

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION
COMPANY, a Nevada corporation,
HAROLD WYATT; AND MARY
WYATT,
Appellants,
vs.
RUBY LAKE ESTATES
HOMEOWNER'S ASSOCIATION,
Respondent

Supreme Court No. 75323
District Court Case No. CV-2012-175
May 04 2018 09:42 a.m.
Electronically Filed
Elizabeth A. Brown
Clerk of Supreme Court
**APPELLANTS' RESPONSE TO
ORDER TO SHOW CAUSE**

APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW Artemis Exploration Company, Harold Wyatt, and Mary Wyatt, Appellants, by and through their undersigned counsel of Gerber Law Offices, LLP, and file their Response to Order to Show Cause.

I. INTRODUCTION

This appeal should not be dismissed because it is taken from a Final Judgment certified as final pursuant to NRCP 54(b). The Final Judgment was certified as final pursuant to "NRCP 54(b)" because the Court found "there is no just reason for delay," and resolved Artemis's declaratory judgment claim as to Ruby Lake Estates Homeowner's Association ("RLEHOA") and Harold and Mary Wyatt (the "Wyatts"). NRCP 54(b); (Exhibit "B" 3:14-18). Given that the Final Judgment was certified as final, the Final Judgment was immediately appealable as to the declaratory judgment claim against RLEHOA and the Wyatts. *McLynn v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 412 P.3d 13 (Nev. 2018) (unpublished disposition); *see also Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 611, 797 P.2d 978, 981 (1990).

In the alternative, the Court should "disregard any error or defect in the" Final Judgment and find that it resolved all claims as to all parties because such a finding "does not affect the substantial rights of the parties." NRCP 61.

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II. PROCEDURAL HISTORY

This case began when a property owner (“Artemis”) filed a declaratory relief claim, among other claims that were voluntarily dismissed, against RLEHOA. RLEHOA answered Artemis’s Complaint and filed counterclaims against Artemis. On February 14, 2018, the District Court granted RLEHOA’s Motion for Summary Judgment that resolved Artemis’s single, declaratory relief claim in RLEHOA’s favor.

On September 11, 2015, the District Court entered its Order: Joinder of Necessary Parties, which required Artemis and RLEHOA to join all of the remaining lot owners of Ruby Lake Estates subdivision as Defendants and Cross-Defendants to the case and as “necessary parties.” In compliance with the Order, Artemis filed its Second Amended Complaint and RLEHOA filed a cross-claim as to all lot owners. After service of process, two lot owners, Harold and Mary Wyatt (“Wyatts”), filed an Answer, and all other lot owners were defaulted for failing to respond to Artemis’s Second Amended Complaint and RLEHOA’s cross-claim.

Subsequently, all of the non-defaulted active litigants—Artemis, RLEHOA, and Wyatts—agreed to dismiss all of RLEHOA’s counterclaims and cross-claim and apply to the District Court to request “that the Court enter Final Judgment” in the Stipulation and Order for Dismissal of Counterclaims and Cross-Claim Without Prejudice, Withdrawal of Pending Motions, and for Final Judgment. (Stipulation and Order, attached hereto as Exhibit “A” 4:3-4.) The District Court signed the Stipulation and Order, and it was entered on February 26, 2018. (*Id.* 4:17.) In accordance with the Stipulation and Order, the District Court entered Final Judgment on February 26, 2018, resolving the single remaining declaratory judgment claim “in favor of RLEHOA.” (Final Judgment, attached hereto as Exhibit “B” 3:8-18.)

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III. RESPONSE

A. **The Final Judgment is appealable because it was certified as final pursuant to NRCP 54(b).**

The Final Judgment was certified as final pursuant to “NRCP 54(b)” because the Court found “there is no just reason for delay,” and resolved Artemis’s declaratory judgment claim as to RLEHOA and the Wyatts. NRCP 54(b); (Exhibit “B” 3:14-18). Given that the Final Judgment was certified as final, the Final Judgment was immediately appealable as to the declaratory judgment claim against RLEHOA and the Wyatts. *McLynn*, 412 P.3d 13 (unpublished disposition); *see also Mallin*, 106 Nev. at 611. Consequently, this appeal should not be dismissed because it is taken from a Final Judgment certified as final pursuant to NRCP 54(b).

In accordance with the Final Judgment, Appellants request that the Court grant leave for Appellants to amend the Docketing Statement by allowing Appellants to file the Amendment to the Docketing Statement attached hereto as Exhibit “C.”

B. **Any error is harmless and should be disregarded pursuant to NRCP 61.**

The Final Judgment, entered February, 26, 2018, resolved the only claim—Artemis’s declaratory judgment claim—“in favor of RLEHOA.” (Exhibit “B” 3:8-18.) There is no doubt that the claim was resolved as to the Appellants and Respondent. If the Court does not find that the Final Judgment was properly certified as final pursuant to NRCP 54(b), as discussed in subsection II(A) above, in the alternative, the Appellants request that this Court not dismiss the appeal and construe the Final Judgment as a judgment that resolved all claims as to all parties, including a default judgment as to the defaulted parties pursuant to NRCP 61 because any error is “harmless” and does not affect the substantial rights of the parties. NRCP 61; (Final Judgment attached hereto as Exhibit “B”).

NRCP 61 states, in pertinent part, “The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the

substantial rights of the parties.” Substantial rights are affected if “but for the alleged error, a different result might reasonably have been reached.” *Khoury v. Seastrand*, 132 Nev. Adv. Op. 52, 377 P.3d 81, 94 (2016) (quoting *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010)).

NRCP 55(a) and (b) provide that a default and a default judgment are “distinct” and may be entered against a party that fails to respond to a complaint. NRCP 54; *See Estate of Lomastro ex rel. Lomastro v. Am. Family Ins. Grp.*, 124 Nev. 1060, 1068, 195 P.3d 339, 345 (2008). A “default acts as an admission by the defending party of all material claims made in the complaint,” and only “leaves open the extent of damages” to be determined in the judgment by default. *Id.* NRCP 55(b) provides that the Clerk can enter a judgment by default for a “sum certain” or a “sum which can by computation be made certain,” or the district court can enter a judgment by default “[i]n all other cases.” NRCP 55(b). NRCP 55 does not require that a judgment by default must be entered separately from a Final Judgment.

In this case, there is no dispute that Artemis’s declaratory relief claim was the only claim that was not voluntarily dismissed as to all parties, including the defaulted defendants. (Exhibit “A” 2:6-7.) The District Court resolved the claim upon entering its Order Granting Defendant’s Motion for Summary Judgment. (Exhibit “A” 2:1-6); *see* NRS 30.010, *et. seq.* (providing district courts with authority to determine questions of construction or validity of instruments, contracts, and statutes.) After entry of the Order Granting Defendant’s Motion for Summary Judgment, the defaulted defendants were joined as defendants to the claim and “defaults were entered against defendants below, other than the parties to this appeal” (Order to Show Cause dated April 5, 2018, 18-12985.) The defaults “act[ed] as an admission by the defending part[ies] of all material claims made in the complaint,” leaving only the “extent of damages” to be entered by default judgment. *Estate of Lomastro ex rel. Lomastro*, 124 Nev. at 1068; (Order to Show Cause filed April 5, 2018; 18-12985.)

The District Court's Order Granting Defendant's Motion for Summary Judgment did not set forth any damages of a "sum certain" or a sum that "by computation be made certain"; therefore, the active litigants signed and submitted their Stipulation and Order to the District Court in order to "apply to the court" for a judgment against the parties. NRCP 55(b)(2); (Exhibit "A" 4:3-4.) The parties to this appeal intended for their Stipulation and Order to be an application to the District Court to enter judgment as to the only claim in order for the parties to appeal the judgment. (Exhibit "A" 4:3-4.) In response to the stipulated application, the District Court entered Final Judgment in favor of RLEHOA in accordance with the District Court's February 14, 2013 Order Granting Defendant's Motion for Summary Judgment. (Exhibit "B.") Consequently, the Final Judgment resolved the only claim in this case.

Any "error" in the District Court's Final Judgment could only have been remedied, in order for it to enter judgment as to all claims and all parties, by specifically including the words "default judgment," citing NRCP 55(b)(2), and removing the NRCP 54(b) citation in the Final Judgment. Inclusion of the terms and the citation do not affect the substantial rights of the defaulted parties because "but for the alleged error, a different result might [not] reasonably have been reached." *Khoury v. Seastrand*, 132 Nev. Adv. Op. 52, 377 P.3d 81, 94 (2016); see *Drake v. Nelsen*, No. 66601, 2016 WL 2870675, at *2 (Nev. App. May 6, 2016) (unpublished opinion) (construing a motion titled as a motion to dismiss as a motion for judgment on the pleadings because no substantial rights were affected from the titling error). Even if the terms "default judgment" and a citation to NRCP 55(b)(2) were included in the Final Judgment, the same result would be reached because the only claim was completely resolved, no damages were awarded, and no issues remain for the District Court to resolve. Therefore, "any error" should be disregarded because it would not affect the substantial rights of the defaulted parties. NRCP 61.

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III. CONCLUSION

The Appellants request that this Court not dismiss this appeal, and find that the Final Judgment was an appealable judgment certified pursuant to NRCP 54(b), or, in the alternative, disregard “any errors” pursuant to NRCP 61 and find that the Final Judgment resolved all claims as to all parties.

DATED this 2nd day May, 2018.

GERBER LAW OFFICE, LLP



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Attorneys for Appellants

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on the 3rd day of May, 2018, I deposited for mailing, postage prepaid, at Elko, Nevada, a true and correct copy of the foregoing *Appelants' Response to Order to Show Cause* addressed as follows:

Gayle A. Kern, Esq.
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane, Suite 200
Reno, Nevada 89511


Employee of Gerber Law Offices, LLP

EXHIBIT A

EXHIBIT A

1 CASE NO. CV-C-12-175

2 DEPT. ~~1~~ 2

3 Affirmation: Pursuant to NRS 239B.030,
4 this document does not contain the social
5 security number of any person.

FILED

2018 FEB 26 AM 9:29

ELKO CO DISTRICT COURT

7 FRN. DEPUTY *WA*

6 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF ELKO**

8 ARTEMIS EXPLORATION COMPANY, a
9 Nevada Corporation,
10 Plaintiff,

11 vs.

12 RUBY LAKE ESTATES HOMEOWNER'S
13 ASSOCIATION, *et. al.*,

14 Defendants.

15 RUBY LAKE ESTATES HOMEOWNER'S
16 ASSOCIATION,
17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY,
20 a Nevada Corporation,

21 Counterdefendant.

22 RUBY LAKE ESTATES HOMEOWNER'S
23 ASSOCIATION,

24 Cross-Claimant,

25 vs.

26 STEPHEN WEST; *et. al.*,

27 Cross-Defendants.
28

STIPULATION AND ORDER FOR
DISMISSAL OF COUNTERCLAIMS
AND CROSS-CLAIM WITHOUT
PREJUDICE, WITHDRAWAL OF
PENDING MOTIONS, AND FOR
FINAL JUDGMENT

1 Plaintiff/Counterdefendant, ARTEMIS EXPLORATION COMPANY ("Artemis"),
2 Defendant/Cross-Defendant, HAROLD and MARY WYATT ("Wyatts"), and
3 Defendant/Counterclaimant/Cross-Claimant RUBY LAKE ESTATES HOMEOWNER'S
4 ASSOCIATION ("RLEHOA") (collectively the "Parties"), by and through their respective,
5 undersigned counsel, hereby STIPULATE AND AGREE, as follows:

6 1. The Parties stipulate to dismiss all RLEHOA's counterclaims and cross-claim without
7 prejudice pursuant to NRCP 41(a)(1)(ii) and 41(c).

8 2. The Parties stipulate to withdraw all pending motions, including RLEHOA's Motion
9 for Summary Judgment on Counterclaims, Artemis's Motion for Summary Judgment on Defendant's
10 Remaining Counterclaims, Artemis's Motion for Leave to File Supplement to Motion for Summary
11 Judgment on Defendant's Remaining Counterclaims, and Artemis's Motion for Reconsideration of
12 Orders Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment. The Parties
13 agree that all documents filed in the case shall be a matter of record upon appeal, and the law and
14 facts stated therein shall not be precluded from being presented on appeal.

15 3. The Parties stipulate that Artemis' and Wyatts' pending Motion to Dismiss
16 Counterclaims and Cross-Claims Under NRCP 41(e) and to Deny Pending Motions For Lack of
17 Jurisdiction ("Motion to Dismiss") is moot and, therefore, withdrawn upon the entry of this
18 Stipulation and Order and Final Judgment. The withdrawn Motion to Dismiss, and any arguments,
19 case law, or allegations in relation thereto, shall not be subject to or presented in any appeal.

20 4. This dismissal of RLEHOA's Counterclaims and Cross-claim shall not constitute an
21 adjudication on the merits, and all Parties stipulate and agree to bear their own fees and costs incurred
22 in the prosecution and/or defense of the Counterclaims and Crossclaim.

23 5. In accord with this Court's Order: Joinder of Necessary Parties entered September 11,
24 2015 ("Joinder Order"), Artemis filed its Second Amended Complaint on or about April 14, 2016,
25 naming all additional property owners of RLEHOA, and RLEHOA filed its Answer, Counterclaims,
26 and Cross-claim on or about April 14, 2016. Thereafter, and following proper service of process of
27 the Second Amended Complaint and RLEHOA's Cross-claim, the Wyatts filed their Answer on or
28 about May 16, 2016. The Second Amended Complaint contains a single declaratory relief claim

1 seeking determination that RLEHOA does not constitute a common interest community pursuant to
2 NRS Chapter 116. In further accord with the Court's Joinder Order, RLEHOA's single Cross-claim
3 against the other property owners is also a declaratory relief claim seeking a determination that
4 RLEHOA is a common interest community subject to the provisions of NRS Chapter 116.

5 6. Artemis, RLEHOA, and the Wyatts are the only parties which have appeared in this
6 matter. All other named property owner/defendants/cross-defendants were properly served with the
7 Second Amended Complaint and RLEHOA's Cross-claim in accord with the Nevada Rules of Civil
8 Procedure, but no appearances were made, and defaults have been duly entered with the Court as
9 to all of the non-appearing property owners/defendants/cross-defendants.

10 7. The Parties stipulate that, with the dismissal of the Cross-claim without prejudice,
11 the non-appearing property owners/defendants/cross-defendants and the Wyatts shall no longer be
12 cross-defendants to this matter. The Wyatts shall remain as party defendants only by virtue of
13 Artemis's Second Amended Complaint and the Wyatts' Answer filed on or about May 16, 2016.
14 Defaults remain of record as to the non-appearing property owners/defendants to Artemis's Second
15 Amended Complaint for declaratory relief, which is identical to the declaratory relief claim asserted
16 in Artemis's original Complaint filed on or about March 2, 2012 ("Original Complaint").

17 8. The Wyatts stipulate and agree to be bound by this Court's Order Granting RLEHOA's
18 Motion for Summary Judgment entered February 14, 2013, on Artemis's declaratory relief claim as
19 asserted in its Original Complaint, and which is identical to Artemis's declaratory relief claim in its
20 Second Amended Complaint. The Wyatts further stipulate and agree to be bound by this Court's
21 Order Denying Artemis's Motion for Summary Judgment entered February 12, 2013 on Artemis's
22 declaratory relief claim as asserted in its Original Complaint, and which is identical to Artemis's
23 declaratory relief claim in its Second Amended Complaint. In both of its Orders, the Court determined
24 as a matter of law that RLEHOA is a common interest community pursuant to NRS Chapter 116,
25 valid at its inception, and continues to be so today. The Wyatts further stipulate and agree to be bound
26 by any decision from the Nevada Supreme Court and/or Nevada Court of Appeals in connection with
27 any appeal of this Court's February 2013 Orders referenced herein-above.

28 ///

1 9. The Parties stipulate and agree that all claims have been resolved as to all parties which
2 have appeared in this matter, including the Wyatts who have stipulated to be bound by this Court's
3 February 12, 2013 and February 14, 2013 Orders, that the other named property owners/defendants
4 were properly served and defaulted as to Artemis's Second Amended Complaint, which is identical
5 to Artemis's declaratory relief claim already adjudicated by the Court's February 2013 Orders.

6 10. Wherefore, the Parties stipulate, agree, and request that the Court enter Final Judgment
7 as to Artemis, RLEHOA, and the Wyatts, and as to the defaulted defendants pursuant to NRCP 54(b)
8 because there is no just reason to delay entry of Final Judgment. A proposed Judgment is attached
9 hereto as Exhibit "A".

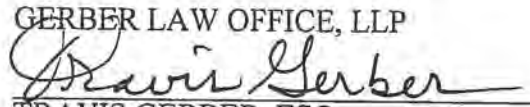
10 DATED this 16th day of February, 2018.

11 KERN & ASSOCIATES, LTD.

12 
13 GAYLE A. KERN, ESQ.
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Attorneys for Defendant Ruby Lake
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DATED this 20th day of February, 2018.

GERBER LAW OFFICE, LLP

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Attorneys for Plaintiff Artemis Exploration
Company and Defendants Harold and Mary
Wyatt

ORDER

19
20 IT IS SO ORDERED this 26 day of February, 2018.

21
22
23 
24 DISTRICT COURT JUDGE
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EXHIBIT “A”

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

3 *Affirmation: This document does*
4 *not contain the social security*
5 *number of any person.*

6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a
9 Nevada Corporation,

10 Plaintiff,

FINAL JUDGMENT

11 vs.

12 RUBY LAKE ESTATES HOMEOWNER'S
13 ASSOCIATION AND DOES I-X,

14 Defendants.
15 _____/

16 The Court, having reviewed and considered the parties' Stipulation and Order for Dismissal
17 of Counterclaims and Crossclaim Without Prejudice, Withdrawal of Pending Motions, and for Final
18 Judgment ("Stipulation and Order"), and further based upon this Court's review and consideration
19 of the Motion for Summary Judgment of Defendant Ruby Lake Estates Homeowner's Association
20 ("RLEHOA") on Plaintiff Artemis Exploration Company's ("Artemis's") Declaratory Relief Claim,
21 the exhibits in support of RLEHOA's Motion, Artemis's Opposition thereto, RLEHOA's Reply; and
22 Artemis's Motion for Summary Judgment on its Declaratory Relief Claim, RLEHOA's Opposition
23 thereto, and Artemis's Reply; and the Court being fully informed in the premises:
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25

26 The Court finds that a Complaint was filed by Artemis on March 2, 2012, which contained
27 a cause of action for Declaratory Relief, and other causes of action that were subsequently,
28 voluntarily dismissed by Artemis. On April 2, 2012, RLEHOA answered the Complaint and filed
counterclaims against Artemis. After competing Motions for Summary Judgment were filed by

1 Artemis and RLEHOA regarding Artemis's sole claim of Declaratory Relief, this Court entered its
2 Order Granting RLEHOA's Motion for Summary Judgment entered February 14, 2013, and the
3 Court's Order Denying Artemis's Motion for Summary Judgment entered February 12, 2013. The
4 Orders determined as a matter of law that RLEHOA is a common interest community pursuant to
5 NRS Chapter 116, valid at its inception, and it continues to be so today.
6

7 Pursuant to this Court's Order: Joinder of Necessary Parties, filed September 11, 2015,
8 Artemis filed its Second Amended Complaint on April 14, 2016, against RLEHOA and all property
9 owners within Ruby Lake Estates subdivision. RLEHOA filed its Answer to Second Amended
10 Complaint, Counterclaim and Cross-Claim on April 14, 2016, which asserted Counterclaims against
11 Artemis and a Cross-Claim against all property owners within Ruby Lake Estates subdivision
12 seeking a determination that RLEHOA is a common interest community pursuant to NRS Chapter
13 116: All property owners within Ruby Lake Estates subdivision were properly served in accord with
14 the Nevada Rules of Civil Procedure with Artemis's Second Amended Complaint and RLEHOA's
15 Cross-claim. Except for Harold and Mary Wyatt and Artemis, all other property
16 owners/defendants/cross-defendants failed to respond or appear, and defaults for each of them have
17 been entered. Pursuant to the afore-mentioned Stipulation and Order, RLEHOA's counterclaims
18 and cross-claim have now been dismissed without prejudice, and all pending Motions have been
19 withdrawn. Furthermore, the Wyatts as party defendants to Artemis's Second Amended Complaint
20 have stipulated and agreed to be bound by this Court's Order Granting RLEHOA's Motion for
21 Summary Judgment entered February 14, 2013, and the Court's Order Denying Artemis's Motion
22 for Summary Judgment entered February 12, 2013, and any subsequent appeal related thereto.
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26 Thus, the Court finds that the only claim not dismissed is Artemis's declaratory judgment
27 claim, which was filed as part of Artemis's original Complaint and re-filed in identical form in
28 Artemis's Second Amended Complaint. Artemis's claim was resolved by the Court's Order Granting

1 RLEHOA's Motion for Summary Judgment entered February 14, 2013, and the Court's Order
2 Denying Artemis's Motion for Summary Judgment entered February 12, 2013. These Orders have
3 not been reconsidered or reversed, and therefore as standing Orders this Court finds that Artemis's
4 claim for declaratory relief has been resolved as a matter of law in accordance with the Court's
5 Orders as to all active litigants which have appeared in this matter, Artemis, RLEHOA, Harold
6 Wyatt, and Mary Wyatt.

8 ***IT IS THEREFORE ORDERED*** that ***JUDGMENT*** is entered in favor of RLEHOA in
9 accord with the Court's Order Granting RLEHOA's Motion for Summary Judgment entered
10 February 14, 2013, and the Court's Order Denying Artemis's Motion for Summary Judgment
11 entered February 12, 2013, and that RLEHOA is a common interest community pursuant to NRS
12 Chapter 116, valid at its inception, and it continues to be so today.

14 ***IT IS FURTHER ORDERED*** that, as to the properly served and defaulted property owner
15 defendants to Artemis's Second Amended Complaint, there is no just reason for delay, Artemis's
16 identical claim for declaratory relief has been resolved as to all appearing parties, and that this
17 ***JUDGMENT*** shall be entered as a ***FINAL JUDGMENT*** in accord with NRCP 54(b).

19 DATED this ____ day of _____, 2018.

23 _____
24 DISTRICT COURT JUDGE

EXHIBIT B

EXHIBIT B

1 CASE NO. CV-C-12-175

2 DEPT. NO. 12

3 *Affirmation: This document does*
4 *not contain the social security*
5 *number of any person.*

FILED

2018 FEB 26 AM 9:29

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY JA

6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a
9 Nevada Corporation,

10 Plaintiff,

11 FINAL JUDGMENT

12 vs.

13 RUBY LAKE ESTATES HOMEOWNER'S
14 ASSOCIATION AND DOES I-X,

15 Defendants.
16 _____ /

17 The Court, having reviewed and considered the parties' Stipulation and Order for Dismissal
18 of Counterclaims and Crossclaim Without Prejudice, Withdrawal of Pending Motions, and for Final
19 Judgment ("Stipulation and Order"), and further based upon this Court's review and consideration
20 of the Motion for Summary Judgment of Defendant Ruby Lake Estates Homeowner's Association
21 ("RLEHOA") on Plaintiff Artemis Exploration Company's ("Artemis's") Declaratory Relief Claim,
22 the exhibits in support of RLEHOA's Motion, Artemis's Opposition thereto, RLEHOA's Reply; and
23 Artemis's Motion for Summary Judgment on its Declaratory Relief Claim, RLEHOA's Opposition
24 thereto, and Artemis's Reply; and the Court being fully informed in the premises:
25

26 The Court finds that a Complaint was filed by Artemis on March 2, 2012, which contained
27 a cause of action for Declaratory Relief, and other causes of action that were subsequently,
28 voluntarily dismissed by Artemis. On April 2, 2012, RLEHOA answered the Complaint and filed
counterclaims against Artemis. After competing Motions for Summary Judgment were filed by

1 Artemis and RLEHOA regarding Artemis's sole claim of Declaratory Relief, this Court entered its
2 Order Granting RLEHOA's Motion for Summary Judgment entered February 14, 2013, and the
3 Court's Order Denying Artemis's Motion for Summary Judgment entered February 12, 2013. The
4 Orders determined as a matter of law that RLEHOA is a common interest community pursuant to
5 NRS Chapter 116, valid at its inception, and it continues to be so today.
6

7 Pursuant to this Court's Order: Joinder of Necessary Parties, filed September 11, 2015,
8 Artemis filed its Second Amended Complaint on April 14, 2016, against RLEHOA and all property
9 owners within Ruby Lake Estates subdivision. RLEHOA filed its Answer to Second Amended
10 Complaint, Counterclaim and Cross-Claim on April 14, 2016, which asserted Counterclaims against
11 Artemis and a Cross-Claim against all property owners within Ruby Lake Estates subdivision
12 seeking a determination that RLEHOA is a common interest community pursuant to NRS Chapter
13 116. All property owners within Ruby Lake Estates subdivision were properly served in accord with
14 the Nevada Rules of Civil Procedure with Artemis's Second Amended Complaint and RLEHOA's
15 Cross-claim. Except for Harold and Mary Wyatt and Artemis, all other property
16 owners/defendants/cross-defendants failed to respond or appear, and defaults for each of them have
17 been entered. Pursuant to the afore-mentioned Stipulation and Order, RLEHOA's counterclaims
18 and cross-claim have now been dismissed without prejudice, and all pending Motions have been
19 withdrawn. Furthermore, the Wyatts as party defendants to Artemis's Second Amended Complaint
20 have stipulated and agreed to be bound by this Court's Order Granting RLEHOA's Motion for
21 Summary Judgment entered February 14, 2013, and the Court's Order Denying Artemis's Motion
22 for Summary Judgment entered February 12, 2013, and any subsequent appeal related thereto.
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26 Thus, the Court finds that the only claim not dismissed is Artemis's declaratory judgment
27 claim, which was filed as part of Artemis's original Complaint and re-filed in identical form in
28 Artemis's Second Amended Complaint. Artemis's claim was resolved by the Court's Order Granting

1 RLEHOA's Motion for Summary Judgment entered February 14, 2013, and the Court's Order
2 Denying Artemis's Motion for Summary Judgment entered February 12, 2013. These Orders have
3 not been reconsidered or reversed, and therefore as standing Orders this Court finds that Artemis's
4 claim for declaratory relief has been resolved as a matter of law in accordance with the Court's
5 Orders as to all active litigants which have appeared in this matter, Artemis, RLEHOA, Harold
6 Wyatt, and Mary Wyatt.

8 *IT IS THEREFORE ORDERED* that *JUDGMENT* is entered in favor of RLEHOA in
9 accord with the Court's Order Granting RLEHOA's Motion for Summary Judgment entered
10 February 14, 2013, and the Court's Order Denying Artemis's Motion for Summary Judgment
11 entered February 12, 2013, and that RLEHOA is a common interest community pursuant to NRS
12 Chapter 116, valid at its inception, and it continues to be so today.

14 *IT IS FURTHER ORDERED* that, as to the properly served and defaulted property owner
15 defendants to Artemis's Second Amended Complaint, there is no just reason for delay, Artemis's
16 identical claim for declaratory relief has been resolved as to all appearing parties, and that this
17 *JUDGMENT* shall be entered as a *FINAL JUDGMENT* in accord with NRCP 54(b).

19 DATED this 26 day of February, 2018.

22 /S/ ALVIN R KACIN

23 _____
24 DISTRICT COURT JUDGE
25
26
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EXHIBIT C

EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION
COMPANY, a Nevada corporation,
HAROLD WYATT; AND MARY
WYATT,

Appellants,

vs.
RUBY LAKE ESTATES
HOMEOWNER'S ASSOCIATION,
Respondent

Supreme Court No. 75323

District Court Case No. CV-C-12-175

AMENDMENT TO THE
DOCKETING STATEMENT

AMENDMENT TO THE DOCKETING STATEMENT

COMES NOW Artemis Exploration Company, Harold Wyatt, and Mary Wyatt, Appellants, by and through their undersigned counsel of Gerber Law Offices, LLP, and amend sections 4, 24, and 25 of the Docketing Statement, as follows:

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

Uncheck the "Default Judgment" box.

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? **"No."**

25. (a) Specify the claims remaining pending below: **"Default Judgments on Artemis's Declaratory Relief claim have not been entered as to the defaulted parties."**

(b) Specify the parties remaining below: **"All defaulted parties, which include all parties other than Artemis Exploration Company, Harold and Mary Wyatt, and Ruby Lake Estates Homeowners' Association."**

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

- (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.”**

DATED this ____ day May, 2018.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on the ____ day of May, 2018, I deposited for mailing, postage prepaid, at Elko, Nevada, a true and correct copy of the foregoing *Amendment to the Docketing Statement* addressed as follows:

Gayle A. Kern, Esq.
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