09/26/2013. The contract revealed no seller
25 contributions towards buyers and closing costs."
26 49. The beneficiary to the contract was the Plaintiff in this case.

- 1 50. The Plaintiff even paid for the appraisal.
- 2 51. If the appraisal was done properly, the Plaintiff would have known the value of the
- 3 Property was a lot less than the amount they were seeking to purchase because it was the
- 4 wrong model.
- 5 52. The Plaintiff would have determined there was not enough square ft. to fit the price.
- 6 53. The Plaintiff relied upon the appraisal of the value of the house.
- 7 54. If the Plaintiff had known it was the wrong model and a smaller house, they would have
- 8 never purchased the house.
- 9 55. If the Plaintiff did not purchase the house for that price, they would not have suffered
- 10 the damages that they suffered.
- 11 56. The Plaintiffs have been accordingly damaged and thus entitled to compensation in
- 12 excess of \$50,000.00.
- 13 57. The Plaintiff is entitled to all its attorneys fees and costs in pursuing this legal action.

14 **THIRD CAUSE OF ACTION**

15 **(Negligent Misrepresentation)**

- 16 58. The Plaintiffs restate and reallege each and every allegation contained in Paragraphs 1
- 17 through 57 inclusively and incorporates them herein by reference as if fully set forth herein.
- 18 59. The appraiser came and looked at the Property.
- 19 60. The appraiser stated the square feet of the gross living area above grade was 3,002. He
- 20 stated the floor plan was adequate. He stated the external obsolescence noted and adjusted.
- 21 61. The appraiser stated "I did analyze the contract for sale for the subject purchase
- 22 transaction....Arms length sale; analysis of the contract of sale revealed a sale price of
- 23 \$337,000 which was agreed on 09/26/2013. The contract revealed no seller contributions
- 24 towards buyers and closing costs."
- 25 62. The Plaintiff paid for the appraisal.
- 26 63. The Defendants had a duty to use their professional standard of care in doing the appraisal.
- 27
- 28

- 1 64. If the Defendant had used the proper standard of care, they would have learned that they
2 were using the wrong model to do their appraisal. The appraiser went onto the Property
3 and looked at the Property.
- 4 65. The appraiser stated that the floor plan was adequate. He should have known the floor plan
5 did not match the house.
- 6 66. The appraisal industry outlines the duty of an appraiser. The Defendants fell below the
7 standard of care.
- 8 67. As a result, the Defendants were negligent.
- 9 68. The harm to the Plaintiff was the direct result of the negligence of the Defendants.
- 10 69. The Plaintiff suffered damages as a result of the action of the Defendants in excess of
11 \$50,000.
- 12 70. The Plaintiff are entitled to their attorneys fees and costs in having to pursue this matter.
- 13 71. If the actions are determined to be deliberate, the Plaintiff is entitled to punitive damages.

14 **FOURTH CAUSE OF ACTION**

15 **(Breach of Statutory Duty to Disclosure Material Facts)**

- 16 72. The Plaintiffs restate and reallege each and every allegation contained in Paragraphs 1
17 through 71 inclusively and incorporates them herein by reference as if fully set forth herein.
- 18 73. Under NRS 645C.470, an appraiser is to disclose to any person with who he or she is
19 dealing, any material fact or other information he or she knows, or in the exercise of
20 reasonable care and diligence should know, concerning or relating to any real estate he or
21 she appraises, including any interest he or she has in the real estate.
- 22 74. The appraiser came and looked at the Property.
- 23 75. The appraiser stated the square feet of the gross living area above Grade was 3,002. This
24 was not correct. Floor plan was adequate. External obsolescence noted and adjusted.

25 ////

26 ////

27 ////

- 1 76. The appraiser sated "I did analyze the contract for sale for the subject purchase
2 transaction....Arms length sale; analysis of the contract of sale revealed a sale price of
3 \$337,000 which was agreed on 09/26/2013. The contract revealed no seller contributions
4 towards buyers and closing costs."
5 77. The Plaintiff paid for the appraisal.
6 78. The Defendants had a duty to use their professional standard of care in doing the appraisal.
7 79. If the Defendant had used the proper standard of care, they would have learned that they
8 were using the wrong model to do their appraisal. The appraiser went onto the Property
9 and looked at the Property.
10 80. The appraiser stated that the floor plan was adequate. He should have known it did not
11 match the house.
12 81. The appraisal industry outlines the duty of an appraiser. The Defendants fell below the
13 standard of care.
14 82. The appraiser should have disclosed the material error if he or she exercises reasonable care
15 and diligence in doing the appraisal.
16 83. As a result, the Defendants were negligent.
17 84. The Defendants breached the statutory duty of the NRS 645C.470.
18 85. The harm to the Plaintiff was the direct result of the negligence of the Defendants.
19 86. The Plaintiff suffered damages as a result of the action of the Defendants in excess of
20 \$50,000.
21 87. The Plaintiff are entitled to their attorneys fees and costs in having to pursue this matter.
22 88. If the actions are determined to be deliberate, the Plaintiff is entitled to punitive damages.

23 ////

24 ////

25 ////

26 ////

27 ////

DAVID J. WINTERTON & ASSOCIATES, LTD
1140 No. Town Center Drive, Suite 120
Las Vegas, Nevada 89144
Phone: (702) 363-0317

1 WHEREFORE, Plaintiffs prays for relief against the Defendants as follows:

2 Plaintiffs prays for relief for the first cause of action and several causes of action as follows:

- 3 1. That Plaintiffs be awarded damages in excess of \$50,000;
- 4 2. That Plaintiffs be paid interest;
- 5 3. That Plaintiffs be awarded punitive damages if applicable;
- 6 4. For attorneys fees and costs in bringing this action;
- 7 5. For such other relief as the court deems just and proper.

8 DATED this 3 day of October, 2015.

9 Submitted by:

10 DAVID J. WINTERTON & ASSOC., LTD.

11 By: 

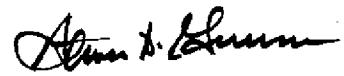
12 David J. Winterton, Esq.

13 Nevada Bar No. 004142

14 1140 No. Town Center Drive, Suite 120

15 Las Vegas, Nevada 89144

16 Attorney for Plaintiffs



CLERK OF THE COURT

1 **ANS**

2 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

3 JOSEPH P. GARIN, ESQ. (NV Bar No. 6653)

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11 *Attorneys for Defendants Desert Appraisals, LLC*
12 *and Travis T. Gliko*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 JAMES A. BOESIGER, an individual,

16 MARIA S. BOESIGER, an individual,

17 Plaintiffs,

18 vs.

19 DESERT APPRAISALS, LLC, a Nevada

20 Limited-Liability Company, TRAVIS T.

21 GLIKO, an individual; DOES I-X, inclusive;

22 ROE CORPORATIONS XI-XX, inclusive,

23 Defendants.

CASE NO.: A-15-725567-C

DEPT. NO.: IX

DESERT APPRAISALS, LLC AND
TRAVIS T. GLIKO'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFFS' COMPLAINT

24 Defendants Desert Appraisals, LLC and Travis T. Gliko ("Defendants"), by and through
25 their attorneys of record, the Law Office of LIPSON, NEILSON, COLE, SELTZER & GARIN,
26 P.C., submit their Answer and Affirmative Defenses to Plaintiffs' Complaint as follows:

27 **NATURE OF ACTION**

28 1. In answering paragraph 1 of the Complaint, Defendants neither admit or deny
the allegations contained therein for the reason that Defendants are without knowledge or
information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to
their proof.

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\\

JURISDICTION AND VENUE

2. In answering paragraph 2 of the Complaint, Defendants neither admit or deny the allegations contained therein for the reason that Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to their proof.

3. In answering paragraph 3 of the Complaint, Defendants neither admit or deny the allegations contained therein for the reason that Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to their proof.

4. In answering paragraph 4 of the Complaint, Defendants neither admit or deny the allegations contained therein for the reason that Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to their proof.

PARTIES

5. In answering paragraph 5 of the Complaint, Defendants neither admit or deny the allegations contained therein for the reason that Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to their proof.

6. In answering paragraph 6 of the Complaint, Defendants neither admit or deny the allegations contained therein for the reason that Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to their proof.

7. In answering paragraph 7 of the Complaint, Defendants neither admit or deny the allegations contained therein for the reason that Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to their proof.

8. In answering paragraph 8 of the Complaint, Defendants admit the allegations contained therein.

3 10. In answering paragraph 10 of the Complaint, Defendants neither admit or deny
4 the allegations contained therein for the reason that Defendants are without knowledge or
5 information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to
6 their proof.

7 11. In answering paragraph 11 of the Complaint, Defendants neither admit or deny
8 the allegations contained therein for the reason that Defendants are without knowledge or
9 information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to
10 their proof.

GENERAL ALLEGATIONS

12 12. In answering paragraph 12 of the Complaint, the document referenced by
13 Plaintiffs is the best evidence and speaks for itself, therefore, no response is required. To the
14 extent a response is required, Defendants neither admit or deny the remaining allegations
15 contained therein for the reason that Defendants are without knowledge or information
16 sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to their proof.

17 13. In answering paragraph 13 of the Complaint, the document referenced by
18 Plaintiffs speaks for itself, therefore, no response is required. To the extent a response is
19 required, Defendants neither admit or deny the remaining allegations contained therein for the
20 reason that Defendants are without knowledge or information sufficient to form a belief as to
21 the truth of the allegations and leave Plaintiffs to their proof.

22 14. In answering paragraph 14 of the Complaint, Defendants neither admit or deny
23 the allegations contained therein for the reason that Defendants are without knowledge or
24 information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to
25 their proof.

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27 || \ \ \

28 || \ \ \

1 15. In answering paragraph 15 of the Complaint, Defendants neither admit or deny
2 the allegations contained therein for the reason that Defendants are without knowledge or
3 information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to
4 their proof.

5 16. In answering paragraph 16 of the Complaint, Defendants neither admit or deny
6 the allegations contained therein for the reason that Defendants are without knowledge or
7 information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to
8 their proof.

9 17. In answering paragraph 17 of the Complaint, Defendants admit the allegations
10 contained therein.

11 18. In answering paragraph 18 of the Complaint, Defendants deny the allegations
12 contained therein.

13 19. In answering paragraph 19 of the Complaint, Defendants deny the allegations
14 contained therein.

15 20. In answering paragraph 20 of the Complaint, Defendants deny the allegations
16 contained therein.

17 21. In answering paragraph 21 of the Complaint, Defendants deny the allegations
18 contained therein.

19 22. In answering paragraph 22 of the Complaint, Defendants deny the allegations
20 contained therein.

21 23. In answering paragraph 23 of the Complaint, Defendants deny the allegations
22 contained therein.

23 24. In answering paragraph 24 of the Complaint, Defendants deny the allegations
24 contained therein.

25 25. In answering paragraph 25 of the Complaint, Defendants deny the allegations
26 contained therein.

27 26. In answering paragraph 26 of the Complaint, Defendants deny the allegations
28 contained therein.

1 36. In answering paragraph 36 of the Complaint, Defendants deny the allegations
2 contained therein.

3 37. In answering paragraph 37 of the Complaint, Defendants deny the allegations
4 contained therein.

5 38. In answering paragraph 38 of the Complaint, Defendants deny the allegations
6 contained therein.

7 39. In answering paragraph 39 of the Complaint, Defendants deny the allegations
8 contained therein.

9 40. In answering paragraph 40 of the Complaint, Defendants deny the allegations
10 contained therein.

11 41. In answering paragraph 41 of the Complaint, Defendants deny the allegations
12 contained therein.

13 **SECOND CAUSE OF ACTION**
14 **(Third-Party Beneficiary to the Contract)**

14 42. In answering paragraph 42 of the Complaint, Defendants incorporate and
15 re-assert all admissions, denials, and allegations contained in previous paragraphs as if fully
16 set forth herein.

17 43. In answering paragraph 43 of the Complaint, Defendants deny the allegations
18 contained therein.

19 44. In answering paragraph 44 of the Complaint, Defendants neither admit or deny
20 the allegations contained therein for the reason that Defendants are without knowledge or
21 information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to
22 their proof.

23 45. In answering paragraph 45 of the Complaint, Defendants deny the allegations
24 contained therein.

25 46. In answering paragraph 46 of the Complaint, Defendants neither admit or deny
26 the allegations contained therein for the reason that Defendants are without knowledge or
27 information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to
28 their proof.

1 47. In answering paragraph 47 of the Complaint, Defendants neither admit or deny
2 the allegations contained therein as the allegations relate to an entity other than this answering
3 Defendant and this answering Defendants are without knowledge or information to form a
4 belief as to the truth of the allegation and leaves Plaintiffs to their proof.

5 48. In answering paragraph 48 of the Complaint, to the extent Plaintiff purports to
6 reference a written document, the written document is the best evidence and speaks for itself.
7 To the extent the allegations are inconsistent with the documents, those allegations are
8 denied.

9 49. In answering paragraph 49 of the Complaint, Defendants deny the allegations
10 contained therein.

11 50. In answering paragraph 50 of the Complaint, Defendants neither admit or deny
12 the allegations contained therein for the reason that Defendants are without knowledge or
13 information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to
14 their proof.

15 51. In answering paragraph 51 of the Complaint, Defendants deny the allegations
16 contained therein.

17 52. In answering paragraph 52 of the Complaint, Defendants deny the allegations
18 contained therein.

19 53. In answering paragraph 53 of the Complaint, Defendants neither admit or deny
20 the allegations contained therein as the allegations relate to an entity other than this answering
21 Defendant and this answering Defendants are without knowledge or information to form a
22 belief as to the truth of the allegation and leaves Plaintiffs to their proof.

23 54. In answering paragraph 54 of the Complaint, Defendants deny the allegations
24 contained therein.

25 55. In answering paragraph 55 of the Complaint, Defendants deny the allegations
26 contained therein.

27 56. In answering paragraph 56 of the Complaint, Defendants deny the allegations
28 contained therein.

1 57. In answering paragraph 57 of the Complaint, Defendants deny the allegations
2 contained therein.

3 **THIRD CAUSE OF ACTION**
4 **(Negligent Misrepresentation)**

5 58. In answering paragraph 58 of the Complaint, Defendants incorporate and
6 re-assert all admissions, denials, and allegations contained in previous paragraphs as if fully
7 set forth herein.

8 59. In answering paragraph 59 of the Complaint, Defendants admit the allegations
9 contained therein.

10 60. In answering paragraph 60 of the Complaint, to the extent Plaintiff purports to
11 reference a written document, the written document is the best evidence and speaks for itself.
12 To the extent the allegations are inconsistent with the documents, those allegations are
13 denied.

14 61. In answering paragraph 61 of the Complaint, to the extent Plaintiff purports to
15 reference a written document, the written document is the best evidence and speaks for itself.
16 To the extent the allegations are inconsistent with the documents, those allegations are
17 denied.

18 62. In answering paragraph 62 of the Complaint, Defendants neither admit or deny
19 the allegations contained therein for the reason that Defendants are without knowledge or
20 information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to
21 their proof.

22 63. In answering paragraph 63 of the Complaint, Defendants admit only to those
23 legal duties imposed by law, under the circumstances of this case, and to no others.

24 64. In answering paragraph 64 of the Complaint, Defendants deny the allegations
25 contained therein.

26 65. In answering paragraph 65 of the Complaint, Defendants deny the allegations
27 contained therein.

28 ///

1 66. In answering paragraph 66 of the Complaint, Defendants deny the allegations
2 contained therein.

3 67. In answering paragraph 67 of the Complaint, Defendants deny the allegations
4 contained therein.

5 68. In answering paragraph 68 of the Complaint, Defendants deny the allegations
6 contained therein.

7 69. In answering paragraph 69 of the Complaint, Defendants deny the allegations
8 contained therein.

9 70. In answering paragraph 70 of the Complaint, Defendants deny the allegations
10 contained therein.

11 71. In answering paragraph 71 of the Complaint, Defendants deny the allegations
12 contained therein.

13 **FOURTH CAUSE OF ACTION**
14 **(Breach of Statutory Duty to Disclosure Material Facts)**

15 72. In answering paragraph 72 of the Complaint, Defendants incorporate and
16 re-assert all admissions, denials, and allegations contained in previous paragraphs as if fully
17 set forth herein.

18 73. In answering paragraph 73 of the Complaint, to the extent that Plaintiffs'
19 allegations purport to recite to Nevada statutes, the statutes are the best evidence and speak
20 for themselves. To the extent the allegations are inconsistent with the statutes, those
21 allegations are denied.

22 74. In answering paragraph 74 of the Complaint, Defendants admit the allegations
23 contained therein.

24 75. In answering paragraph 75 of the Complaint, to the extent Plaintiff purports to
25 reference a written document, the written document is the best evidence and speaks for itself.
26 To the extent the allegations are inconsistent with the documents, those allegations are
27 denied.

28 ///

1 76. In answering paragraph 76 of the Complaint, to the extent Plaintiff purports to
2 reference a written document, the written document is the best evidence and speaks for itself.
3 To the extent the allegations are inconsistent with the documents, those allegations are
4 denied.

5 77. In answering paragraph 77 of the Complaint, Defendants neither admit or deny
6 the allegations contained therein for the reason that Defendants are without knowledge or
7 information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to
8 their proof.

9 78. In answering paragraph 78 of the Complaint, Defendants admit only to those
10 legal duties imposed by law, under the circumstances of this case, and to no others.

11 79. In answering paragraph 79 of the Complaint, Defendants deny the allegations
12 contained therein.

13 80. In answering paragraph 80 of the Complaint, Defendants deny the allegations
14 contained therein.

15 81. In answering paragraph 81 of the Complaint, Defendants deny the allegations
16 contained therein.

17 82. In answering paragraph 82 of the Complaint, Defendants deny the allegations
18 contained therein.

19 83. In answering paragraph 83 of the Complaint, Defendants deny the allegations
20 contained therein.

21 84. In answering paragraph 84 of the Complaint, Defendants deny the allegations
22 contained therein.

23 85. In answering paragraph 85 of the Complaint, Defendants deny the allegations
24 contained therein.

25 86. In answering paragraph 86 of the Complaint, Defendants deny the allegations
26 contained therein.

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AFFIRMATIVE DEFENSES

Desert Appraisals, LLC and Travis T. Gliko ("Defendants"), by and through their attorneys of record, the Law Office of LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C., submit their Affirmative Defenses to Plaintiffs' Complaint as follows:

First Affirmative Defense

Plaintiffs fail to state a claim against Defendant upon which relief may be granted.

Second Affirmative Defense

Plaintiffs fail to mitigate damages, if any.

Third Affirmative Defense

Plaintiffs' claims are barred in whole or in part by the Doctrine of Laches.

Fourth Affirmative Defense

Plaintiffs' claims are barred in whole or in part by the Doctrine of Unclean Hands.

Fifth Affirmative Defense

Defendants were not the proximate cause of Plaintiffs' alleged damages.

Sixth Affirmative Defense

Defendants assert an affirmative defense that Plaintiffs' alleged damages may have been caused or contributed to by the acts or omissions of Plaintiffs and/or other persons or parties, including Plaintiffs, thereby eliminating or reducing liability of these answering Defendants under comparative fault principles.

Seventh Affirmative Defense

Plaintiffs are barred from asserting any claim against these answering Defendants because the alleged injuries and damage, if any, were the result of intervening, superseding conduct, omissions and/or actions by others, including Plaintiffs.

Eighth Affirmative Defense

Plaintiffs have not suffered a cognizable legal injury.

Ninth Affirmative Defense

Defendants employed the services of an attorney to defend this action and should be allowed a reasonable sum for attorneys' fees with associated costs incurred in this action.

Tenth Affirmative Defense

Defendants did not make a false material representation of fact and, if they did make a false material representation, which Defendants deny, they did not make it with the intent to deceive or induce Plaintiffs to act in reliance.

Eleventh Affirmative Defense

Defendants were not negligent and their conduct did not fall below the standard of care.

Twelfth Affirmative Defense

Defendants deny each and every allegation of the Complaint, as well as Plaintiffs' prayer for relief, not specifically admitted or otherwise pled to herein.

Thirteenth Affirmative Defense

There is no causal connection between Defendants' actions and/or alleged inactions and Plaintiffs' alleged damages, if any.

Fourteenth Affirmative Defense

Plaintiffs' claims are barred by the applicable statute of limitations.

Fifteenth Affirmative Defense

Defendants performed accurate measurements of the subject property.

Sixteenth Affirmative Defense

Defendants' appraisal of the subject property was reasonable.

Seventeenth Affirmative Defense

Defendants' appraisal of the subject property was fair.

Eighteenth Affirmative Defense

Defendants' appraisal was reviewed and approved by the lender.

Nineteenth Affirmative Defense.

The subject property was a model home and contained many upgrades. Thus, it was unique to the community.

Twentieth Affirmative Defense

Pursuant to NRCP 8 and 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the

1 filing of this Answer to the Complaint, and Defendants reserve the right to amend their Answer
2 to allege additional affirmative defenses as subsequent investigation warrants.

3 WHEREFORE, Defendants pray for judgment as follows:

4 1. That the Court find no cause of action in favor of Plaintiffs and that Plaintiffs take
5 nothing based on the allegations in their Complaint;

6 2. That the Complaint be dismissed with prejudice;

7 3. That the Court award Defendants' reasonable attorneys' fees and costs of suit;
8 and

9 4. For such other and further relief as this Court may deem just and proper.

10 DATED this 21st day of March, 2016.

11 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

12 By: 
13

14 JOSEPH P. GARIN, ESQ. (NV Bar No. 6653)
15 STEPHEN G. KEIM, ESQ. (NV Bar No. 11621)
16 9900 Covington Cross Drive, Ste. 120
17 Las Vegas, Nevada 89144
18 (702) 382-1500 -phone
19 (702) 382-1512- fax
20 jgarin@lipsonneilson.com
21 sanderson@lipsonneilson.com

22 Attorneys for Defendants *Desert Appraisals, LLC* and
23 *Travis Gliko*
24
25
26
27
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of March, 2016, service of the foregoing **DESERT APPRAISALS, LLC AND TRAVIS T. GLIKO'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT** was made pursuant to NRCP 5(b) and Administrative Order 14-2, electronically transmitted to the Clerk's Office using the Odyssey E-File & Serve system for filing and transmittal to the following Odyssey E-file & Serve registrants:

David J. Winterton, Esq.
Tennille K. Pereira, Esq.
DAVID J. WINTERTON & ASSOC.
1140 N. Town Center Dr., Ste. 120
Las Vegas, NV 89144
david@davidwinterton.com
tenille@davidwinterton.com
Attorneys for Plaintiffs



An Employee of
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

Lipson, Neilson, Cole, Seltzer & Garin, P.C.
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Las Vegas, Nevada 89144
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1 IAFD

2 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

3 JOSEPH P. GARIN, ESQ. (NV Bar No. 6653)

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9 igarin@lipsonneilson.com

10 skeim@lipsonneilson.com

11 *Attorneys for Defendants Desert Appraisals, LLC*
12 *and Travis T. Gliko*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 JAMES A. BOESIGER, an individual,
16 MARIA S. BOESIGER, an individual,

17 Plaintiffs,

18 vs.

19 DESERT APPRAISALS, LLC, a Nevada
20 Limited-Liability Company, TRAVIS T.
21 GLIKO, an individual; DOES I-X, inclusive;
22 ROE CORPORATIONS XI-XX, inclusive,

23 Defendants.

CASE NO.: A-15-725567-C
DEPT. NO.: IX

INITIAL APPEARANCE FEE
DISCLOSURE

24 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted
25 for parties appearing in the above entitled action as indicated below:

26 Defendant, DESERT APPRAISALS, LLC: \$ 223.00

27 Additional Defendant, TRAVIS T. GLIKO: 30.00

28 TOTAL REMITTED: \$ 253.00

DATED this 21st day of March, 2016.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ. (NV Bar No. 6653)

STEPHEN G. KEIM, ESQ. (NV Bar No. 11621)

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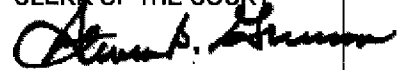
Attorneys for Defendants Desert Appraisals, LLC and
Travis Gliko

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tenille@davidwinterton.com
Attorneys for Plaintiffs

Elsa Fera

- 2 -



LIPSON NEILSON, P.C.
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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES A. BOESIGER, an individual;
MARIA S. BOESIGER, an individual,

Plaintiffs,

vs.

DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
GLIKO, an individual; DOES I-X, inclusive;
ROE CORPORATIONS XI-XX, inclusive.

Defendants.

Case No.: A-15-725567-C
Dept. No.: XXIV

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

LIPSON NEILSON, P.C.

9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

1 Please take notice that on the 19th day of January, 2018, an Order Granting
2 Defendants' Motion for Summary Judgment was entered in the above-captioned matter. A
3 copy of said Order is attached hereto and made part hereof.

4 Dated this 25th day of January, 2018.

5 LIPSON NEILSON, P.C.

6
7 */s/ Eric N. Tran*

8 By: _____

9 JOSEPH P. GARIN, ESQ. (Bar No. 6653)
10 ERIC N. TRAN, ESQ. (Bar No. 11876)
11 9900 Covington Cross Drive, Suite 120
12 Las Vegas, Nevada 89144

13 *Attorneys for Defendants*
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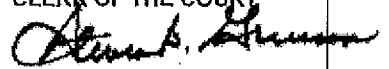
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 25th day of January, 2018, I electronically served the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** to the following parties utilizing the Court's E-File/ServeNV System:

David J. Winterton, Esq.
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES A. BOESIGER, an individual;
MARIA S. BOESIGER, an individual,

Plaintiffs,

vs.

DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
GLIKO, an individual; DOES I-X, inclusive;
ROE CORPORATIONS XI-XX, inclusive.

Defendants.

Case No.: A-15-725567-C
Dept. No.: XXIV

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

Defendants Desert Appraisal, LLC and Travis Gliko's (collectively referred to as "Defendants") Motion for Summary Judgment came before the Court on December 5, 2017 at 9:00 a.m. Eric N. Tran, Esq. appeared on behalf of Defendants; and David Winterton, Esq. appeared on behalf of Plaintiffs James A. Boesiger and Maria S. Boesiger (collectively referred to as "Plaintiffs"). The Court having reviewed the pleadings and papers on file, and oral arguments of counsel, and cause appearing, hereby orders as follows:

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<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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1. FINDINGS OF FACT

1. On September 26, 2013, Plaintiffs entered into a Purchase Agreement to purchase real property located at 5015 Adrian Fog Avenue, Las Vegas, Nevada 89141 ("the Property").

2. As part of the agreement, Plaintiffs made an initial offer of \$337,000.00 contingent on Plaintiffs obtaining a loan in the amount of \$325,205.00 from the lender, Guild Mortgage, Inc.

3. After Plaintiffs' initial offer of \$337,000.00 to purchase the Property was accepted by the Seller, Guild Mortgage hired Defendants to conduct an appraisal on the Property.

4. On October 9, 2013, Defendant Gliko conducted an appraisal of the Property.

5. According to the Appraisal Report, Defendant Gliko appraised the Property at \$340,000.00. The Property was also appraised at having 3,002 square feet of gross living area.

6. On October 2, 2015, Plaintiffs filed a Complaint against Defendants asserting claims for (1) Professional Negligence; (2) Breach of Third Party Beneficiary Contract; (3) Negligent Misrepresentation; and (4) Breach of the Statutory Duty to Disclose Material Facts pursuant to NRS 645C.470.

7. Plaintiffs' Complaint stems from Plaintiff Maria Boesiger's belief that "Defendants did an appraisal on the Property that was completely wrong" and that "Defendants used the wrong model to create their appraisal." See Complaint at ¶ 18. The Complaint also alleges that Defendants appraised the Property at 400-500 square feet higher than the actual size of the Property. Id. at ¶ 19. Plaintiffs allege that Defendants' wrong appraisal of the Property resulted in Plaintiffs paying \$337,000.00 for the Property and required Plaintiffs to obtain a larger loan to purchase the Property. Id. at ¶ 20.

8. On July 29, 2016, Plaintiffs' served their designation of expert witness naming appraiser Craig Jiu as their expert. Plaintiffs stated that Mr. Jiu was designated to discuss the errors in the Defendants' appraisal. However, Plaintiffs' expert disclosure did not contain an expert report regarding the statements or opinions of Mr. Jiu or the data or other information that Mr. Jiu relied upon. Instead, Plaintiffs' "designation of expert witness Craig Jiu" was a one-page document simply stating that Plaintiffs designated Craig Jiu as an expert. On May 22, 2017, Plaintiffs withdrew their Expert Designation of Craig Jiu after Defendants filed a Motion to Strike Plaintiffs' Expert Designation. The deadline for expert disclosures was June 8, 2017, and Plaintiffs never disclosed another expert to support their case.

9. The premise of Plaintiffs' professional negligence claim against Defendants is that Plaintiffs believe Defendants appraised the Property incorrectly because Defendants were unaware that the Clark County Assessor's Office had a different model home and a different square footage listed in its records. See Maria Boesiger's Affidavit attached to Plaintiffs' Opposition at ¶ 13, 14, 15. In this regard, Maria Boesiger's affidavit states as follows:

13. Subsequently, the Clark County tax assessment on my home led to the discovery that the actual square footage of the house was significantly smaller than the amount listed in the assessor's record at the time I purchased the house. It was subsequently revised by the county to reflect the true square footage.

14. The appraiser from the Clark County came to my house and said it was the wrong model and not the one they have on file. He looked very confused by it. Clark County has since changed the assessment to reflect the lower square footage.

15. I was unable to refinance my house and qualify for a less expensive conventional loan because of the overvaluation of the house in the initial appraisal by Travis Gliko before I finalized the purchase of the home.

Id.

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10. However, the Appraisal Report makes it clear that Defendant Travis Gliko was well aware of the discrepancy in the square footage of the Property from the Assessor's Office and the MLS Listing. In this regard, the Appraisal Report clearly states as follows:

SQUARE FOOTAGE DIFFERENCE:

The Assessor and MLS Listing have a documented 3,533 SF of living area for the subject property. This is incorrect as the subject was former model home with the garage converted to office space. It has since been converted back to the original floor plan with a 2-car garage but the Assessor and MLS still have the garage space as living area. The appraiser approx. measurements with the 2 car garage is 3,002SF. This appears to be the correct living square footage as verified with the builders floor plan. Therefore, the appraiser will utilize the appraisers approx measurements within the context of this report.

See Defendants' Appraisal Report at Exhibit C to Defendants' Motion for Summary Judgment at DA00076 (bold underline emphasis added).

11. The Appraiser Report was also made directly and solely for the benefit of the Lender Guild Mortgage. For example, the front of the Appraisal Report states that the appraisal is for "Guild Mortgage." See Defendants' Motion for Summary Judgment at **Exhibit C** to Appraisal Report at DA000066. The second page of the Appraisal Report states "the purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property." See *Id.* at DA000067. The Appraiser Report also states the intended user and intended use is as follows:

Intended Use: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

Intended User: The Intended user for this appraisal report is the lender/client.

Id. at DA000070.

1 The Appraisal Report then identified the lender/client as follows:

2 LENDER/CLIENT

3 Name Solidifi

4 Company Name Guild Mortgage

5 Id. at DA000072

6 The Supplemental Addendum portion of the Appraisal Report states the intended
7 user is as follows:

8 **INTENDED USER:**

9 The Intended User of this appraisal report is the
10 Lender/Client. The Intended Use is to evaluate the property
11 that is the subject of this appraisal for a mortgage finance
12 transaction, subject to the state Scope of Work, purpose of
13 the appraisal, reporting requirements of this appraisal report
14 form, and the Definition of Market Value. **No additional**
15 **intended Users are identified by this appraiser.**

16 Id. at DA000076 (bold emphasis added).

17 12. Nowhere in the Appraisal Report does it clearly state the intended
18 beneficiaries are the Plaintiffs. On the contrary, as emphasized above, the Appraiser
19 Report clearly states that "no addition intended users are identified by this appraiser."

20 Id. at DA000076.

21 **II. CONCLUSIONS OF LAW**

22 13. In order to establish a prima facie case of negligence, a plaintiff must
23 establish four elements: "(1) the existence of a duty of care, (2) breach of that duty, (3)
24 legal causation, and (4) damages." Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.,
25 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009).

26 14. When a claim of negligence is based on an allegation that a professional
27 was negligent, the plaintiff must show that the professional's conduct fell below the
28 standard of care associated with that profession. See Redden v. SCI Colo. Funeral
Servs., Inc., 38 P.3d 75, 80-81 (Colo.2001). For those practicing a profession involving
specialized knowledge or skill, the applicable standard of care generally requires the
actor to possess a standard minimum of special knowledge and ability and to exercise

1 reasonable care in a manner consistent with members of the profession in good
2 standing. Hice v. Lott, 223 P.3d 139, 143 (Colo. App. 2009).

3 15. This means that a plaintiff in a professional malpractice action is required
4 to provide expert testimony to establish defendant's standard of care because ordinary
5 persons are not conversant with it. Daniel Mann, Johnson & Mendenhall v. Hilton
6 Hotels Corp., 98 Nev. 113, 115, 642 P.2d 1086, 1087 (1982); Tommy L. Griffin
7 Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 351 S.C. 459, 570 S.E.2d
8 197, 203 (S.C.Ct.App. 2002); Hice, 223 P.3d at 143.

9 In Nevada, the general rule governing the admissibility of expert testimony is
10 NRS. 50.275, which states:

11 If scientific, technical or other specialized knowledge will
12 assist the trier of fact to understand the evidence or to
13 determine a fact in issues, a witness qualified as an expert
14 by special knowledge, skill, experience, training, or
15 education may testify to matters within the scope of such
16 knowledge.

17 The Nevada Supreme Court discussed NRS 50.275 in Hallmark v. Eldridge,
18 shedding light on various aspects of the statute. Hallmark v. Eldridge, 124 Nev. 492,
19 189 P.3d 646, 650 (2008). In Hallmark, the Court held that before a person may testify
20 as an expert pursuant to NRS 50.275, the District Court must first determine whether he
21 or she is qualified in an area of scientific, technical, or other specialized knowledge. Id.,
22 124 Nev. at 499, 189 P.3d. at 651. In determining whether a person is properly
23 qualified, the court should consider the following factors: "(1) formal schooling and
24 academic degrees, (2) licensure, (3) employment experience, and (4) practical
25 experience and specialized training." Id.

26 Expert testimony is unnecessary only in such cases where the relevant standard
27 of care does not require specialized or technical knowledge. See Am. Family Mut. Ins.
28 Co. v. Allen, 102 P.3d 333, 343 (Colo.2004); see also White v. Jungbauer, 128 P.3d
263, 264 (Colo.App.2005) (expert testimony is not required if the subject matter of a

professional negligence claim lies within the ambit of common knowledge of ordinary persons).; Daniel, 98 Nev.at 115, 642 P.2d at 1087.

NOW THEREFORE, IT IS HEREBY ORDERED:

16. With respects to Plaintiffs' causes of action for Professional Negligence, in this case, Plaintiffs' failure to disclose an expert is fatal to their case as an expert is necessary to establish the duty of care, and Defendants' breach of the duty of care. Likewise, Plaintiffs cannot simply rely on statements made by Plaintiff Marie Boesiger because Ms. Boesiger is not qualified to provide any testimony regarding the duty of care or Defendants' breach of the duty of care.

17. With respects to Plaintiffs' causes of action for Negligent Misrepresentation and Breach of the Statutory Duty to Disclose Material Facts, these claims also fail as they are derivative of Plaintiffs' Professional Negligence claim.

18. With respects to Plaintiffs' cause of action for Breach of Third Party Beneficiary, this claim fails because the Appraisal Report clearly and unequivocally state that the Lender Guild Mortgage is the only intended beneficiary. The Appraisal Report also clearly state that "[n]o additional intended Users are identified by this appraiser." In addition, because Plaintiffs are not intended beneficiaries to the Appraisal Report, Plaintiffs do not even have standing as there was never ever a duty owed to Plaintiffs which is dispositive of this entire case.

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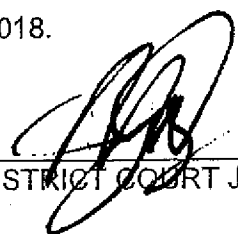
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Boesiger et al. v. Desert Appraisals, LLC et al.
Case No.: A-15-725567-C

19. Defendants' Motion for Summary Judgment is hereby **GRANTED** in its entirety.

Dated this 12 day of January, 2018.


DISTRICT COURT JUDGE JIM CROCKET

Submitted by:

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: 

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Approved as to form and content:

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Submitted for review/No Response

By: _____

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