

1 I declare under penalty of perjury under the laws of the United States of America and
2 the State of Nevada that the foregoing is true and correct.

3 DATED this 8TH day of March, 2017.


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6 LARRY HARTMAN
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Exhibit B

Exhibit B

DEANER, MALAN, LARSEN & CIULLA
Attorneys at Law

Charles W. Deener
Douglas R. Malan
Brent A. Larsen†
Anthony Ciulla

A PROFESSIONAL CORPORATION
720 South Fourth Street, Suite 300
Las Vegas, Nevada 89101
Telephone (702) 382-6911
Fax (702) 366-0854
www.deanerlaw.com

J. Douglas Deener
(1944-1990)

Also Licensed In:
† Utah

Of Counsel:
Thomas D. Beatty

August 11, 2016

VIA EMAIL (etran@lipsonneilson.com)
and U.S. MAIL

Eric N. Tran, Esq.
Lipson, Neilson, Cole, Seltzer & Garin
9900 Covington Cross Drive, Ste. 120
Las Vegas, Nevada 89144

Re: *145 East Harmon II Trust, et al. v. MGM Resorts International, et al.*
Case No.: A-16-733764-C

Dear Eric:

Since we last spoke on the telephone, I have had the opportunity to review the Complaint in the above-referenced matter. Based on what I saw in the Complaint, I must ask you to voluntarily dismiss my client, The Residences at MGM Grand - Tower A Owners' Association (hereinafter "Tower A"). In your Complaint you state that my client is a limited liability company. In fact, it is a non-profit homeowners' association. This is a fact you could have easily ascertained from the Nevada Secretary of State records prior to filing your Complaint. Please see the enclosed printout from the Secretary of State.

On behalf of my client I must object to the "gunshot method" of your Complaint in that you are seemingly naming as a Defendant every conceivable entity that ever had any association with your client's property, regardless of whether they had anything to do with the employee who you claim made an allegedly unlawful entry into your client's property. Before you named my client as a Defendant, however, I believe that your NRCP 11 obligations required you to do more due diligence in investigating any alleged involvement that Tower A had regarding the particular unauthorized entry that is the subject of your Complaint.

Moreover, your own client should know, based on the amount of annual assessments that it pays into the Tower A Association, that Tower A's assessment collections could not allow it to have a budget to hire employees or a staff. For your information, the annual assessments at Tower A run from \$25 to \$50 per unit. Thus, the employee that you are complaining about is clearly an employee of some entity other than my client.

Eric N. Tran, Esq.
August 11, 2016
Page No. 2

Another objection that I have to your Complaint is that it repeatedly uses the phrase the "MGM Defendants." Your own Complaint identifies certain MGM Defendants as being subsidiaries of MGM International. However, your Complaint very carefully acknowledges that my client is not a subsidiary of MGM International. Yet, while you make a distinction between my client and the other MGM Defendants in terms of its ownership, you make no distinction in any other part of the Complaint as to what my client's alleged involvement is or was with any of the other Defendants' role in dealing with your client's property. Instead, you merely lumped all the Defendants together in alleged wrongdoing, without mentioning any particular act of wrongdoing by my client.

You also make an allegation that each and every Defendant in the Complaint owns an interest in your client's property. Your client knows that my client is merely a sub-association in a condominium hotel development. As such my client does not own any property. Please tell me what your pre-complaint investigation turned up to support any allegation that my client owns any property, and in particular any interest in your client's property.

If you do not voluntarily dismiss my client, you will force my client to incur unnecessary attorneys fees. When we prevail in this matter, my client will have to consider filing a special assessment lien against your client because your client will be the sole cause of having caused my client to unnecessarily incur expenses in the way of attorneys fees. It makes no sense that all the other owners in Tower A should have to pay the cost for attorneys fees in defending your client's frivolous claims, when such expenses should have been avoided if you and your client had been more diligent in ascertaining whether my client was ever involved with the employee's actions that you are complaining about.

Moreover, if you do not dismiss my client from this case, then you are going to compel us to file a motion to dismiss for failure to state a claim, or for a more definite statement, because your Complaint fails to give any particulars as to what role, if any, you allege my client had in entering into your client's property. While it may be true that an employee of one of the other Defendants entered your client's property, your Complaint has no specific or direct allegation that could possibly place any of my client's representatives at the scene of the allegations that are the subject of your Complaint. Your Complaint is completely void of mentioning any such facts.

Based on the foregoing, we respectfully request that you dismiss my client from this case. In our last telephone conversation you stated that it is up to my client to prove to you that my client was not involved. I believe you are proceeding from an erroneous premise because the Plaintiff has the initial burden of proof and persuasion, and even the initial duty, before suing a defendant, to make a proper and diligent investigation as to whether the targeted defendant had any real connection to the allegations being made in the Complaint.

Eric N. Tran, Esq.
August 11, 2016
Page No. 3

I am of the belief that you do not have any evidence to tie my client into any of the allegations in your Complaint setting forth a claim for wrongful entry into the property. If I am correct in that belief, then it is your duty to immediately dismiss my client from this case. The failure to do so will present serious repercussions.

If you are in possession of any facts that can tie my client into your client's claims, then I would be more than happy to receive such information.

I look forward to hearing from you.

Sincerely,

DEANER, MALAN, LARSEN & CIULLA

A handwritten signature in dark ink, appearing to read "Brent Larsen" with a stylized flourish at the end.

Brent Larsen, Esq.,

BAL/ss
Encl.
cc: Clients

THE RESIDENCES AT MGM GRAND - TOWER A OWNERS' ASSOCIATION

Business Entity Information			
Status:	Active	File Date:	1/9/2004
Type:	Domestic Non-Profit Corporation	Entity Number:	C359-2004
Qualifying State:	NV	List of Officers Due:	1/31/2017
Managed By:		Expiration Date:	
NV Business ID:	NV20041348419	Business License Exp:	

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	ASSOCIA NEVADA SOUTH	Address 1:	3675 W CHEYENNE AVE STE 100
Address 2:		City:	NORTH LAS VEGAS
State:	NV	Zip Code:	89032
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Other		
Jurisdiction:	NORTH LAS VEGAS	Status:	Active

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

-	Officers	Include Inactive Officers	
Director - JILL ARCHUNDE			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	
City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	
Secretary - ROBERT BERGER			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	
City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	
Treasurer - ROBERT BERGER			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	
City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	
President - TITUS SGRO			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	

City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	

- Actions/Amendments			
Action Type:	Articles of Incorporation		
Document Number:	C359-2004-001	# of Pages:	5
File Date:	1/9/2004	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	C359-2004-002	# of Pages:	2
File Date:	6/10/2004	Effective Date:	
List of Officers for 2004 to 2005			
Action Type:	Registered Agent Resignation		
Document Number:	C359-2004-003	# of Pages:	4
File Date:	8/5/2004	Effective Date:	
GORDON & SILVER, LTD. 9TH FLOOR 3960 HOWARD HUGHES PARKWAY LAS VEGAS NV 89109 RAF			
Action Type:	Annual List		
Document Number:	C359-2004-004	# of Pages:	2
File Date:	12/17/2004	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060057807-64	# of Pages:	1
File Date:	2/22/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060094483-25	# of Pages:	1
File Date:	3/31/2005	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	20060084482-14	# of Pages:	1
File Date:	3/31/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060014099-01	# of Pages:	2
File Date:	1/10/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060776791-35	# of Pages:	1
File Date:	12/1/2006	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Address Change		
Document Number:	20060812837-45	# of Pages:	1
File Date:	12/19/2006	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	20070001849-31	# of Pages:	1
File Date:	12/28/2007	Effective Date:	
(No notes for this action)			

Action Type:	Annual List	
Document Number:	20080054435-51	# of Pages: 1
File Date:	1/24/2008	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20090054722-72	# of Pages: 1
File Date:	1/26/2009	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20100389707-97	# of Pages: 1
File Date:	5/21/2010	Effective Date:
2010/2011		
Action Type:	Annual List	
Document Number:	20110066985-49	# of Pages: 1
File Date:	1/27/2011	Effective Date:
ALO2011-2012		
Action Type:	Annual List	
Document Number:	20120041128-51	# of Pages: 1
File Date:	1/20/2012	Effective Date:
12-13		
Action Type:	Annual List	
Document Number:	20130223795-25	# of Pages: 1
File Date:	4/3/2013	Effective Date:
(No notes for this action)		
Action Type:	Miscellaneous	
Document Number:	20130311845-98	# of Pages: 1
File Date:	5/8/2013	Effective Date:
Pursuant to NRS 116 & 78.170(2)		
Action Type:	Miscellaneous	
Document Number:	20130451614-67	# of Pages: 1
File Date:	7/3/2013	Effective Date:
PURSUANT TO NRS 116		
Action Type:	Miscellaneous	
Document Number:	20140075614-00	# of Pages: 1
File Date:	1/29/2014	Effective Date:
PURSUANT TO NRS 116		
Action Type:	Miscellaneous	
Document Number:	20140093424-89	# of Pages: 1
File Date:	2/8/2014	Effective Date:
PURSUANT TO NRS 116		
Action Type:	Annual List	
Document Number:	20140123066-86	# of Pages: 1
File Date:	2/20/2014	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20140786767-97	# of Pages: 1
File Date:	12/1/2014	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20150522920-28	# of Pages: 1

Entity Details - Secretary of State, Nevada

<http://nvsos.gov/sosentitysearch/PrintCorp.aspx?lx&nvq=nn%2b7poH...>

File Date:	11/30/2015	Effective Date:	
(No notes for this action)			

Exhibit C

Exhibit C

Brent Larsen

From: Eric Tran <ETran@lipsonneilson.com>
Sent: Monday, September 19, 2016 11:56 AM
To: Brent Larsen
Cc: ewyatt@wshblaw.com; Suzanne Saavedra
Subject: RE: 145 East V. MGM Tower A

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Brent,

I have been swamped at work lately and I will be out of the country for the next two weeks. I'll have the voluntary dismissal of tower A done when I come back.

Eric

From: Brent Larsen [<mailto:BLarsen@deanerlaw.com>]
Sent: Tuesday, September 13, 2016 5:13 PM
To: Eric Tran <ETran@lipsonneilson.com>
Cc: ewyatt@wshblaw.com; Suzanne Saavedra <SSaavedra@deanerlaw.com>
Subject: RE: 145 East V. MGM Tower A

Hello Eric

On August 26th you telephoned me to tell me that you were going to proceed with filing a voluntary dismissal of the Tower A hoa, and that the dismissal would be without prejudice. You also told me that you would have the dismissal filed by the end of the next week. To date I have not seen the dismissal. Please tell me what is going on. I hope to hear from you soon.

Brent Larsen, Esq.
Deaner, Malan, Larsen & Ciulla
720 S. Fourth Street, #300
Las Vegas, Nevada 89101
(702) 382-6911
(702) 366-0854 (fax)
blarsen@deanerlaw.com

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication (including any attachments) contains confidential and/or privileged information intended only for the addressee, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. If you have received this communication in error, please reply to this e-mail, or call us immediately at (702) 382-6911, and ask to speak to the sender of the communication. Thank you. Deaner, Malan, Larsen & Ciulla - Attorneys at Law.

From: Eric Tran [<mailto:ETran@lipsonneilson.com>]
Sent: Tuesday, August 02, 2016 10:16 AM
To: Brent Larsen
Cc: Suzanne Saavedra
Subject: RE: 145 East V. MGM Tower A

Exhibit D

Exhibit D

Brent Larsen

From: Brent Larsen
Sent: Monday, December 12, 2016 3:33 PM
To: Steve.lewis@stoamigo.com
Cc: Suzanne Saavedra; etran@lipsonneilson.com; ewyatt@wshblaw.com
Subject: FW: 145 E. Harmon II Trust v. MGM Resorts International, et al.
Attachments: Tran.001 8-11-2016 (w-encl).pdf

Hello Steve

Thank you for your recent email. The letter attached to this email is the letter I sent to Mr. Tran back on August 11th, wherein we made a demand to have my client dismissed from the complaint. As a result of that letter Mr. Tran agreed in writing to dismiss my client from the case. Unfortunately, because of Mr. Tran's lack of diligence we now have to start this process all over again. I hope to hear from you soon.

Brent Larsen, Esq.
Deaner, Malan, Larsen & Ciulla
720 S. Fourth Street, #300
Las Vegas, Nevada 89101
(702) 382-6911
(702) 366-0854 (fax)
blarsen@deanerlaw.com

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From: Suzanne Saavedra
Sent: Thursday, August 11, 2016 2:05 PM
To: Eric N. Tran Esq. (etran@lipsonneilson.com)
Cc: Brent Larsen
Subject: 145 E. Harmon II Trust v. MGM Resorts International, et al.

Letter of today's date from Mr. Larsen and enclosure are attached.

Suzanne Saavedra-Zaranti
Legal Assistant to Brent Larsen, Esq.
Deaner, Malan, Larsen & Ciulla
720 S. Fourth Street, Ste. 300
Las Vegas, Nevada 89101
(702) 382-6911
(702) 366-0854 (fax)
ssaavedra@deanerlaw.com

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Exhibit G

Exhibit G

Receipt/Conformed Copy

Requestor:

NEVADA TITLE COMPANY

05/10/2006 14:17:00 T20060002761

Book/Instr: 20060510-0004007

Restrictio Page Count: 66

Fees: \$79.00 N/C Fee: \$25.00

APN# 162-21-315-001 through 577

RETURN TO:

NEVADA TITLE COMPANY
2500 N. BUFFALO DR. #150
LAS VEGAS, NV 89128

Frances Deane

Clark County Recorder

Name of Document: DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS AND RESERVATION OF
EASEMENTS FOR THE RESIDENCES AT MGM GRAND -
TOWER A

This page added to provide additional information required by
NRS 111.312 Sectins 1-2 (Additional recording fee applies).

This cover page must be typed or printed clearly in black ink only.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
THE RESIDENCES AT MGM GRAND -TOWER A**

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Residences at MGM Grand - Tower A, a Nevada limited liability company (this "*Declaration*"), is dated for reference purposes only as of December 9, 2003 and is made by Turnberry/MGM Grand Towers LLC, a Nevada limited liability company (the "*Declarant*").

PRELIMINARY STATEMENTS

A. The Declarant is in the process of acquiring certain real property located in Clark County, Nevada, more particularly described on Exhibit "A" attached hereto (the "*Real Property*" and, as improved, the "*Condominium Property*").

B. It is the desire and intention of the Declarant through this Declaration to create a "common interest community" as defined in NRS Section 116.110323 which will be a "condominium" as defined in NRS Section 116.110325, and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all property made subject to this Declaration.

C. It is contemplated that the Condominium Property will be benefited and burdened by a reciprocal easement agreement between MGM Grand Hotel, LLC, a Nevada limited liability company and the Declarant (the "*Reciprocal Easement Agreement*"), which, among other things, will grant certain rights to the Owners over and upon the adjoining properties.

D. The Declarant hereby declares that all of the Condominium Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, reservations, rights, easements, conditions and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, maintenance, improvement and sale of Units for the purpose of enhancing the value, desirability and attractiveness of the Condominium Property. All provisions of this Declaration including, without limitation, the easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes upon the Condominium Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants in this Declaration shall run with and burden the Condominium Property and all Persons having or acquiring any right, title or interest in the Condominium Property, or any part thereof, and their successive owners and assigns.

E. The Declarant, its successors, assigns and grantees, covenant and agree that the undivided interest in the Common Elements, the Membership, any easements conveyed therewith and the fee title to each respective Unit conveyed therewith shall not be separated or separately conveyed, and each such undivided interest, Membership and easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in

19. *Violations.*

19.1. *Limitation on Expenditures.* The Association shall not incur litigation expenses, including, without limitation, attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings without the approval of a majority of the Class A Members and a majority of the Class B Members, excluding the voting power of any Owner who would be a defendant in such proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the Governing Documents, or (ii) collect any unpaid Assessments levied pursuant to this Declaration.

19.2. *Schedule of Fines.* The Board may adopt a schedule of reasonable fines or penalties and a policy of administering such fines or penalties which fines or penalties, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, invitees, tenants, guests or Family of such Owner, to comply with any provisions of the Governing Documents. Such fines or penalties may only be assessed by the Board, against the Owner and the Unit of the violating Owner, after Notice and Hearing.

19.3. *Right to Enforce.* The Board, any Owner and, as applicable, the Hotel Unit Owner (not at the time in default hereunder), or the Declarant (so long as the Declarant is an Owner) shall be entitled to enforce the Governing Documents. Each Owner shall have a right of action against the Association for the Association's failure to comply with the Governing Documents. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

20. *General Provisions.*

20.1. *No Waiver.* Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision, or any other provision of this Declaration.

20.2. *Attorneys' Fees.* Any judgment rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and costs of court.

20.3. *Severability.* The provisions of this Declaration shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions of this Declaration.

20.4. *Interpretation.* The Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the other, unless the context dictates otherwise.

Exhibit H

Exhibit H

Steven D. Grierson

SINGER & LARSEN P.C.

4475 S. Pecos Road

Las Vegas, Nevada 89121

Telephone (702) 454-2111 • Facsimile (702) 454-1333

1 STDM
2 BRENT LARSEN, ESQ.
3 Nevada Bar No. 1184
4 SINGER & LARSEN P.C.
5 4475 S. Pecos Road
6 Las Vegas, Nevada 89121
7 (702) 454-2111
8 blarsen@deanerlaw.com
9 Attorney for Defendant,
10 The Residences at MGM Grand -
11 Tower A Owners' Association

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 145 EAST HARMON II TRUST, ANTHONY
16 TAN AS TRUSTEE OF THE 145 EAST
17 HARMON II TRUST,

18 Plaintiffs,

19 v.

20 MGM RESORTS INTERNATIONAL; MGM
21 GRAND CONDOMINIUMS, LLC; THE
22 SIGNATURE CONDOMINIUMS, LLC;
23 SIGNATURE TOWER I, LLC; THE
24 RESIDENCES AT MGM GRAND - TOWER
25 A OWNERS' ASSOCIATION; and DOES I-
26 X,

27 Defendants.

Case No.: A-16-733764-C
Dept. No.: XVIII

28 **STIPULATION AND ORDER FOR DISMISSAL**

COMES NOW the Plaintiff, 145 EAST HARMON II TRUST and ANTHONY TAN AS TRUSTEE OF THE 145 EAST HARMON II TRUST (hereinafter "the Plaintiff"), by and through their attorney, STEPHEN K. LEWIS, ESQ., and the Defendant THE RESIDENCES AT MGM GRAND - TOWER A OWNERS' ASSOCIATION (hereinafter "Defendant/MGM Tower A"), by and through its attorney, BRENT LARSEN, ESQ. of the law firm of SINGER & LARSEN P.C., and hereby stipulate and agree to the following:

1. All claims asserted in the Plaintiff's First Amended Complaint against Defendant MGM Tower A, are hereby dismissed with prejudice.

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Exhibit I

Exhibit I

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1 collections, and dealing with internal disputes among disgruntled association members.
2 Thus, I believe that I have focused my practice on trying to specialize on contract, real
3 property and association law in representing entities in their various legal issues.

4 6. Throughout my career I am frequently asked to give seminars on the subjects
5 that I practice in. On many occasions I have agreed to present seminars wherein I have co-
6 authored several of the sections of various books put out by the companies producing
7 seminars. I have also participated as an author in the Nevada Civil Practice Manual. When
8 the manual was first created I co-authored the chapter on parties and I was the sole author of
9 the chapter on receivers. I am also recognized as the current author of the chapter on service
10 of process.

11 7. Frequently I have been asked to represent other lawyers, and even judges, when
12 they have been presented with legal difficulties.

13 8. I can also state that the hours shown on the attached billing statements
14 accurately reflect the work that I have done in this case. Some of the billing statements
15 contain redactions, which have been redacted in order to protect the attorney/client privilege
16 and work product that needs to be safeguarded on behalf of my client.

17 9. I have endeavored to keep the fees as minimal as possible. In fact, many of the
18 billing entries actually show a reduced amount of time, in order to assist my client so that it
19 would not be over burdened with legal expense in defending against this lawsuit, that I
20 determined from the beginning of my representation, to be wholly without merit as far as
21 Tower A is concerned. As an example, the Exhibit 3 billing statement attached hereto states
22 that the number of my hours for May 18th is 2.5 hours. A more accurate number would be 5
23 hours. It is my opinion that all the hours shown on the billing statements were necessarily
24 incurred.

25 10. Even after we filed a Motion to Dismiss and/or Summary Judgment, it was
26 necessary to continue to take an aggressive posture because the Plaintiff's counsel threatened
27 more litigation as soon as I informed him that it would be necessary to address an award of
28 attorneys' fees if we were to talk about a stipulation for dismissal at such a late hour of the

1 litigation. The Plaintiffs' counsel told me in an email that he intended to oppose Tower A's
2 Motion for Summary Judgment and to seek his own recovery of attorneys' fees. Ultimately,
3 with the passage of time, cooler heads prevailed so that Plaintiffs' counsel apparently
4 realized that opposing Tower A's Motion for Summary Judgment would only add to the
5 bleeding by both sides in having to unnecessarily incur more attorneys' fees with further
6 litigation. However, the Plaintiffs' late concession in agreeing to dismiss the case, does not
7 erase or remove the fact that: (1) Tower A should have been dismissed from this case in
8 September of 2016; and (2) because Tower A was not timely dismissed, it was compelled to
9 be so heavily invested in attorneys' fees, such that it had already incurred over nearly \$8,000
10 in costs plus attorneys' fees at that given point in time. I submit that given such
11 circumstances, Tower A was fully justified in seeking a recovery of attorneys' fees.

12 11. In all events, I believe that the attached billing records and the work product
13 that has been submitted to the court demonstrates: (1) my qualities as an advocate; (2) the
14 quality of work that I have done in this case; (3) the volume of work that has been done in
15 this case, which I have tried to keep to as few hours as possible; and (4) for the result. The
16 result is obviously favorable to my client as the prevailing party.

17 I declare under penalty of perjury under the laws of the United States of America and
18 the State of Nevada that the foregoing is true and correct.

19 DATED this 18 day of May, 2017.

20
21 
22 BRENT LARSEN

Exhibit 1

Exhibit 1

DEANER, MALAN, LARSEN & CIULLA
720 SOUTH FOURTH STREET
SUITE #300
LAS VEGAS, NV 89101
702/382-6911

EIN # 88-0135196

RESIDENCES AT MGM GRAND - TOWER A OWNERS' ASSOC.
c/o ASSOCIA NEVADA SOUTH
ROBYN STYLES
3675 W. CHEYENNE AVE., #100
N. LAS VEGAS NV 89032

Account No.:
Statement No:

Page: 1
03/09/2017
5802-0004
1

MGM Grand - Tower A adv. 145 E. Harmon II Trust

Fees

		Hours	
08/01/2016	BAL Telephone conference with Robyn Styles on 3-day notice of default; looking up case on computer; exchange emails with client on answering complaint	0.50	187.50
08/02/2016	BAL Telephone conference with opposing counsel on extension of time; email to opposing counsel on extension of time; sent emails to client confirming extension of time; telephone conference with Attorney Wyatt (Signature counsel) on tender of defense; reviewed complaint	0.75	281.25
08/04/2016	BAL Dictate letter to Elissa Wyatt; review pleadings; dictate and edit letter to Eric Tran on dismissing complaint	0.75	281.25
08/11/2016	BAL Edit letter to Tran and email draft to clients	0.20	75.00
08/16/2016	BAL Telephone conference with [REDACTED] case	0.10	37.50
08/19/2016	BAL Reviewed letter from Alliance and Signatures attorney	0.10	37.50
08/22/2016	BAL Telephone conference with plaintiff's attorney on getting a response to my letter; exchanging emails with plaintiff's attorney on extension of time to answer complaint; exchange emails with Alliance attorney on extension of time and answer to my demand for dismissal	0.75	281.25
08/23/2016	BAL Dictate and edit letter to clients [REDACTED]	0.40	150.00
08/25/2016	BAL Two telephone conferences with [REDACTED] and reviewed Jill's email	0.30	112.50

TRUST363

RESIDENCES AT MGM GRAND - TOWER A OWNERS' ASSOC.

Account No.:
Statement No:Page: 2
03/09/2017
5802-0004
1

MGM Grand - Tower A adv. 145 E. Harmon II Trust

		Hours	
08/26/2016			
BAL	Telephone conference with plaintiff's counsel on dismissing the case	0.20	75.00
08/27/2016			
BAL	Email to clients and email to Wyatt that plaintiff will be dismiss case	0.20	75.00
09/13/2016			
BAL	Email to Eric Tran on where dismissal is; email to Elise Wyatt	0.20	75.00
12/12/2016			
BAL	Reviewed letter from Mr. Hartman on status; reviewed court's docket sheet; telephone conference with Elisa Wyatt on status and told of plaintiff's new attorney; conference with legal assistant on getting documents off of Wiznet; email to Tran on why he never followed through with a dismissal; looking up contact information for Attorney Lewis; email letter to Attorney Lewis on status of dismissal; second email to Lewis on letter demanding a dismissal; reviewed Lewis' reply; drafting email to Hartman on status of case and reviewing old status report emails to send to Harman; exchanging emails with Tran on his dereliction (.75)	2.50	937.50
12/13/2016			
BAL	Telephone conference with Elisa Wyatt on Tran emails and cases; reviewed email from Hartman and replied	0.30	112.50
12/21/2016			
BAL	Conference with Tom Beatty on shotgun pleading; research on Westlaw on shotgun pleading	0.75	281.25
12/22/2016			
BAL	Research on cases with shotgun pleading	0.50	187.50
12/23/2016			
BAL	Dictating declaration of Larry Hartman	0.50	187.50
12/28/2016			
BAL	Edit Larry Hartman's affidavit	0.50	187.50
	For Current Services Rendered	9.50	3,562.50
	Total Current Work		3,562.50

Payments

08/02/2016	Retainer payment - Transferred from account 5802.0001	-1,500.00
	Balance Due	<u>\$2,062.50</u>

All Attorney's Fees are Billed Through the 25th of Each Month. Statements are Due and Payable Upon Receipt. Late Fees will be applied if Payments are Not Received within the 30 Days From the Date of Statement.

TRUST364

Exhibit 2

Exhibit 2

DEANER, MALAN, LARSEN & CIULLA
720 SOUTH FOURTH STREET
SUITE #300
LAS VEGAS, NV 89101
702/382-6911

EIN # 88-0135196

Page: 1

05/18/2017

5802-0004

2

Account No.:

Statement No:

RESIDENCES AT MGM GRAND - TOWER A OWNERS' ASSOC.

c/o ASSOCIA NEVADA SOUTH

LARRY HARTMAN

3675 W. CHEYENNE AVE., #100

N. LAS VEGAS NV 89032

MGM Grand - Tower A adv. 145 E. Harmon II Trust

Interim Statement

Previous Balance

\$2,062.50

Fees

Hours

01/04/2017

BAL

Telephone conference with Elisa Wyatt on her prior motion to dismiss and results; reviewed email from Wyatt enclosing pleadings on the motion to dismiss

0.60

225.00

01/17/2017

BAL

Reviewed email from Hartman; telephone conference with Hartman on status of matters

0.20

75.00

03/01/2017

BAL

Reviewed Hartman's email on board meeting; email in reply to Hartman

0.10

37.50

03/07/2017

BAL

Telephone conference with Larry Hartman to go over information on his declaration; editing and finalizing Larry Hartman declaration in support of motion for summary judgment and/or dismiss and email to Hartman and conference with legal assistant to send to Hartman; telephone conference with Hartman on declaration and working on motion for summary judgment

1.00

375.00

03/08/2017

BAL

Reviewed email from Hartman on declaration and reply to email and email to legal assistant

0.10

37.50

03/09/2017

BAL

Dictate and edit motion to dismiss

2.00

750.00

03/10/2017

BAL

Reviewed draft of motion to dismiss to send to client; email to legal assistant to make edits

0.50

187.50

03/13/2017

BAL

Telephone conference with Larry Hartman on board meeting and proceeding with Motion to Dismiss

0.10

37.50

TRUST366

RESIDENCES AT MGM GRAND - TOWER A OWNERS' ASSOC.

Page: 2
05/18/2017
5802-0004
2

Account No.:
Statement No:

MGM Grand - Tower A adv. 145 E. Harmon II Trust

		Hours	
03/14/2017	BAL		
	Editing and polishing Motion for Summary Judgment and to Dismiss; reviewed court docket sheet for status	1.50	562.50
03/15/2017	BAL		
	further editing and finalizing of Motion to Dismiss and for Summary Judgment	1.50	562.50
03/17/2017	BAL		
	Reviewed email from Steve Lewis; conference with legal assistant on email	0.10	37.50
03/20/2017	BAL		
	Telephone conference with Elisa Wyatt on status of settlement negotiations	0.20	75.00
03/21/2017	BAL		
	Exchange emails with Lewis on dismissal and attorney fees issues; left voice message with client; telephone conference with Steve Lewis on attorneys' fees and dismissal issues	0.40	150.00
03/22/2017	BAL		
	Telephone conference with Larry Hartman on Motion to Dismiss and moving for attorneys' fees; reviewed letter from Steve Lewis	0.30	112.50
03/23/2017	BAL		
	Reviewed Lewis' letter and emails and dictate draft of letter in response for client to review	0.50	187.50
03/24/2017	BAL		
	Reviewed email from Lewis and email to Lewis on responding to his letter	0.10	37.50
03/27/2017	BAL		
	Email to Lewis on dismissal; reviewed email	0.10	37.50
03/28/2017	BAL	N/C	
03/29/2017	BAL		
	Exchange emails with Lewis on settlement	0.10	37.50
03/31/2017	BAL		
	Dictate letter to Lewis and reviewed Lewis's email on dismissal of case and attorneys fees; telephone conference with Elise Wyatt; reviewed Lewis's threatening email; sent email to Lewis giving him more time to respond to motion to dismiss and/or summary judgment; email to Elise	0.60	225.00
	For Current Services Rendered	10.00	3,750.00

TRUST367

Exhibit 3

Exhibit 3

SINGER & LARSEN P.C.

LAW OFFICE
4475 S. PECOS ROAD
LAS VEGAS, NEVADA 89121
(702) 454-2111

Michael H. Singer, Esq.
msinger@singerlarsen.com
Also licensed: New York & D.C.

Brent A. Larsen, Esq.
blarsen@singerlarsen.com
Also licensed: Utah

May 18, 2017

Attn: Larry Hartman
Associa Nevada South
3675 W. Cheyenne Avenue, #100
N. Las Vegas, Nevada 89032

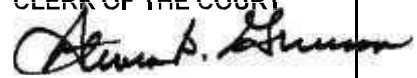
Re: *MGM Grand – Tower A adv. 145 E. Harmon II Trust*

STATEMENT FOR SERVICES RENDERED:

Hours: (BAL) \$375/hr
(MAH)\$450/hr

04/02/17	(BAL) Conference with Attorney Mike Singer to discuss his view, as a short trial judge on the outcome of the issue of recovery of attorneys fees given the circumstances; discussed CC&Rs, reviewed complaint on CC&Rs allegations and reviewed CC&Rs to determine liability for attorneys' fees	1.00	375.00
	(MHS) Office conference with Brent Larsen on attorney fee issues and bad faith issues	.25	112.50
04/07/17	Prepare and finalize letter to client on status of the matter and plaintiff's response to the motion to dismiss and letters from plaintiff's counsel; dictate and finalize letter to Steve Lewis in reply to his demands and granting extension of time for him to answer; reviewed Lewis's reply to letter	1.25	468.75
04/08/17	Reviewed email from Lewis on possibility of dismissing Tower A with prejudice and reserving rights to attorneys' fees; dictate such stipulation to dismiss	.25	93.75
04/10/17	Email to Hartman on new possible stipulation for dismissal; telephone conference with Elisa Wyatt;		

	telephone conference with Hartman on claim for attorneys fees	.60	225.00
04/17/17	Exchange emails with plaintiff's counsel on stipulation to dismiss with prejudice and reservation of rights on attorneys' fees; making edits to stipulation and conference with Suzanne on further proceedings	.20	75.00
04/18/17	Exchange emails with plaintiff's counsel on address for pick up of stipulation	.10	37.50
04/24/17	Telephone conference with Elisa Wyatt on dismissal of our client	.10	37.50
04/28/17	Reviewed cost bill; prepared memorandum of costs and prepare notice of entry of judgment; conference with legal assistant going over costs	.50	187.50
05/07/17	Working on motion for attorneys' fees	3.00	1,125.00
05/18/17	Working on motion for attorneys' fees; editing and finalizing motion	2.50	937.50
	TOTAL:	9.75	<u>\$ 3,675.00</u>
	BALANCE DUE:		\$3,675.00



OPPS

STEPHEN K. LEWIS, ESQ.
Nevada Bar No. 7064
5538 S. Eastern Ave.
Las Vegas, Nevada 89119
Telephone: (702) 948-9770 ext. 2030
Facsimile: (815) 550-2830
Email: steve.lewis@stoamigo.com
Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

145 EAST HARMON II TRUST, ANTHONY)	CASE NO. A-16-733764-C
TAN AS TRUSTEE OF THE 145 EAST)	
HARMON TRUST,)	DEPT. NO. XVIII
)	
Plaintiffs,)	
vs.)	PLAINTIFF'S OPPOSITION TO
)	DEFENDANT THE RESIDENCES AT
MGM RESORTS INTERNATIONAL; MGM)	MGM GRAND – TOWER A OWNERS'
GRAND CONDOMINIUMS, LLC; THE)	ASSOCIATION'S MOTION FOR
SIGNATURE CONDOMINIUMS, LLC;)	ATTORNEYS' FEES
SIGNATURE TOWER 1, LLC; THE)	
RESIDENCES AT MGM GRAND - TOWER A)	
OWNERS' ASSOCIATION, and DOES I - X,)	
)	
Defendants.)	
)	
)	
)	

**PLAINTIFF'S OPPOSITION TO DEFENDANT THE RESIDENCES AT MGM GRAND –
TOWER A OWNERS' ASSOCIATION'S MOTION FOR ATTORNEYS' FEES**

Plaintiffs, 145 East Harmon II Trust, Anthony Tan as Trustee of the 145 East Harmon II Trust, by and through their counsel of record, Stephen K. Lewis, Esq., hereby respectfully submit the foregoing Opposition. This opposition is based upon the memorandum of points and authorities contained herein, the pleadings and papers on file with the Court, and any oral argument that this Court may hear on the date set for hearing.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

BRIEF ANSWER

The instant motion fails for numerous reasons which will all be addressed in detail *infra*. In short summary, the Defendant HOA was Voluntarily Dismissed from this matter without facing legal requirements to appear or participate in discovery. However, after being voluntarily dismissed, the HOA filed its motion claiming it was a prevailing party, amongst other things. The HOA's motion for fees should be denied as:

- 1) The HOA was Voluntarily Dismissed and did not obtain a "judgment" thus, section 20.2 of the CC&Rs does not apply;
- 2) A Voluntary Dismissal does not create a "prevailing party" under rule, statute or contract;
- 3) The "Harm to Fellow Owners" is not recognized, under any legal theory, as a basis for seeking or awarding Fees or Costs;
- 4) The Plaintiff's claim was valid and not "maintained" to "harass" the HOA; and
- 5) Due to the unnecessary motion practice, counsel cannot meet the Brunzell factors.

II.

INTRODUCTION

Procedural Posture of this Motion

Plaintiff filed its Amended Complaint on June 10, 2016. That complaint named MGM RESORTS INTERNATIONAL et. al. (hereinafter MGM) and THE RESIDENCES AT MGM GRAND - TOWER A OWNERS' ASSOCIATION (hereinafter HOA); naming the HOA for the first time. MGM answered, but the HOA did not. Pursuant to counsel's affidavit, he was retained

1 by the HOA on or about August 1, 2016. With no communication in all of 2017, the HOA filed a
2 Motion to Dismiss on March 15, 2017. That motion was vacated when a Stipulated Rule 41(a)(1)
3 Voluntary Dismissal was entered between the Plaintiff and HOA. The instant motion followed.

4 Factual Predicate

5 This matter surrounds an occurrence of massive mold growth in a predominantly unused
6 condo unit in the MGM towers. The unit was not part of the rental pool; nor used by the owners,
7 except in very rare occasions. The owner, who is a local Las Vegas resident, had not been to the
8 unit in months until December 3, 2015, when on a routine visit, he found the unit entirely covered in
9 mold. It was later determined that the unit's shower was left on; running on the hottest temperature
10 and highest pressure. The mold damage was so bad that remediation required demolition of most of
11 the unit.
12

13 During the initial pre-litigation investigation, the following facts were obtained:
14

- 15 1) The owner had not been in the unit in months;
- 16 2) An employee of MGM used his electronic key to enter the unit on November 26, 2015;
- 17 3) The MGM disputed if the shower valve was left in the "full on" position, or if the valve
18 broke in the wall cavity;
- 19 4) The HOA had insurance coverage for damage in the common walls;
- 20 5) The General Manager of MGM Signature, Jill Archunde, is also a director of the Tower
21 A HOA;
- 22 6) The HOA and MGM were aware that employees of MGM illegally entered units from
23 time-to-time; and
- 24 7) The HOA and MGM were aware that the Signature Buildings had a history of mold
25 issues.
26
27
28

1 The MGM had electronic key access records to prove both issues 1 and 2 above. Public
2 records prove issue 5 to be true. But certainly items 3, 4, 6 & 7, and many others were, and
3 continue to this day, to be in dispute. Additionally, since this matter was settled before discovery
4 began, the Plaintiff was not privy to expert reports on the plumbing and/or related coverage issues.

5 In addition to the pre-discovery difficulties in establishing causation; ownership and
6 operation of the building was also difficult to ascertain prior to discovery. See Affidavit of Eric
7 Tran, Esq., dated May 19, 2016 (attached to Plaintiff's Opposition to Defendant's Motion to
8 Dismiss (May 19, 2016)). Certainly, the MGM property was not set up in a simple legal fashion.
9 Nor does the unique "part hotel - part condo" aspect of the property lend itself to a quick
10 determination of responsibilities. In addition, Jill Archunde, sits on the HOA board and manages all
11 the employees on site. Occupying both positions creates reasonable questions and issues. This
12 information may or may not have been accurate, or even applicable depending on how experts
13 opinioned the massive water intrusion took place, but these facts provide support for filing suit
14 against the HOA.
15
16

17 Discussions with the HOA re: Dismissal
18

19 Plaintiff transitioned litigation counsel in December of 2016. The Substitution of counsel
20 was filed on December 8, 2016. However, it was not until December 20, 2016 that the file was
21 transferred from the law firm of Lipson, Neilson, Cole, et al., to current counsel. On December 12,
22 HOA's counsel advised new counsel that Mr. Tran agreed to dismiss his client, and inquired if the
23 Plaintiff would still agree to a dismissal. This counsel responded that "I do not have the file yet, but
24 will review and be happy to sit with you...." See email dated December 12, 2016 (Exhibit 1).
25 Importantly, at no time prior to motion practice, did HOA's counsel provide anything which
26 indicated that Mr. Tran (Plaintiff's prior counsel) agreed with the Voluntary Dismissal.
27
28

1 Plaintiff's counsel reviewed the file by the first week of January. By that time, MGM and
2 Plaintiff were in settlement discussions. Additionally, Plaintiff's counsel called HOA's counsel's
3 office to obtain the mystery Tran dismissal agreement and discuss dismissing the case. The call was
4 never returned. Thereafter, on January 10, 2017, Plaintiff's counsel emailed MGM's counsel and
5 asked if she had heard from Mr. Larsen and if she had the Tran email. See email dated January 10,
6 2017 (Exhibit 2). On, January 12, 2017, MGM's counsel forwarded a Tran email wherein he had
7 agreed with the dismissal. In response, another email was sent to MGM's counsel on same day
8 saying "I still have not received a call or email [from Larsen]..." See email dated January 12, 2017
9 (Exhibit 3). At that point, MGM's counsel and Plaintiff's counsel were in comprehensive struggles
10 to settle the case. This effort can be evidenced by more than 37 emails from MGM to Plaintiff from
11 Jan 10, 2017 to the present. Similarly, Plaintiff has sent over 51 emails to MGM counsel during
12 those days. Numerous phones calls have also taken place and many versions of a settlement
13 agreement circulated. But not a peep from HOA's counsel in all of 2017.

14
15
16 HOA's counsel sent only one email to Plaintiff's new counsel, ever. It was sent in
17 December of 2016 and asked: "So I am writing to inquire if you are prepared to voluntarily dismiss
18 my client from the above referenced case." No mention of a Motion to Dismiss was made. And no
19 communications followed ever. Larsen email dated Dec. 12, 2016; see also, Larsen billing
20 (attached to Motion for Fees). Movant's pleading, affidavit and billing history evidence the same.
21 Without a returned call or any further communication from HOA, Plaintiff's counsel was entirely
22 ignorant of the imminent HOA Motion to Dismiss.

23
24
25 In fact, Plaintiff's counsel was at the doctor's office when he received service of the motion
26 to dismiss via electronic delivery. Counsel immediately left the office and called HOA's counsel to
27 inquire into the reason the motion was filed without any communication. Because of that call and
28

1 related subsequent communications, the HOA's motion was withdrawn and a Stipulated Rule
2 41(a)(1) Voluntary Dismissal was entered.

3
4 **III.**

5 **LEGAL ARGUMENT**

6 It is unfortunate that this Honorable Court is forced to review and consider the forgoing
7 motion. But, it remains poignant that there is NO judgment entered for the HOA and against the
8 Plaintiff. It is significant that NO discovery provides an absolute defense for the HOA. It is just as
9 vital to consider the HOA was under no time-line to file a responsive pleading. Finally, and no less
10 critical, at no time did counsel for the HOA attempt to contact Plaintiff's counsel in 2017, nor ever
11 indicate a Motion to Dismiss was looming

- 12
13 1. The CC&Rs only provide for a fees consideration for "any judgment". No judgment
14 was entered.

15 The HOA's first allegation is reliant upon an express provision of the CC&R's which relates
16 to the unit. The applicable provision simply does not apply herein, as it's expressly set for a
17 condition precedent to any consideration of a reasonable fee award; namely the entry of a judgment.

18 20.02 Attorneys' Fees. Any judgment rendered in any action of
19 proceeding pursuant to this Declaration shall include a sum for
20 attorneys' fees in such amount as the court may deem reasonable,
21 in favor of the prevailing party, as well as the amount of any
22 delinquent payment, interest thereon, costs or collection and cost
23 of court.

24 Most certainly, no "judgment" has been entered by this Court for the HOA and against the
25 Plaintiff. Yet, it cannot go without mention that these CC&Rs are not only non-negotiable, but the
26 cited provision would appear to only apply to a collection action, expressly providing: "...the
27 amount of any delinquent payment, interest thereon, costs or collection and cost of court." Indeed,
28

1 this was not a collection action, but unquestionably, absent a “judgment”, this provision should not
2 apply.

3 2. The Voluntary Dismissal of a Valid claim does NOT create a “Prevailing Party” such to
4 support a fee award.

5 On April 27, 2017, Plaintiff and HOA entered a Stipulation and Order for Dismissal under
6 NRCP 41(a)(1). Such a dismissal should not be considered an adjudication on the merits such to
7 establish the HOA as a “prevailing party”. Precisely, Rule 41(a) states: “...except that a notice of
8 dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once
9 dismissed in any court of the United States or of any state an action based on or including the same
10 claim.” Rule 41(a)(1). The Dismissal, whether Rule 41(a) is expressly set forth or not, was one of
11 stipulation; not order of the Court. Thus, this Honorable Court granted the HOA no merit-based
12 relief which is required for the HOA to demonstrate that they were a prevailing party. Furthermore,
13 since the Plaintiff herein has not dismissed the same claim “in any court of the United States or of
14 any state”, as a matter of Rule, the HOA is not a “prevailing party” such to move under any
15 “prevailing party” provision.
16
17

18 Moreover, not only does the rule itself provide language to quell any argument that the HOA
19 was a “prevailing party” under a pre-answer Stipulation of Dismissal, but on April 28, 2017, the
20 Nevada Court of Appeals discussed the differing effect of a Rule 41(a) and Rule 41(b) dismissal.
21 See Shalov v. Ladah, at 2-3 (Nev. App., 2017)(citing Five Star Capital Corp. v. Ruby, 124 Nev.
22 1048, 1057-58 (2008) (recognizing that the dismissals identified by NRCP 41(b) are meant to have
23 preclusive effect, and treating the NRCP 41(b) dismissal order in that case as a valid final judgment
24 satisfying the elements of claim preclusion); *compra* Szabo Food Serv., Inc. v. Canteen Corp., 823
25 F.2d 1073, 1076-77 (7th Cir. 1987) (“A dismissal under Rule 41(a) is unlike a dismissal with
26 prejudice under Rule 41(b), which enables the defendant to say that he has 'prevailed.'”). Such a
27
28

1 ruling makes sense in this matter, since Rule 41(a) is an “agreed” dismissal and Rule 41(b) is an
2 “involuntary” dismissal, thus validly acting as a merit based finding. Since the predicate pleading to
3 which the instant motion is a Rule 41(a) Dismissal, this Honorable Court should not consider the
4 HOA to be a “prevailing party”; assuming it even finds the CC&R’s applicable hereto.

5 In fact, the Nevada Courts have utilized the same “prevailing party” analysis for both NRS
6 18 and CC&R claims. See Azzarello v. Humboldt River Ranch, 385 P.3d 50 (Nev.
7 2016)(*unpub.*)(“[I]n particular, appellants were not a “prevailing party” for purposes of NRS
8 18.010(2)(b) or the CC&Rs because they did not “succeed[] on *any significant issue* in [the]
9 litigation which achieve[d] some of the benefit [they] sought.” (emphasis added). Thus, absent a
10 merit-based finding by this Court, and a ruling the CC&R provision even applies, the HOA did not
11 succeed on any issue enabling the “prevailing party” provision in the CC&R’s to apply herein.

12
13
14 3. Due to all other parties’ concerted effort to minimize litigation time and costs, this Court
15 should use its discretion and deny the motion.

16 It is well settled that a court has discretion to award attorney fees in certain matters. Yet, the
17 facts of this matter do not justify a Voluntarily Dismissed party being awarded fees. In fact, the
18 Procedural Posture of this matter is such that the HOA had not been forced to appear or produce any
19 discovery – ever. In fact, MGM’s initial discovery was due to the Plaintiff in February of 2017.
20 Yet, neither MGM’s nor Plaintiff’s counsel wished to incur fees and costs in “litigating” the matter
21 and decided to focus all their efforts on serious settlement talks. Consequently, the due date was
22 extended, and extended again, so that the parties could work toward and finalize their settlement.

23
24 Efforts to settle aside, Plaintiff’s initial pleading related to the HOA was valid. Pursuant to
25 NRCP 8(a), a complaint must contain "a short and plain statement of the claim showing that the
26 pleader is entitled to relief." Plaintiff did just that.
27
28

1 Certainly, any HOA motion to dismiss would have been met with a strong Rule 56(f)
2 opposition. This Court can also take notice that Plaintiff stipulated to dismiss Defendant
3 Turnberry/MGM Grand Towers from this matter on October 11, 2016. Thus, Plaintiff was acting
4 consistently to advance the matter and tighten its claims; while concurrently trying to settle the case.

5
6 4. Counsels' lack of communication should not cause an award of Fees & Costs

7 Plaintiff's counsel made a phone call to HOA's counsel to resolve their claims. And one
8 call is more than counsel for the HOA did in this regard. The HOA provides no attempted
9 communication wherein a Dismissal was demanded or where a Motion to Dismiss was ever
10 threatened. Nor can they provide any evidence of any communication to Plaintiff in 2017. It was
11 the failure to simply pick-up the phone, before expending thousands in fees, that caused the HOA's
12 fees.

13
14 By way of example, Plaintiff's counsel understands that NRPR 3.5A does not sit on all fours
15 with this situation, but arguably counsel had an affirmative obligation to reach out...at least once
16 before filing a motion to dismiss.

17
18 **Rule 3.5A. Relations with Opposing Counsel.** When a lawyer
19 knows or reasonably should know the identity of a lawyer representing an
20 opposing party, he or she should not take advantage of the lawyer by
21 causing any default or dismissal to be entered without first inquiring about
22 the opposing lawyer's intention to proceed.

23 Similar demands for communication between counsel are also set forth in: EDCR 2.34(d) –
24 establishing a meet and confer requirement before discovery motions are filed and EDCR 2.47(b) –
25 demanding a meet and confer requirement before motions in limine are filed. Again, Plaintiff's
26 counsel is aware these rules don't control general "motions" and such requirements are not
27 expressly listed in the "motions" sections of the Local Rules, but certainly these rules hint toward a
28

1 general desire for counsel to work together before filing unnecessary motions and clogging the
2 Court's calendar.

3 Indeed, in this counsel's 17 years of litigation practice here in Clark County, the 9th Circuit,
4 California, and even in Canada, the standard practice was absolutely to "reach out", especially in
5 multi-party matters, and advise counsel of a pending motion before drafting it. In fact, in-person
6 meetings even took place in many of this Counsel's prior cases, as attorneys tried to "work
7 together" to correctly posture cases and not "bill" their clients needlessly. While litigation is
8 adversarial by design, no attorney should want to draft motions for something a telephone call can
9 solve.
10

11 5. There is no basis for legal recovery for "Harm to Fellow Owners"
12

13 Movant's "Harm to Fellow Owners" contention is novel; but misguided and improper. The
14 law regarding awards of fees is longstanding and well settled. Simply put, a district court can only
15 award attorney fees and costs when authorized by statute, contract, or rule. U.S. Design & Constr.
16 Corp. v. Int'l Bhd. of Elec. Workers Local 357, 118 Nev. 458, 462 (2002). Thus, there are only
17 three tiny boxes for which a claim for fees can be placed. "Harm to Fellow Owners" does not fit
18 into any of the three prescriptive boxes. Thus, an allegation of "Harm to Fellow Owners" cannot, as
19 a matter of law, support a claim for fees. This claim must fail.
20

21 6 Considering the pre-discovery facts, Plaintiff's action against the HOA was reasonable
22 and an award fees under NRS 18.010(2)(b) must fail.

23 But for the vexatious nature of movant's counsel, no motions of any kind, nor spending of
24 fees would have had to occur. No appearance or discovery was forced upon the HOA. Nor did
25 Plaintiff demand any defendant waste time on litigation or discovery, since settlement was a very
26 real and eventual goal for the entire case in 2017.
27
28

1 Additionally, Plaintiff had reasonable grounds to file suit against the HOA as it was
2 impossible to initially determine who entered the unit and turned the water on. Was it an employee,
3 hotel guest, or other owner? Rumors existed that the HOA had knowledge of such illegal actions
4 taking place in the past. Perhaps it was just a plumbing failure within the walls of the building
5 which could be a valid claim against the HOA and/or its insurance to cover?
6

7 Due to the posture of this motion, Plaintiff also wishes to point this Court to the following
8 brief excerpts from the CC&Rs which would appear to create duties and obligations upon the HOA
9 to act in assistance of the Plaintiff herein.
10

11 Sect 5.2 “.....operating for the general welfare of the Owners
12 with respect to the common elements.....”

13 Sect 7.2 “.....promote the and welfare of the Owners....
14 maintenance of the common elements”

15 Sect 11.1 “.....Members of the Association shall make all
16 determination with respect to the common elements”

17 Sect 11.2 “In the event of any destruction of any portion of the
18 Common Elements, the repair or replacement of which is the
19 responsibility of the Association.....”

20 Understanding there is not a pending Declaratory Relief motion, and NRCP 8(a), Plaintiff will not
21 expand any further upon this section.
22

23 Furthermore, ownership and operation of the building was also difficult to ascertain as the
24 General Manager of MGM Signature is also a director of Tower A HOA. Uncertainly, historical
25 rumors, overlapping facts, and intertwined parties marred this matter initially. Yet that is not
26 peculiar in the construction/mold arena of litigation in Nevada.
27

28 Plaintiff most certainly did not file suit against the HOA to “harass” the entity. Furthermore,
the record simply does not support allegations that Plaintiff “maintained” an “unreasonable” action
against the HOA. This argument must also fail.

///
///

STEVE LEWIS, ESQ.
Attorney at Law
5538 S. Eastern Avenue
Las Vegas, Nevada 89119
Attorney for Plaintiff

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7. HOA’s bills are unreasonable and largely unnecessary

The HOA justifies and advances its massive billing in the final paragraph of its motion:

“Indeed it is submitted that having to litigate and file a Motion for Summary Judgment to obtain the dismissal, and being able to do so by incurring less than \$15,000 in attorneys’ fees, is in and of itself a worthy accomplishment.” Motion at pg 10, lln 15-17.

Yet, the HOA did NOT ever have to “litigate” this matter. Nor did it have to file a Motion to Dismiss. Simply put, the entire case will shortly be dismissed, possibly with less fees expended by all three other attorneys combined. Humbly, counsel working together and NOT filing motions, is often more productive in resolving cases; and Plaintiff’s counsel has litigated many massively disputed matters, including one with 51 contested court hearings. Besides the simple fact that neither motion was necessary, for the record, Plaintiff will go through the Brunzell factors:

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. Brunzell v. Golden Gate National Bank, 85 Nev. 346, (1969).

Frist, Plaintiff offers no opinion as to the qualities of Mr. Larsen as an attorney. However, Plaintiff asserts almost none of his actions were necessary or reasonable. It is also odd that Mr. Larsen felt it necessary to seek another counsel’s advice on the filing of the instant motion. Second, the motions filed by Mr. Larsen were basic in nature and most certainly NOT important to the litigation. In fact, had he not filed either motion and called counsel, his client would be in the exact same legal position it is in now (or would have an exhibit to prove Plaintiff’s counsel was acting unreasonably in the face of a threatened motion). Simply put, it was the HOA’s counsel that needlessly generated his own fees. Third, while the motions drafted were certainly competent, they

1 were wholly unnecessary. Finally, yes counsel obtained a dismissal, however, Plaintiff asserts
2 almost none of the claimed time reasonably facilitated the dismissal; in fact, Plaintiff agreed to the
3 dismissal solely because MGM and Plaintiff had already agreed to the terms of their settlement and
4 were working on the settlement agreement at that time. Time for Plaintiff's new counsel to get up
5 to speed, and a reasonable discussion would have elicited the same result. Two other defendants
6 can attest to that fact.
7

8 **IV.**

9 **CONCLUSION**

10 Wherefore, Defendant's Motion should be denied in its entirety.

11 **DATED** this 5th day of June, 2017.

12
13 /s/ Stephen K. Lewis

14 STEPHEN K. LEWIS, ESQ.

15 Nevada Bar No. 7064

16 5538 S. Eastern Ave.

17 Las Vegas, Nevada 89119

18 Telephone: (702) 948-9770 ext. 2030

19 Facsimile: (815) 550-2830

20 Email: steve.lewis@stoamigo.com

21 *Attorneys for Plaintiffs*
22
23
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25
26
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28

CERTIFICATE OF SERVICE

I, Jonathan Hale, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen (18) years and not a party to the action within. My business address is 5538 S. Eastern Ave., Las Vegas, Nevada 89119.

On the 5th day of June, 2017, I served the document described as **PLAINTIFFS OPPOSITION TO DEFENDANT'S MOTION FOR FEES AND COSTS** on those parties/attorneys below:

Elisa L. Wyatt, Esq.
Wood, Smith, Henning & Berman, LLP
7674 West Lake Mead Blvd, Suite 150
Las Vegas, NV 89128

Brent Larsen, Esq.
SINGER & LARSEN
4475 S. Pecos Rd
Las Vegas, NV 89121

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business.

X VIA ELECTRONIC SERVICE: in accordance with the Master Service List, pursuant to NEFCR 9. I am "readily familiar" with the firm's practice of electronically serving documents.

VIA FACSIMILE: in accordance to the Consent of Service by Electronic Means on file herein. Via facsimile by transmitting through a facsimile service maintained by the person on whom it is served at the facsimile number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile number to which transmitted.

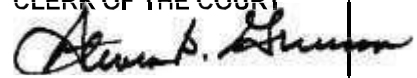
VIA EMAIL: in accordance to the Consent of Service by Electronic Means on file herein. Via email by transmitting through an email service maintained by the person on whom it is served at the email address provided by that person. The copy of the document served by email bears a notation of the date and time of transmission and the email address to which transmitted.

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Executed on the 5th day of June, 2017.

/s/ Jonathan Hale
An employee of STOAMIGO



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Attorney for MGM Grand –
Tower A Owners' Association

DISTRICT COURT

CLARK COUNTY, NEVADA

145 EAST HARMON II TRUST, ANTHONY
TAN AS TRUSTEE OF THE 145 EAST
HARMON II TRUST,

Case No.: A-16-733764-C

Dept. No.: XVIII

Plaintiffs,

vs.

MGM RESORTS INTERNATIONAL; MGM
GRAND CONDOMINIUMS, LLC; THE
SIGNATURE CONDOMINIUMS, LLC;
SIGNATURE TOWER I, LLC; THE
RESIDENCES AT MGM GRAND –
TOWER A OWNERS' ASSOCIATION; and
DOES I - X,

Defendants.

DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEYS' FEES

COMES NOW the Defendant, THE RESIDENCES AT MGM GRAND – TOWER A OWNERS' ASSOCIATION (hereinafter "Defendant/Tower A"), by and through its attorney, BRENT LARSEN, ESQ. of the law firm of SINGER & LARSEN P.C., and hereby submits its Reply in Support of its Motion for Attorneys' Fees as follows:

- The Plaintiffs' Opposition to Tower A's Motion for Attorneys' Fees is conspicuously silent in avoiding a discussion of numerous facts that are material to the adjudication of the Motion to recover attorneys' fees.**

The material facts that are relevant to Defendant/Tower A's entitlement to attorneys' fees, which have been conveniently ignored in the Plaintiffs' Opposition brief, are as follows:

1 1. The Plaintiffs' prior counsel, and original attorney who filed the case, Eric Tran,
2 expressly stated in writing on September 19, 2016, that he was going to voluntarily dismiss
3 Tower A from this case. See Exhibit "A" attached hereto. Yet, by December 12, 2016, the
4 Plaintiffs' still failed to perform on that promise. As a result, on December 12, 2016 Tower A's
5 counsel sent numerous emails to both Plaintiffs' current counsel, Mr. Lewis and Plaintiffs' prior
6 counsel Mr. Tran protesting that the Plaintiffs had not performed its promise to dismiss Tower
7 A from this case. See December 12, 2016 emails attached as Exhibit "B."

8 2. Eric Tran's agreement to dismiss Tower A from the case came as a result of a
9 demand to letter dated August 11, 2016 to Eric Tran (Exh. "C") from Tower A's counsel, which
10 demanded that Tower A be dismissed from this case in order to avoid a motion for sanctions.
11 That letter was based on the fact that the underlying Complaint against Tower A had no merit of
12 any kind. Mr. Lewis, the Plaintiffs' current counsel, received that same demand letter on
13 December 12, 2016. See Exhibit "B" top of page 2.

14 3. Keeping in mind that notice to a litigant's counsel is the same as notice to the
15 litigant itself, *Huckabay Props., Inc. v. NC Auto Parts, LLC*, 322 P.3d 429 (2014), Mr. Lewis
16 was also informed of Tower A's extreme displeasure that it had not been dismissed as of
17 December 2016, and that the demand for a dismissal as set forth in the August 11, 2016 letter
18 attached hereto as Exhibit "C" was still in full force and effect when Mr. Lewis became the
19 Plaintiffs' attorney in this case.

20 4. Yet, Mr. Lewis, with notice of that demand, sent an email to Defendant's counsel
21 on December 12, 2016, attached hereto as Exhibit "B," stating that he did not want to be a part
22 of any more angry emails between Mr. Eric Tran and Mr. Larsen. See Exhibit "B," p. 2.

23 5. When the foregoing demands were ignored, Tower A directed its counsel to
24 proceed with the preparation of affidavits and a Motion to Dismiss and for Summary Judgment.
25 Between the dates when the aforementioned December 12, 2016 emails were sent, to March 15,
26 2017 when the Motion to Dismiss was filed, there is no record anywhere in these proceedings
27 which shows that the Plaintiffs' counsel ever reached out to Tower A's counsel in an effort to
28

1 resolve Tower A's demand that it be dismissed from this case.¹ Therefore, Tower A's Motion
2 to Dismiss was properly filed on March 15, 2017.

3 6. Tower A, on behalf of its members, has a compelling reason to obtain timely
4 dismissals of lawsuits, particularly when the lawsuits are without merit. For instance, NRS
5 116B.760(f) deals with situations where hotel/condominium unit owners are wanting to sell
6 their properties. That property owner has to present a "resale package" to its prospective buyer.
7 Subsection (f) of NRS 116B.760 provides that part of the resale package include:

8 (f) A statement of any unsatisfied judgments or pending legal
9 actions against the association or the hotel unit owner which
10 affect the shared components and the status of any pending legal
11 actions relating to the condominium hotel of which the unit's
12 owner has actual knowledge.

13 Therefore, this lawsuit does not just affect the Tower A entity and the Plaintiffs. This
14 lawsuit has a direct impact on every member of the Tower A association because this lawsuit
15 would have to be disclosed anytime any other member of the association tried to sell its unit.
16 Thus, Tower A, as the homeowners' association, has a duty to all of its members to pursue the
17 dismissal of frivolous lawsuits so that such lawsuits do not have to be explained or disclosed in
18 a "resale package."

19 7. The dismissal in this case was "with prejudice." The Plaintiffs' entire argument
20 proceeds on the premise that this lawsuit was dismissed as a voluntary dismissal without
21 prejudice. Plaintiffs' arguments completely ignore the effect of a "dismissal with prejudice"
22 that is stipulated to in order to avoid an adversarial hearing on Tower A's Motion for Summary
23 Judgment.

24 ///

25 ///

26 ///

27 ¹ Plaintiffs' counsel alleges that he made an unreturned phone call to Tower A's counsel in January of
28 2017. That claim is disputed. The undersigned counsel has not seen on any message or any note from any
receptionist showing that Mr. Lewis ever made a call to Mr. Larsen. Moreover, all prior communications with Mr.
Lewis were by email. If there was an email from Mr. Lewis there would have been a record of it. Therefore, it is
submitted that it is very improper for Plaintiffs' counsel to put the entire burden of communication on Tower A's
counsel when Plaintiffs' counsel received written demands for a dismissal and Plaintiffs' counsel, both prior and
current, chose to ignore those demands.

1 **2. Tower A's counsel discharged all the duties it was required to follow when it**
2 **sent numerous emails and demand letters for a dismissal of Tower A. Since**
3 **the Plaintiffs have not denied its attorneys received those written**
4 **communications, the burden was on the Plaintiffs' counsel to effectuate**
5 **more communications if it truly wanted to avoid facing a Motion to Dismiss**
6 **and/or Summary Judgment.**

7 Tower A submits that Plaintiffs have presented a very disingenuous argument in its
8 contention that Tower A's counsel allegedly engaged in unethical conduct by filing the Motion
9 to Dismiss or Summary Judgment without contacting Mr. Lewis before doing so. Such an
10 argument completely ignores Plaintiffs' own failure to address Tower A's August 2016 demand
11 letter sent to Mr. Lewis on December 12, 2016, to either dismiss the case or face a motion for
12 sanctions. Thus Tower A's counsel had clearly reached out to the Plaintiffs' counsel for a
13 dismissal on numerous occasions. Those communications were simply ignored. This raises the
14 question of who, after December 12, 2016, had the burden of contacting who at any point in
15 time thereafter? Therefore the Plaintiffs' contention that Tower A's counsel was "vexatious,"
16 as argued at page 10 of Plaintiffs' Opposition, or that Plaintiffs' current counsel was taken
17 advantage of by Tower A's filing of the Motion for Summary Judgment, is an erroneous
18 argument on its face. Tower A's filing of a Motion to Dismiss and/or Summary Judgment was
19 most certainly filed in the normal course of litigation just the same as any other Motion to
20 Dismiss is filed in the normal course.

21 Plaintiffs' counsel claims that he made one phone call to Defendant's counsel before the
22 Motion to Dismiss was filed. Yet, there is no affidavit or any evidence to support that claim.
23 More importantly all prior communications between Plaintiffs' current counsel by Tower A's
24 counsel were done by email. Yet there are no emails from Plaintiffs' current counsel, prior to
25 Tower A filing its Motion For Summary Judgment stating that the Plaintiffs were willing to
26 follow through on what Plaintiffs' prior counsel, Eric Tran, had promised to do, which was to
27 dismiss the case. The Plaintiffs are also making inconsistent arguments when it alleges that it
28 was willing to dismiss Tower A from this case in January of 2017 if only Tower A's counsel
had made a call to the Plaintiffs' counsel. Such a proposition is an absurd argument to make
when the Plaintiffs argue on the last page of its Opposition, that the Plaintiffs only agreed to the
actual dismissal in this case "solely because MGM and Plaintiff had already agreed to the

1 terms of their settlement and were working on a settlement agreement at the time.” That quote
2 from page 13 of Plaintiffs’ Opposition clearly demonstrates what Plaintiffs’ intent was and why
3 Plaintiffs’ counsel was ignoring Tower A’s demands for a dismissal. That is because Plaintiffs
4 inexplicitly admits finally, at page 13 of its brief that it had no intentions of ever following
5 through with the prior promise of Eric Tran to dismiss Tower A from this case until the Plaintiff
6 could also reach a settlement with the other Defendants in this case. The documentary evidence
7 in this case clearly shows that the Plaintiffs made no committed effort to have Tower A
8 dismissed from this case until after Tower A was compelled to file its Motion For Summary
9 Judgment in order to seek its dismissal from this case.

10 Plaintiffs argue that the entirety of the case has been on the verge of settlement after the
11 Motion for Summary Judgment was filed. Yet, the docket sheet attached hereto as Exhibit “D”
12 shows that this case still has not been settled with the other active Defendant in this case since
13 there is no other stipulation to dismiss this case as of the filing of this brief. Moreover, the
14 Plaintiffs do not have the right to hold the dismissal of Tower A hostage until Plaintiffs can
15 succeed in achieving a settlement with all the other Defendants in this case. As explained
16 above, NRS 116B.760(f) basically sets forth an affirmative duty on the association to have
17 frivolous lawsuits dismissed so that its unit owners are not burdened with having to disclose a
18 frivolous lawsuit in any resale package when they attempt to sell their property.

19 There is a very stark contradiction in the Plaintiffs’ Opposition to the Motion for
20 Attorneys’ Fees, wherein the Plaintiffs state at page 5 that it was looking for the “mystery”
21 email where Attorney Tran agreed to dismiss Tower A from the case. Plaintiffs then state that
22 its current counsel did receive on January 17, 2017, the Eric Tran email where Mr. Tran
23 expressly stated in writing that the Plaintiffs had agreed to dismiss Tower A from this case. The
24 Plaintiffs’ use of the term “mystery Tran dismissal agreement,” would have been no mystery at
25 all where that email was clearly in the file. Mr. Lewis cannot deny that he was made fully
26 aware on December 12, 2016, that Tower A expected to be dismissed from this case pursuant to
27 the aforementioned August 2016 demand letter for a dismissal. Yet, in stark contrast to those
28 arguments, the Plaintiffs’ Opposition states on page 13 just before its Conclusion that the

1 Plaintiffs only agreed to the actual dismissal of Tower A in this case “. . . solely because MGM
2 and Plaintiff had already agreed to the terms of their settlement and were working on a
3 settlement agreement at the time.”

4 That statement at page 13 of Plaintiffs’ Opposition makes it very clear that neither
5 Plaintiffs nor Plaintiffs’ counsel had any intention of dismissing Tower A from this case until
6 the Plaintiffs had obtained a resolution of the entire case. Mr. Larsen, as attorney for Tower A,
7 was simply acting on the instructions of his client who rightfully demanded a dismissal. When
8 it was clear a dismissal was not forthcoming, which Plaintiffs now admit would never have been
9 forthcoming absent Plaintiffs’ belief that it could settle the entirety of its case against all other
10 Defendants, Tower A was completely justified in filing its Motions in the ordinary course of
11 litigation and Rules of Civil Procedure, in order to obtain a dismissal or summary judgment in
12 this case. Yet, in the face of all the foregoing documentation, the Plaintiffs’ Opposition cites
13 Rules of Ethical Conduct to ostensibly say that Tower A’s counsel was attempting to take
14 advantage of Plaintiffs’ counsel. The aforementioned facts simply do not line up with the
15 Plaintiffs’ specious arguments.

16 In fact, it is entirely inappropriate for Mr. Lewis to try to make the adjudication of this
17 Motion as a contest between the parties’ counsel, through his attempts to characterize his
18 conduct as allegedly innocent and productive, and accuse the Defendant’s counsel of being
19 “vexatious.”

20 **3. Summary of facts that Plaintiffs have ignored in its Opposition brief.**

21 Plaintiffs’ entire Opposition to the Motion for Attorney Fees is to try to make this a case
22 about Tower A’s attorney being “vexatious” to the displeasure of Attorney Lewis. That is a
23 misleading argument because this case is not about any conflicts between the attorneys who
24 represent the Plaintiffs and Tower A. Instead this is a case about the Plaintiffs’ actions that it
25 has taken against Tower A. The actions of Plaintiffs’ prior attorney, Eric Tran, injured Tower A
26 first by filing a frivolous complaint against Tower A, and second in failing to follow through
27 with his promise to dismiss Tower A from the case after he promised in writing that he would
28 do so. Thus, Plaintiffs must take responsibility for the actions of its prior attorney. The

1 Plaintiffs' recourse should be against attorney Tran since he filed the frivolous Amended
2 Complaint against Tower A and he failed to perform his promise to dismiss Tower A from this
3 case.

4 The injury to Tower A, in the form of incurring attorneys' fees, should not be borne by
5 all the members of the Plaintiffs' homeowners' association, but instead should be borne solely
6 by the Plaintiffs, because ultimately this is a case to be solely decided between the parties, and
7 not the attorneys themselves. After all, it is the Plaintiffs who wrongfully filed a suit against
8 Tower A, and it is the Plaintiffs, through its attorney, that failed to follow through with a
9 promise to a voluntary dismissal of Tower A from this case.

10 **4. The Plaintiffs' Opposition to the Motion for Attorneys' Fees proceeds on the**
11 **erroneous premise that the Stipulation of Dismissal in this case does not**
12 **establish Tower A as the prevailing party in this case. Such an argument**
13 **ignores the words "dismissal with Prejudice." A dismissal with prejudice is**
14 **a final act of a court in dismissing a case. It is the equivalent of a judgment**
15 **and most certainly makes the Tower A the prevailing party.**

16 Plaintiffs' Opposition makes numerous legal arguments that are in clear err, which are as
17 follows:

18 1. At page 7, line 6 of its Opposition, Plaintiffs argue that the dismissal in this case
19 ". . . should not be considered an adjudication on the merits such as to establish the HOA as a
20 'prevailing party'." That argument completely ignores the words in the parties' Stipulation and
21 Court Order which states that the Plaintiffs' Amended Complaint against Tower A shall be
22 dismissed **"with prejudice."** Indeed, the entire theme of Plaintiffs' Opposition is to suggest
23 that the dismissal in this case was voluntarily entered into by the Plaintiffs, as though the case
24 was dismissed without prejudice and no Motion for Summary Judgment was pending at the time
25 the Stipulation for Dismissal with prejudice was entered into. At no point in the Plaintiffs'
26 Opposition does it even acknowledge that the dismissal in this case is **"with prejudice."**

27 2. Plaintiffs' entire argument also fails to mention that as part of the Stipulation for
28 Dismissal with prejudice that the parties expressly agreed that Tower A expressly reserved the
right to make a motion for attorneys' fees. Thus, even though the Motion for Summary
Judgment was withdrawn, it was only withdrawn because a stipulation for dismissal would
render moot any need to go forward on a motion for summary judgment.

1 Case law has recognized for several decades that a dismissal “with prejudice” is a
2 dismissal “on the merits” of the case, meaning it has a res judicata result, which has the same
3 effect as a judgment for dismissal. For instance, in the case of *Bank of America v. Jorjorian*, 24
4 N.E.2d 896 (Ill.App. 1940), the court dealt with the meaning of the words “with prejudice.” In
5 rejecting that plaintiff’s argument that a previously dismissed suit with prejudice allowed the
6 plaintiff to institute a new suit, the court held that it was necessary to construe the words “with
7 prejudice.” In dismissing the plaintiff’s claim, and whether the words “dismissal with
8 prejudice” constitutes an effective res judicata bar against further proceedings, the court stated
9 as follows:

10 This depends upon the meaning of the words “with prejudice” as
11 defined by the courts. In *Union Indemnity Co. v. Benton County*
12 *Lumber Co.* (citations omitted) the court held that these words had
13 well recognized legal import and are “as conclusive of the rights
14 of the parties as if the suit had been prosecuted to a final judgment
adverse to the plaintiff. This was followed in *Lake v. Wilson*
(citations omitted) holding that a “**dismissal with prejudice is res**
judicata (emphasis the court’s) of all questions which might have
been litigated in the suit.”

15 The Colorado case of *Powers v. Professional Rodeo Cowboys*, 832 P.2d 1099
16 (Colo.App. 1992), illustrates how the plaintiff’s use of the term “voluntary dismissal” is being
17 misconstrued. In the *Powers* case, the court held that the trial court did not abuse its discretion
18 in denying plaintiff’s request for a voluntary dismissal without prejudice, where the defendant
19 alleged it had incurred legal expenses of over \$30,000 in a case that was on the verge of trial on
20 the merits and the case would have been relatively simple and inexpensive. The *Powers* case is
21 instructive of how the Plaintiffs’ arguments should be rejected in this case, since the dismissal
22 was agreed to **with prejudice** on the eve of a pending summary judgment motion. Clearly, at
23 that stage of the proceedings in this case the Plaintiffs were no longer in a position to timely
24 exercise a right under Rule 41(a) to simply voluntarily dismiss Tower A without prejudice, and
25 without addressing the payment for attorneys’ fees that Tower A has wrongfully incurred in this
26 case.

27 Similarly, in the case of *Handy v. Reed*, 81 P.3d 450 (Kan.App. 2003), the court held the
28 plaintiff cannot take advantage of the voluntary dismissal rules where such a dismissal involved
a court order. Thus, Plaintiffs’ argument at page 7 of its Opposition ignores the fact that the

1 Stipulation in this case did require an order of the court, and that Order of Dismissal is an
2 adjudication of the Plaintiffs' claims against Tower A on the merits.

3 Plaintiffs' Opposition argument also ignores the fact that a dismissal with prejudice is an
4 appealable order. See NRAP 4 that provides for appeals from judgments and "orders." For
5 instance, if Tower A's Motion for Summary Judgment had gone to a hearing and the Motion
6 was granted, an order simply stating that the motion is granted and that the case is dismissed
7 "with prejudice," without using the word "judgment," the result would have been the same as if
8 the Order of Dismissal included the word "judgment." That is because under NRAP 4 an order
9 granting a dismissal with prejudice is an appealable order for purposes of NRAP 4. There is no
10 rule that states an order of dismissal with prejudice requires the use of the word "judgment."

11 NRCP 54(c) dealing with recovering attorneys' fees, provides what would naturally
12 follow after an order is entered dismissing a case with prejudice. That is, if the party who
13 prevails on a motion for summary judgment wants to seek attorneys' fees, then it would file a
14 motion or attorneys' fees under NRCP 54(c), wherein the motion for attorneys' fees could very
15 easily, in many circumstances such as the instant case, actually produce a monetary judgment.

16 Thus, the situation before this court is no different than a granting of a motion for
17 summary judgment dismissing a case, and thereafter, the prevailing party seeks a recovery of
18 attorneys' fees in the form of a money judgment.

19 Plaintiffs' Opposition completely misconstrues the procedure that is followed under
20 NRCP 41(a) for a "voluntary dismissal." For instance, Plaintiffs admit that it finally understood
21 on January 17, 2017 from an email from MGM's counsel that the Plaintiffs' prior counsel
22 agreed to dismiss Tower A from this case. Thus, Mr. Lewis, Plaintiffs' current counsel could
23 have followed through with Attorney Tran's promise and merely filed a voluntary dismissal of
24 Tower A from this case pursuant to the provisions of NRCP 41(a)(1). That rule provides that
25 the Plaintiffs could have dismissed Tower A by merely paying Tower A's filing fees without an
26 order of the court had it simply filed a notice of voluntary dismissal of Tower A at any time
27 before Tower A filed a motion for summary judgment.

28

1 The Plaintiffs' reliance on the unpublished decision of *Azzarelo v. Humboldt River*
2 *Ranch*, 385 P.3d 50 (Nev. October 14, 2016), is completely misplaced because the *Azzarelo*
3 case supports Tower A's argument because the *Azzarelo* case was dismissed "without
4 prejudice." Thus, that case talked about the distinction between a dismissal with prejudice and a
5 dismissal without prejudice. In the *Azzarelo* case, the court stated that the appellants were not a
6 prevailing party for purposes of recovering attorneys' fees under CC&Rs 18.010(2)(b), because
7 the court stated that the appellants "did not succeed on any significant issue in the litigation
8 which achieved some benefit they sought" since the dismissal in that case was "without
9 prejudice" as distinguished from "with prejudice." Thus, the court stated "[r]ather, respondent
10 voluntarily dismissed the case without prejudice, see NRCP 41(a)(1), meaning that no issues
11 were decided whatsoever." The court then cited a 10th Circuit case by further stating as follows:

12 Voluntary dismissal of an action ordinarily does not create a
13 prevailing party because in order to create a prevailing party there
14 must be a "judicially sanctioned change in the legal relationship
of the parties." (Citations omitted.) (See case attached hereto as
Exhibit "E.")

15 A dismissal "**with prejudice**" significantly changes the legal relationship of the parties
16 in this case. The dismissal "with prejudice," however, is very different from the dismissal
17 without prejudice in the *Azzarelo* case because as a result of the dismissal "**with prejudice**," the
18 Plaintiffs can no longer make any further claims against Tower A. That is not the case with all
19 the other Defendants who still remain as active Defendants in this case. Thus, the Plaintiffs and
20 Tower A's relationship with each other drastically changed when the Court Order of Dismissal
21 "with prejudice" was filed in this matter.

22 Plaintiffs' reliance on the *Shalov v. Ladah* case, filed by the Nevada Intermediate
23 Appellate Court on April 28, 2017 (it cannot be ascertained whether that is a published decision
24 or not but is nonetheless), attached hereto as Exhibit "F," also fails to support the Plaintiffs'
25 position. In that case the court specifically stated that ". . . a defendant will be considered the
26 prevailing party where the judgment constitutes an adjudication on the merits for purposes of
27 claim preclusion." In this case a dismissal "with prejudice" is a dismissal on the merits, which
28 has the effect of a final judgment that would clearly preclude the Plaintiffs from asserting the

1 same claims against Tower A at any time in the future under the doctrine of res judicata. See
2 *Bank of America, supra* case. Thus, the only method by which this court could accept the
3 Plaintiffs' argument is if the words "with prejudice" were stricken from the parties' Stipulation
4 and Court Order of Dismissal.

5 **5. Plaintiffs' arguments are an attempt to have "form triumph over**
6 **substance."**

7 The Nevada Supreme Court has repeatedly held that in construing a statute or a contract,
8 the court should not construe words in a manner so that "form triumphs over substance." See
9 *Carrillo v. Valley Bank of Nevada*, 103 Nev. 157, 734 P.2d 724 (1987). The Plaintiffs are
10 attempting such a practice in this case by claiming that an order for dismissal "with prejudice"
11 cannot have the effect of a judgment because the word "judgment" is not stated in the order of
12 dismissal. If the words "dismissal with prejudice" has the meaning of an adjudication on the
13 merits, then it is clear that Tower A must be recognized as a prevailing party in this case where
14 it achieved its ultimate goal of being dismissed with prejudice, so that no further claims could
15 be made against Tower A.

16 An example of the Court's reasoning for not allowing form to triumph over substance, is
17 demonstrated by the case of *Carrillo v. Valley Bank of Nevada, supra*. In that case the court
18 was construing a deficiency statute. In rejecting the bank's argument that it was a sold-out
19 junior for purposes of pursuing a deficiency judgment, the court stated as follows:

20 Endorsement of such a view would truly exalt form over
21 substance in disregard of reality. 103 Nev. at 158.

22 Similarly the Plaintiffs in this case are attempting to "exalt form over substance" in disregard of
23 the reality that the Order of Dismissal with prejudice is an adjudication on the merits of this
24 case. The Plaintiffs' Opposition is essentially asking this court to ignore the words "with
25 prejudice" and to simply say that because the Court Order of Dismissal with prejudice also does
26 not use the word "judgment," that somehow the words "with prejudice" have no meaning.

27 Moreover, Tower A did obtain a money judgment against Plaintiffs when Tower A filed
28 its Memorandum of Costs on April 28, 2017. The Memo of Costs was filed pursuant to NRS
18.020 which allows a prevailing party to obtain a recovery of its costs. Even under a pure

1 voluntary dismissal (i.e., a dismissal without prejudice that was not obtained in the face of a
2 summary judgment), the Defendant would still be entitled to a recovery of its costs. See NRC
3 41(a)(1). The recovery of costs has the effect of a monetary judgment. The Plaintiffs never
4 objected to Tower A's Memorandum of Costs. As a result Defendant can recover those costs at
5 any time it pursues a writ of execution in this matter. No writ of execution has been issued at
6 this time since the Defendant has chosen to wait until an adjudication is made on its application
7 for attorneys' fees.

8 The fallacy of the Plaintiffs' arguments is also demonstrated by the definition of a
9 "dismissal with prejudice" as explained in Black's Law Dictionary as follows:

10 *dismissal with prejudice.* A dismissal, usu. after an adjudication
11 on the merits, barring the plaintiff from prosecuting any later
12 lawsuit on the same claim. If, after a dismissal with prejudice the
13 plaintiff files a later suit on the same claim the defendant in the
14 later suit can assert the defense of res judicata (claim preclusion).
(Citation omitted.)

15 Therefore, there is no question that Tower A is a prevailing party against the Plaintiffs in
16 this matter. As the "prevailing party" on a court ordered dismissal with prejudice, Defendant
17 Tower A is entitled to a recovery of attorneys' fees.

18 The Plaintiffs' efforts to minimize the effect of the words "with prejudice," also ignores
19 the practicality of how the Stipulation came about. The Stipulation came about through Tower
20 A's counsel offering a solution after the Motion for Summary Judgment was filed, whereby
21 both parties could "stop their bleeding." That is, once the Plaintiffs announced it was willing to
22 dismiss the case, Tower A's counsel insisted on a dismissal with prejudice. That would make
23 the pending Motion for Summary Judgment and/or Dismissal moot. Thus, Plaintiffs and
24 Defendant were both anxious at that point to avoid having to incur further attorneys' fees on the
25 pending Motion for Summary Judgment. The Stipulation with prejudice saved the Plaintiffs
26 from having to spend further attorneys' fees in opposing the Motion for Summary Judgment and
27 that Stipulation also spared Tower A from having to incur more attorneys' fees in the form of
28 writing a reply brief in support of its efforts to obtain a summary judgment.

29 If Tower A had insisted on going through with a hearing on its summary judgment
30 Motion, and if the Motion was granted, that would not have put Tower A in any better position

1 This Motion is made and based on the pleadings and papers on file herein, this Motion
2 and the exhibits attached hereto and the Declaration of Brent Larsen.

3 DATED this 18th day of May, 2017.

4 Respectfully submitted,

5 SINGER & LARSEN P.C.

6
7 /s/ Brent Larsen

8 BRENT LARSEN, ESQ.

9 Nevada Bar No. 1184

10 4475 S. Pecos Road

11 Las Vegas, Nevada 89121

12 Attorney for MGM Grand - Tower A

13 **NOTICE OF MOTION**

14 PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION FOR
15 ATTORNEYS' FEES on for hearing in Department 18 of the above-entitled Court on the
16 20 day of June, 2017, at 9:00 A .m., or as soon thereafter as counsel may
17 be heard.

18 DATED this 18th day of May, 2017.

19 SINGER & LARSEN P.C.

20 /s/ Brent Larsen

21 BRENT LARSEN, ESQ.

22 Nevada Bar No. 001184

23 4475 S. Pecos Road

24 Las Vegas, Nevada 89121

25 Attorney for MGM Grand - Tower A

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POINTS AND AUTHORITIES

The Defendant, Tower A, is entitled to recover its attorneys' fees incurred in this action based upon NRS 18.010(2)(b) as well as the CC&Rs of Tower A's homeowners' association, both of which provide for an award of attorneys' fees to the prevailing party in litigation. The amount of attorneys' fees Tower A is seeking is \$10,987.50.

1. Statement of Facts.

1. Plaintiffs filed a First Amended Complaint (hereinafter "Complaint") on June 10, 2016, which pleading named Tower A as a Defendant in this action.

2. Tower A's counsel was hired on August 1, 2016 to address the Complaint.

3. After reviewing the Complaint, Tower A's attorney sent a letter on August 11, 2016 to the Plaintiffs' counsel, which letter pointed out that the Plaintiffs' attempt to name Tower A as a Defendant in this action would be subject to a motion for NRCP 11 sanctions. Thus, Tower A's counsel demanded that Tower A be dismissed from this case. See Demand Letter dated August 11, 2016 attached hereto as **Exhibit A**.

4. After several exchanges of correspondences between Tower A's counsel and Plaintiffs' counsel, Plaintiffs' counsel finally sent an email on September 19, 2016, wherein the Plaintiffs' counsel agreed and promised that he would file a voluntary dismissal of Tower A from this action. See Email attached hereto as **Exhibit B**. Plaintiffs' counsel stated that he was in the process of leaving town on an extended vacation but when he returned he would follow up with dismissing Tower A from this case.

5. By December 12, 2016, the Plaintiffs had not dismissed Tower A from the Complaint. As a result, Tower A's counsel made further inquiry of the Plaintiffs' then counsel, Eric Tran, to inquire why Tower A had still not been dismissed from the case. Mr. Tran explained that Plaintiffs hired new counsel, and that Mr. Tran had no intention of involving himself any further in the case. See Email dated December 12, 2016 attached hereto as **Exhibit C**.

6. On December 12, 2016, Tower A's counsel sent another email to the Plaintiffs' successor counsel, Steve Lewis, to explain that Tower A was still insisting that it be dismissed

1 from this case. Tower A's counsel further informed Mr. Lewis in the same email that the
2 agreement for a dismissal was effectuated with Mr. Lewis's predecessor counsel. See Email
3 dated December 12, 2016 attached hereto as **Exhibit D**.

4 7. Mr. Lewis, as the Plaintiffs' new counsel, stated on December 12, 2016 in an email
5 attached hereto as **Exhibit E**, that he was not interested in receiving any further emails that
6 explained why Tower A's counsel was so upset with the Plaintiffs' predecessor counsel's failure
7 to act on his promise to have Tower A dismissed from this case.

8 8. On March 15, 2017, Tower A filed a Motion to Dismiss, or in the alternative,
9 Motion for Summary Judgment. That Motion is attached hereto as **Exhibit F**.

10 9. After Tower A filed its Motion to Dismiss, Plaintiffs' successor and current
11 counsel, Steve Lewis, finally responded by stating that he would agree to dismiss Tower A from
12 the case. By that point in time, however, Tower A was too heavily invested in attorneys' fees.
13 Most of those attorneys' fees could have been avoided if the Plaintiffs had dismissed Tower A
14 from this lawsuit back in September 2016, as it had promised to do so. As a result, counsel for
15 Tower A informed Plaintiffs' counsel that a mere dismissal at that point in time would no longer
16 be sufficient since Tower A's counsel unnecessarily incurred attorneys' fees that it needed to
17 recover. Thus, considering that there is a substantial basis to pursue a Motion for the recovery
18 of attorneys' fees against the Plaintiffs, Tower A's counsel stated that any dismissal would have
19 to address Tower A's claim for attorneys' fees.

20 10. The basis for Tower A's claim for recovery of attorneys' fees is found in the
21 CC&Rs that govern the Tower A homeowners' association in which the Plaintiffs are members.
22 The CC&Rs that govern an award of attorneys' fees is attached hereto as **Exhibit G**.

23 11. The Plaintiffs' Complaint in this case invokes the CC&Rs when it claimed in ¶ 52
24 of its Complaint that Tower A, as a homeowners' association, somehow breached its own
25 CC&Rs with regard to the alleged injuries claimed in the Plaintiffs' Complaint.

26 12. On April 27, 2017, the Plaintiffs and Tower A finally reached a stipulation,
27 wherein it was agreed that: (1) Tower A's Motion to Dismiss would be taken off calendar; (2)
28 Tower A would be dismissed with prejudice from this case; and (3) as part of such stipulation,

1 Tower A reserved its right to pursue a recovery of attorneys' fees. Thus, the Plaintiffs were not
2 required to address the Motion to Dismiss. See Stipulation attached as **Exhibit H**.

3 Based on these facts, Tower A submits that it is entitled to recover attorneys' fees because
4 that portion of the Complaint that asserts claims against Tower A, is essentially "DOA" meaning
5 "dead on arrival." That is because the Complaint itself failed to allege any viable claim against
6 Tower A. The Complaint was a "shotgun" Complaint, as described in the attached Motion to
7 Dismiss, meaning that whatever wrongful conduct that the Signature Defendant possibly
8 engaged in as described in the Complaint was wrongfully attributed to Tower A as well.
9 Plaintiffs' prior attorney carelessly alleged that Tower A was equally guilty of whatever acts the
10 "Signature Defendant" was allegedly guilty of. This fatal flaw in the Plaintiffs' Complaint was
11 more clearly set forth in the Motion to Dismiss and/or Summary Judgment attached hereto as
12 **Exhibit F**. Those arguments are incorporated by reference in this brief.

13 **2. Tower A is entitled to a recovery of attorneys' fees based on the CC&Rs that**
14 **govern Plaintiffs' relationship with Tower A, where the Plaintiffs are**
15 **essentially members of the homeowners' association that Plaintiffs chose to**
16 **sue.**

17 A successful party in litigation is entitled to a recovery of attorneys' fees whenever there
18 is a written agreement providing for the recovery of attorneys' fees. See *Rowland v. Lepire*, 99
19 Nev. 308, 662 P.2d 1332 (1983). The Plaintiffs admit in ¶ 52 of their Complaint that CC&Rs
20 governing a homeowners' association provides a written agreement between a homeowners'
21 association and its members. See also, *Boulder Oaks Community Assoc. v. B&J Andrews*, 125
22 Nev. 397, 215 P.3d 27 (2009), which states that CC&Rs governing an HOA have the force of
23 contractual obligations.

24 Section 20.2 of the CC&Rs attached hereto as **Exhibit G**, specifically provides for the
25 recovery of attorneys' fees by the prevailing party. That section states as follows:

26 20.2 *Attorneys' Fees*. Any judgment rendered in any action or
27 proceeding pursuant to this Declaration shall include a sum for
28 attorneys' fees in such amount as the court may deem reasonable,
in favor of the prevailing party, as well as the amount of any
delinquent payment, interest thereon, costs of collection and costs
of court.

///

1 CC&Rs are written documents that are recorded with the Clark County Recorder. When
2 the Plaintiffs bought their unit within Tower A, that purchase subjected the Plaintiffs to all of
3 the provisions of the CC&Rs. Thus, when the Plaintiffs attempted to invoke the protections of
4 the CC&Rs when they filed their Complaint, that also subjected themselves to the burdens of the
5 CC&Rs when the Plaintiffs failed to prevail against Tower A in this lawsuit. Thus, the Plaintiffs
6 must accept the consequences of the aforementioned attorneys' fees provision when they chose
7 to sue their own homeowners' association, under circumstances when they had no possible
8 chance of prevailing against Tower A.

9 Thus, Tower A is entitled to an award of attorneys' fees for the simple reason that the
10 CC&Rs provide for Tower A to recover attorneys' fees as the prevailing party in this case.

11 **3. Public policy should also favor an award of attorneys' fees in this case given**
12 **that the Plaintiffs' lawsuit has caused injury to its own fellow members of the**
13 **Tower A Homeowners' Association.**

14 Tower A is a non-profit corporation. See Larry Hartman's Declaration attached Motion
15 to Dismiss and/or Summary Judgment. Thus Tower A's only source of revenue is to collect
16 from its members assessments that are charged on an annual basis. Larry Hartman's Declaration
17 points out that the annual assessments are extremely modest since the assessments range from
18 \$25 to \$50 **per year**, depending on the size of the unit. With such a limited source of revenue,
19 the kind of attorneys' fees that the Plaintiffs have subjected Tower A and its members to absorb,
20 will obviously place a great hardship on the members and the Association, if the Association
21 (Tower A) cannot recover its attorneys' fees from the Plaintiffs who wrongfully sued the
22 Association. In essence there is no justifiable reason why the 300+ other members of the Tower
23 A HOA should have to face a special assessment or increase in dues in order to cover the costs
24 incurred in defending against the Plaintiffs' wrongful pursuit of a lawsuit against Tower A. The
25 Plaintiffs are the only members of the Association who should be required to pay the costs of
26 the Association's defense against the Plaintiffs' frivolous claims against Tower A. That expense
27 and burden should not be cast upon the Plaintiffs' fellow association members.

27 ///

28 ///

1 **4. Tower A is also entitled to an award of attorneys' fees under NRS**
2 **18.010(2)(b).**

3 NRS 18.010(2)(b) provides for an award of attorneys' fees when a complaint is brought
4 against a particular defendant without any reasonable grounds. That statute specifically provides
5 as follows:

6 **NRS 18.010 Award of attorney's fees.**

7 1. ...
8 2. In addition to the cases where an allowance is authorized by specific
9 statute, the court may make an allowance of attorney's fees to a prevailing
10 party:

11 (a) ...
12 (b) Without regard to the recovery sought, when the court finds that
13 the claim, counterclaim, cross-claim or third-party complaint or defense of
14 the opposing party was brought or maintained without reasonable ground
15 or to harass the prevailing party. The court shall liberally construe the
16 provisions of this paragraph in favor of awarding attorney's fees in all
17 appropriate situations. ...

18 That the Plaintiffs' claim against Tower A was "brought or maintained without
19 reasonable grounds ..." is best demonstrated by the facts cited above, and in particular:

20 1. The Plaintiffs' prior attorney specifically agreed in writing that he would dismiss
21 Tower A from this case so that Tower A would not have even been required to file an Answer
22 or any other pleading in this action.

23 2. The Motion to Dismiss attached hereto as **Exhibit F**, sets forth all of the reasons
24 why the Plaintiffs' Complaint was brought without reasonable grounds against Tower A. That
25 Motion was never opposed. Unfortunately, it took the filing of that Motion to finally obtain a
26 firm commitment from the Plaintiffs to dismiss Tower A from this case.¹

27 3. If this court undertook a review of the Amended Complaint, with the specific
28 objective of focusing on the allegations that are specifically directed against Tower A, as
29 opposed to the generic claims that Plaintiffs made against all of the Defendants, then the court

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1 would see that the Plaintiffs' Complaint does not present any viable claim for relief against
2 Tower A.

3 Based upon the foregoing, Tower A has shown that it is entitled to a recovery of
4 attorneys' fees based on both the CC&Rs that govern the conduct between the Plaintiffs and
5 Tower A, as well as NRS 18.010(2).

6 **5. The amount of attorneys' fees that Tower A is seeking to recover is**
7 **reasonable under the circumstances.**

8 Attached hereto as **Exhibit I** is the Declaration of Brent Larsen, which contains a
9 summary of the hours of work performed by Tower A's attorneys in finally accomplishing a
10 dismissal of Tower A from this case. That billing shows a total of 29.25 hours over a 10-month
11 period, wherein fees are charged at the rate of \$375/hour. It is submitted that such number of
12 hours is reasonable. Mr. Larsen's Declaration explains that the number of hours can be broken
13 down in three phases. The first phase involved the initial review and analysis of the Complaint,
14 and discussions with co-counsel and opposing counsel in an effort to cause the Plaintiffs' prior
15 counsel to dismiss Tower A from the Complaint. Those hours from August 2016 through the
16 end of December totaled 9.5 hours.

17 After it was apparent that the Plaintiffs were not going to voluntarily dismiss Tower A
18 from the Complaint, Tower A's counsel then proceeded with preparing and filing a Motion to
19 Dismiss and/or Summary Judgment. That period covered from January 4, 2017 through March
20 15, 2017. The total number of hours from January 4th through March 31st is 10 hours. That
21 phase included the time necessary to prepare a brief on the Motion to Dismiss and/or Summary
22 Judgment.

23 The third phase involved the period after the filing of the Motion to Dismiss, where the
24 Plaintiffs simply asked for a dismissal with each party to bear their own attorneys' fees. The
25 blated offer showed a complete indifference to the fact that such result could have happened if
26 the Plaintiffs had followed through with its promise to dismiss the case in September 2016, when
27 Plaintiff's prior counsel agreed to do so. See **Exhibit B** attached hereto. At that point Tower
28 A's counsel insisted that any dismissal of the case would have to address the subject of

1 attorneys' fees. Thus, 9.75 hours had been incurred from April 1, 2017 through May 18, 2017,
2 which includes over six hours for the preparation of this Motion for Attorneys' Fees. The other
3 time was spent in negotiating the terms of dismissal of the case. All three of those phases are
4 shown in billing records attached to Mr. Larsen's Declaration.

5 It is submitted that none of those hours are excessive. In fact, it is submitted that the
6 number of hours for such tasks is very reasonable.

7 In the often-cited case of *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d
8 31 (1969), the court set forth four factors that should be evaluated by the trial court in
9 determining a reasonable amount of fees to award to a prevailing party. These factors include:
10 (1) the qualities of the advocate, (2) the quality of the work to be done, (3) work actually
11 performed by the lawyer, and (4) the result. The Declaration of Brent Larsen, Tower A's
12 counsel throughout this case, attempts to address all four of the aforementioned factors.

13 1. With regard to the first factor, the qualities of the advocate, it is submitted that this
14 court has been familiar with Mr. Larsen and the quality of his legal work for several decades.
15 Mr. Larsen has been practicing law in Nevada for the past 39 years. It is submitted that the court
16 can make its own evaluation of the advocacy qualities of Mr. Larsen without Mr. Larsen having
17 to engage in a debilitating task of having to "toot his own horn."

18 2. With regard to the character of the work done, it is believed that the court can
19 analyze the character of the work done, by looking at the demand letter submitted to by Mr.
20 Larsen to Plaintiffs' predecessor counsel, which is attached hereto as **Exhibit A**. That letter sets
21 forth in clear detail all of the reasons why the Plaintiffs should have proceeded with the
22 dismissal of Tower A from this case in August of 2016. The quality of the work performed by
23 Tower A's counsel is also represented by the Motion to Dismiss and/or Summary Judgment
24 attached hereto as **Exhibit F**. It is submitted that both of those documents show the volume of
25 quality in the work that was done in this case.

26 While the undersigned counsel agrees that obtaining the dismissal in this case was not
27 complex, that is only because the Plaintiffs' Complaint was so fundamentally flawed to begin

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1 with. Moreover, the lack of complexity in this case is also represented by the fact that Tower
2 A's counsel is only seeking the sum of \$10,987.50 as a recovery of attorneys' fees.

3 Certainly the amount of those fees would have risen substantially if this case had been
4 a complicated case. The fact that this case is not complicated insofar as Tower A is concerned,
5 merely underscores the question as to why the Plaintiffs never followed through with its promise
6 to dismiss Tower A from this case.

7 With regard to the third criteria, which is the work actually performed by the lawyer, once
8 again Mr. Larsen's Declaration shows a detailed time schedule of the work performed by Tower
9 A's lawyer. The work performed is also represented by the demand letter for a dismissal as well
10 as the Motion for a Summary Judgment and a Motion for Attorneys' Fees.

11 4. The fourth criteria concerns the result. Obviously the result was very favorable
12 to Tower A since it ultimately did get itself dismissed from this case through the fact that it had
13 to hire a lawyer to accomplish that task. Thus, Tower A obtained a favorable outcome of this
14 case by a result that was not exorbitantly expensive.

15 Indeed it is submitted that having to litigate and file a Motion for Summary Judgment to
16 obtain the dismissal, and being able to do so by incurring less than \$15,000 in attorneys' fees,
17 is in and of itself a worthy accomplishment.

18 CONCLUSION

19 Based upon the foregoing, Tower A submits that it has shown a clear and convincing
20 entitlement to a recovery of its attorneys' fees that it is seeking in this matter, which is in the
21 amount of \$10,987.50.

22 Tower A is entitled to recover its attorneys' fees because such an award is expressly
23 provided for in the written CC&Rs that were invoked in this case when the Plaintiffs filed their
24 Amended Complaint against Tower A, and that their Complaint wrongfully alleged a violation
25 of those CC&Rs by Tower A.

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1 Tower A is also entitled to an award of attorneys' fees under NRS 18.010(2)(b), which
2 specifically provides for a recovery of the fees when the complaint is brought without reasonable
3 grounds. Moreover, that statute directs the court to be very liberal in the award of attorneys' fees
4 under these kinds of circumstances.

5 Thus, Tower A's Motion for an award of attorneys' fees should be granted in the amount
6 of \$10,987.50.

7 DATED this 18 day of May, 2017.

8 Respectfully submitted,

9 SINGER & LARSEN P.C.

10
11 
12 BRENT LARSEN, ESQ.
13 Nevada Bar No. 001184
14 4475 S. Pecos Road
15 Las Vegas, Nevada 89121
16 Attorney for The Residences at MGM
17 Grand - Tower A Owners' Association
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of SINGER & LARSEN P.C.; that on 18th day of May, 2017, I served a copy of the above and foregoing MOTION FOR ATTORNEYS' FEES, by way of:

☒ Electronic mail,

☒ Electronic means through the Clark County efilings/serving system pursuant to EDCR 8.05(a),

☐ Mailing through the United States Postal Service,

to the following address:

Stephen K. Lewis, Esq.
5538 S. Eastern Avenue
Las Vegas, Nevada 89119
steve.lewis@stoamigo.com
Attorney for Plaintiffs

Elisa L. Wyatt, Esq.
Wood, Smith, Henning & Berman
7674 W. Lake Mead Blvd.
Suite 150
Las Vegas, Nevada 89128
ewyatt@wshblaw.com
Attorney for Defendant,
The Signature Condominiums, LLC


An Employee of Singer & Larsen P.C.

Exhibit A

Exhibit A

DEANER, MALAN, LARSEN & CIULLA
Attorneys at Law

Charles W. Deaner
Douglas R. Malan
Brent A. Larsen†
Anthony Ciulla

A PROFESSIONAL CORPORATION
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Las Vegas, Nevada 89101
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Fax (702) 366-0854
www.deanerlaw.com

J. Douglas Deaner
(1944-1990)

Also Licensed In:
† Utah

Of Counsel:
Thomas D. Beatty

August 11, 2016

***VIA EMAIL (etran@lipsonneilson.com)
and U.S. MAIL***

Eric N. Tran, Esq.
Lipson, Neilson, Cole, Seltzer & Garin
9900 Covington Cross Drive, Ste. 120
Las Vegas, Nevada 89144

Re: *145 East Harmon II Trust, et al. v. MGM Resorts International, et al.*
Case No.: A-16-733764-C

Dear Eric:

Since we last spoke on the telephone, I have had the opportunity to review the Complaint in the above-referenced matter. Based on what I saw in the Complaint, I must ask you to voluntarily dismiss my client, The Residences at MGM Grand - Tower A Owners' Association (hereinafter "Tower A"). In your Complaint you state that my client is a limited liability company. In fact, it is a non-profit homeowners' association. This is a fact you could have easily ascertained from the Nevada Secretary of State records prior to filing your Complaint. Please see the enclosed printout from the Secretary of State.

On behalf of my client I must object to the "gunshot method" of your Complaint in that you are seemingly naming as a Defendant every conceivable entity that ever had any association with your client's property, regardless of whether they had anything to do with the employee who you claim made an allegedly unlawful entry into your client's property. Before you named my client as a Defendant, however, I believe that your NRCP 11 obligations required you to do more due diligence in investigating any alleged involvement that Tower A had regarding the particular unauthorized entry that is the subject of your Complaint.

Moreover, your own client should know, based on the amount of annual assessments that it pays into the Tower A Association, that Tower A's assessment collections could not allow it to have a budget to hire employees or a staff. For your information, the **annual** assessments at Tower A run from \$25 to \$50 per unit. Thus, the employee that you are complaining about is clearly an employee of some entity other than my client.

TRUST310

Another objection that I have to your Complaint is that it repeatedly uses the phrase the "MGM Defendants." Your own Complaint identifies certain MGM Defendants as being subsidiaries of MGM International. However, your Complaint very carefully acknowledges that my client is not a subsidiary of MGM International. Yet, while you make a distinction between my client and the other MGM Defendants in terms of its ownership, you make no distinction in any other part of the Complaint as to what my client's alleged involvement is or was with any of the other Defendants' role in dealing with your client's property. Instead, you merely lumped all the Defendants together in alleged wrongdoing, without mentioning any particular act of wrongdoing by my client.

You also make an allegation that each and every Defendant in the Complaint owns an interest in your client's property. Your client knows that my client is merely a sub-association in a condominium hotel development. As such my client does not own any property. Please tell me what your pre-complaint investigation turned up to support any allegation that my client owns any property, and in particular any interest in your client's property.

If you do not voluntarily dismiss my client, you will force my client to incur unnecessary attorneys fees. When we prevail in this matter, my client will have to consider filing a special assessment lien against your client because your client will be the sole cause of having caused my client to unnecessarily incur expenses in the way of attorneys fees. It makes no sense that all the other owners in Tower A should have to pay the cost for attorneys fees in defending your client's frivolous claims, when such expenses should have been avoided if you and your client had been more diligent in ascertaining whether my client was ever involved with the employee's actions that you are complaining about.

Moreover, if you do not dismiss my client from this case, then you are going to compel us to file a motion to dismiss for failure to state a claim, or for a more definite statement, because your Complaint fails to give any particulars as to what role, if any, you allege my client had in entering into your client's property. While it may be true that an employee of one of the other Defendants entered your client's property, your Complaint has no specific or direct allegation that could possibly place any of my client's representatives at the scene of the allegations that are the subject of your Complaint. Your Complaint is completely void of mentioning any such facts.

Based on the foregoing, we respectfully request that you dismiss my client from this case. In our last telephone conversation you stated that it is up to my client to prove to you that my client was not involved. I believe you are proceeding from an erroneous premise because the Plaintiff has the initial burden of proof and persuasion, and even the initial duty, before suing a defendant, to make a proper and diligent investigation as to whether the targeted defendant had any real connection to the allegations being made in the Complaint.

Eric N. Tran, Esq.
August 11, 2016
Page No. 3

I am of the belief that you do not have any evidence to tie my client into any of the allegations in your Complaint setting forth a claim for wrongful entry into the property. If I am correct in that belief, then it is your duty to immediately dismiss my client from this case. The failure to do so will present serious repercussions.

If you are in possession of any facts that can tie my client into your client's claims, then I would be more than happy to receive such information.

I look forward to hearing from you.

Sincerely,

DEANER, MALAN, LARSEN & CIULLA

A handwritten signature in black ink, appearing to read "Brent Larsen" with a stylized flourish at the end.

Brent Larsen, Esq.

BAL/ss
Encl.
cc: Clients

THE RESIDENCES AT MGM GRAND - TOWER A OWNERS' ASSOCIATION

Business Entity Information			
Status:	Active	File Date:	1/9/2004
Type:	Domestic Non-Profit Corporation	Entity Number:	C369-2004
Qualifying State:	NV	List of Officers Due:	1/31/2017
Managed By:		Expiration Date:	
NV Business ID:	NV20041348418	Business License Exp:	

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	ASSOCIA NEVADA SOUTH	Address 1:	3675 W CHEYENNE AVE STE 100
Address 2:		City:	NORTH LAS VEGAS
State:	NV	Zip Code:	89032
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Other		
Jurisdiction:	NORTH LAS VEGAS	Status:	Active

Financial Information	
No Par Share Count:	0
Capital Amount:	\$ 0
No stock records found for this company	

Officers		<input type="checkbox"/> Include Inactive Officers	
Director - JILL ARCHUNDE			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	
City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	
Secretary - ROBERT BERGER			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	
City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	
Treasurer - ROBERT BERGER			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	
City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	
President - TITUS SGRO			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	

City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	

Actions/Amendments			
Action Type:	Articles of Incorporation		
Document Number:	C359-2004-001	# of Pages:	5
File Date:	1/9/2004	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	C359-2004-002	# of Pages:	2
File Date:	6/10/2004	Effective Date:	
List of Officers for 2004 to 2005			
Action Type:	Registered Agent Resignation		
Document Number:	C359-2004-003	# of Pages:	4
File Date:	8/5/2004	Effective Date:	
GORDON & SILVER, LTD. 9TH FLOOR			
3960 HOWARD HUGHES PARKWAY LAS VEGAS NV 89109 RAF			
Action Type:	Annual List		
Document Number:	C359-2004-004	# of Pages:	2
File Date:	12/17/2004	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20050057807-64	# of Pages:	1
File Date:	2/22/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20050094483-25	# of Pages:	1
File Date:	3/31/2005	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	20050094482-14	# of Pages:	1
File Date:	3/31/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060014099-01	# of Pages:	2
File Date:	1/10/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060776791-35	# of Pages:	1
File Date:	12/1/2006	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Address Change		
Document Number:	20080812637-45	# of Pages:	1
File Date:	12/19/2006	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	20070001849-31	# of Pages:	1
File Date:	12/28/2007	Effective Date:	
(No notes for this action)			

Action Type:	Annual List	
Document Number:	20080054435-61	# of Pages: 1
File Date:	1/24/2008	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20090064722-72	# of Pages: 1
File Date:	1/26/2009	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20100389707-97	# of Pages: 1
File Date:	5/21/2010	Effective Date:
2010/2011		
Action Type:	Annual List	
Document Number:	20110066986-49	# of Pages: 1
File Date:	1/27/2011	Effective Date:
ALO2011-2012		
Action Type:	Annual List	
Document Number:	20120041128-81	# of Pages: 1
File Date:	1/20/2012	Effective Date:
12-13		
Action Type:	Annual List	
Document Number:	20130223796-25	# of Pages: 1
File Date:	4/3/2013	Effective Date:
(No notes for this action)		
Action Type:	Miscellaneous	
Document Number:	20130311845-98	# of Pages: 1
File Date:	5/8/2013	Effective Date:
Pursuant to NRS 116 & 78.170(2)		
Action Type:	Miscellaneous	
Document Number:	20130451814-67	# of Pages: 1
File Date:	7/3/2013	Effective Date:
PURSUANT TO NRS 116		
Action Type:	Miscellaneous	
Document Number:	20140075614-00	# of Pages: 1
File Date:	1/29/2014	Effective Date:
PURSUANT TO NRS 116		
Action Type:	Miscellaneous	
Document Number:	20140093424-89	# of Pages: 1
File Date:	2/6/2014	Effective Date:
PURSUANT TO NRS 116		
Action Type:	Annual List	
Document Number:	20140123066-95	# of Pages: 1
File Date:	2/20/2014	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20140785767-97	# of Pages: 1
File Date:	12/1/2014	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20150522920-28	# of Pages: 1

File Date:	11/30/2015	Effective Date:	
(No notes for this action)			

Exhibit B

Exhibit B

From: Eric Tran <ETran@lipsonneilson.com>
Sent: Monday, September 19, 2016 11:56 AM
To: Brent Larsen
Cc: ewyatt@wshblaw.com; Suzanne Saavedra
Subject: RE: 145 East V. MGM Tower A

Hi Brent,

I have been swamped at work lately and I will be out of the country for the next two weeks. I'll have the voluntary dismissal of tower A done when I come back.

Eric

From: Brent Larsen [<mailto:BLarsen@deanerlaw.com>]
Sent: Tuesday, September 13, 2016 5:13 PM
To: Eric Tran <ETran@lipsonneilson.com>
Cc: ewyatt@wshblaw.com; Suzanne Saavedra <SSaavedra@deanerlaw.com>
Subject: RE: 145 East V. MGM Tower A

Hello Eric

On August 26th you telephoned me to tell me that you were going to proceed with filing a voluntary dismissal of the Tower A hoa, and that the dismissal would be without prejudice. You also told me that you would have the dismissal filed by the end of the next week. To date I have not seen the dismissal. Please tell me what is going on. I hope to hear from you soon.

Brent Larsen, Esq.
Deaner, Malan, Larsen & Ciulla
720 S. Fourth Street, #300
Las Vegas, Nevada 89101
(702) 382-6911
(702) 366-0854 (fax)
blarsen@deanerlaw.com

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Exhibit C

Exhibit C

From: Eric Tran <ETran@lipsonneilson.com>
Sent: Monday, December 12, 2016 10:47 AM
To: Brent Larsen
Cc: Suzanne Saavedra; ewyatt@wshblaw.com
Subject: RE: 145 East V. MGM Tower A

Brent,

There was a substitution of counsel filed last Friday. The new counsel representing Plaintiffs is Steve Lewis. You should speak to Steve Lewis.

Eric Tran

From: Brent Larsen [<mailto:BLarsen@deanerlaw.com>]
Sent: Monday, December 12, 2016 10:41 AM
To: Eric Tran <ETran@lipsonneilson.com>
Cc: Suzanne Saavedra <[SSaavedra@deanerlaw.com](mailto:ssaavedra@deanerlaw.com)>; ewyatt@wshblaw.com
Subject: RE: 145 East V. MGM Tower A

Hello Eric

Can you please tell me why you have never followed through with your promise to dismiss my client from this case? Do I need to file a motion to dismiss and ask for sanctions? I need to hear from you ASAP.

Brent Larsen, Esq.
Deaner, Malan, Larsen & Ciulla
720 S. Fourth Street, #300
Las Vegas, Nevada 89101
(702) 382-6911
(702) 366-0854 (fax)
blarsen@deanerlaw.com

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Exhibit D

Exhibit D

From: Steve Lewis <steve.lewis@stoamigo.com>
Sent: Monday, December 12, 2016 12:55 PM
To: Brent Larsen
Cc: Suzanne Saavedra
Subject: Re: 145 E. Harmon v. mgm tower A

Brent,

I appreciate the introduction email. However, I do not even have the file yet. Once I do, I will review all claims made and be happy to sit with you to discuss your client.

Thanks,
Steve

Sent from my iPhone

On Dec 12, 2016, at 12:16 PM, Brent Larsen <BLarsen@deanerlaw.com> wrote:

Hello Mr. Lewis

I understand that you are the new attorney for the Plaintiff in the above referenced matter. Your predecessor counsel, Mr. Tran, previously assured me in writing that he would voluntarily dismiss my client, tower A, from the above referenced lawsuit. However, Mr. Tran never followed through with his promise. So I am writing to inquire if you are prepared to voluntarily dismiss my client from the above referenced case?

I eagerly await your response.

Brent Larsen, Esq.
Deaner, Malan, Larsen & Ciulla
720 S. Fourth Street, #300
Las Vegas, Nevada 89101
(702) 382-6911
(702) 366-0854 (fax)
blarsen@deanerlaw.com

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Exhibit E

Exhibit E

Brent Larsen

From: Steve Lewis <steve.lewis@stoamigo.com>
Sent: Monday, December 12, 2016 4:38 PM
To: Brent Larsen
Cc: Eric Tran; Suzanne Saavedra; ewyatt@wshblaw.com
Subject: Re: 145 E. Harmon II Trust v. MGM Resorts International, et al.

Gentlemen,

Please remove me from any emails which contain pointless bickering.

Sent from my iPhone

On Dec 12, 2016, at 4:13 PM, Brent Larsen <BLarsen@deanerlaw.com> wrote:

You need to take a hard look at the email I just sent you. I think you need to take some CLE classes on what professionalism really means. If nothing else you should learn that it is a two way street. If you want to be treated as a professional then start acting like one., by first recognizing how your behavior is reasonably perceived by others.

Brent Larsen, Esq.

Deaner, Malan, Larsen & Ciulla

720 S. Fourth Street, #300

Las Vegas, Nevada 89101

(702) 382-6911

(702) 366-0854 (fax)

blarsen@deanerlaw.com

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From: Eric Tran [<mailto:ETran@lipsonneilson.com>]
Sent: Monday, December 12, 2016 3:44 PM
To: Brent Larsen; steve.lewis@stoamigo.com
Cc: Suzanne Saavedra; ewyatt@wshblaw.com
Subject: RE: 145 E. Harmon II Trust v. MGM Resorts International, et al.

Mr. Larsen,

I am going to respectfully request that you refrain from making side comments such as "because of Mr. Tran's lack of diligence we now have to start this process all over again."

I don't need to get into a back and forth with you regarding this. Mr. Lewis is now counsel for Plaintiffs. Please be professional and direct all your communication to Mr. Lewis.

Eric Tran

From: Brent Larsen [<mailto:BLarsen@deanerlaw.com>]
Sent: Monday, December 12, 2016 3:33 PM
To: Steve.lewis@stoamigo.com
Cc: Suzanne Saavedra <[SSaavedra@deanerlaw.com](mailto:ssaavedra@deanerlaw.com)>; Eric Tran <ETran@lipsonneilson.com>;
ewyatt@wshblaw.com
Subject: FW: 145 E. Harmon II Trust v. MGM Resorts International, et al.

Hello Steve

Thank you for your recent email. The letter attached to this email is the letter I sent to Mr. Tran back on August 11th, wherein we made a demand to have my client dismissed from the complaint. As a result of that letter Mr. Tran agreed in writing to dismiss my client from the case. Unfortunately, because of Mr. Tran's lack of diligence we now have to start this process all over again. I hope to hear from you soon.

Brent Larsen, Esq.
Deaner, Malan, Larsen & Ciulla
720 S. Fourth Street, #300
Las Vegas, Nevada 89101
(702) 382-6911
(702) 366-0854 (fax)
blarsen@deanerlaw.com

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From: Suzanne Saavedra
Sent: Thursday, August 11, 2016 2:05 PM
To: Eric N. Tran Esq. (etran@lipsonneilson.com)
Cc: Brent Larsen
Subject: 145 E. Harmon II Trust v. MGM Resorts International, et al.

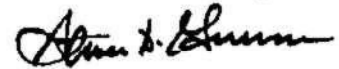
Letter of today's date from Mr. Larsen and enclosure are attached.

Suzanne Saavedra-Zaranti
Legal Assistant to Brent Larsen, Esq.
Deaner, Malan, Larsen & Ciulla
720 S. Fourth Street, Ste. 300
Las Vegas, Nevada 89101
(702) 382-6911
(702) 366-0854 (fax)
ssaavedra@deanerlaw.com

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Exhibit F

Exhibit F



CLERK OF THE COURT

1 MDSM
2 BRENT LARSEN, ESQ.
3 Nevada Bar No. 1184
4 4475 S. Pecos Road
5 Las Vegas, Nevada 89121
6 (702) 454-2111
7 blarsen@deanerlaw.com
8 Attorney for Defendant,
9 Residents at MGM Grand -
10 Tower A Owners' Association

11
12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 145 EAST HARMON II TRUST, ANTHONY
16 TAN AS TRUSTEE OF THE 145 EAST
17 HARMON II TRUST,

18 Plaintiffs,

19 v.

20 MGM RESORTS INTERNATIONAL; MGM
21 GRAND CONDOMINIUMS, LLC; THE
22 SIGNATURE CONDOMINIUMS, LLC;
23 SIGNATURE TOWER I, LLC; THE
24 RESIDENCES AT MGM GRAND - TOWER
25 A OWNERS' ASSOCIATION; and DOES I-
26 X,

27 Defendants.

Case No.: A-16-733764-C
Dept. No.: XVIII

ORAL ARGUMENT REQUESTED


28
29 **MOTION TO DISMISS OR, IN THE ALTERNATIVE,**
30 **MOTION FOR SUMMARY JUDGMENT**

31 COMES NOW the Defendant, MGM Grand - Tower A Owners' Association
32 (hereinafter "Tower A"), by and through its attorney, BRENT LARSEN, ESQ., and hereby
33 moves this court to dismiss Tower A from all causes of action in Plaintiff's Complaint
34 pursuant to NRCP 12(b)(5), or, in the alternative, pursuant to NRCP 56, wherein Tower A is
35 asking that it be dismissed from all claims in Plaintiff's Complaint based upon the Plaintiff's
36 failure to state a claim against Tower A upon which relief can be granted and based upon
37 there being no genuine issue of material fact that the Plaintiff has no viable claim against
38 Tower A, since Tower A is entitled to judgment as a matter of law.

1 This Motion is made and based upon all the pleadings and papers on file herein, the
2 Points and Authorities and exhibits submitted herewith, and any other such argument this
3 court may entertain at the hearing of this matter.

4 DATED this 15 day of March, 2017.


5 Respectfully submitted,

6
7 
8 BRENT LARSEN, ESQ.
9 Nevada Bar No. 001184
10 4475 S. Pecos Road
11 Las Vegas, Nevada 89121
12 Attorney for MGM Tower A

13 **NOTICE OF MOTION**

14 PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION TO
15 DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT on for
16 hearing in Department 18 of the above-entitled Court on the 2 day of May,
17 2017, at 9:00 a.m., or as soon thereafter as counsel may be heard.

18 DATED this 15 day of March, 2017.

19
20 
21 BRENT LARSEN, ESQ.
22 Nevada Bar No. 001184
23 4475 S. Pecos Road
24 Las Vegas, Nevada 89121
25 Attorney for MGM Tower A
26
27
28

1 **POINTS AND AUTHORITIES**

2 1. **The Plaintiffs have not stated a claim against Tower A based on its "shotgun**
3 **pleadings," wherein the claims against Tower A are vague and indefinite.**

4 The Plaintiffs' Complaint has engaged in the disapproved practice of "shotgun
5 pleading." See *Strategic Income Fund, LLC v. Spear*, 305 F.3d 1293 (11th Cir. 2002). See
6 also, *Corbitt v. Home Depo USA, Inc.*, 589 F.3d 1136 (11th Cir. 2009), which cases explain
7 the disapproval of shotgun pleadings. Those cases explain their disapproval of shotgun
8 pleadings, because such pleadings attempt to have all causes of action merged into a single
9 cause of action that has been pled. Both of those courts stated that separate causes of action
10 should be pled to allege separate facts applicable to each separate claims and the parties, or
11 the relationships between the parties.

12 The biggest problem with the Plaintiffs' "shotgun" Complaint is that all of their
13 claims and allegations against The Signature Condominiums, LLC and The Signature Tower
14 I, LLC (collectively "Signature"), have been wrongfully merged into the Plaintiffs'
15 Complaint against Tower A, as well as other Defendants in this action. Thus, the Plaintiffs'
16 "shotgun" Complaint wrongfully assumes that every other Defendant that Plaintiffs have
17 named in this action are automatically guilty of all the same allegedly wrongful acts that the
18 Plaintiffs claim to have been committed by Signature.

19 The essence of the Plaintiffs' Complaint alleges that some person, presumably
20 employed by Signature, had access to a key that allowed entry into the Plaintiffs'
21 condominium unit, and that such employee allegedly allowed himself or a stranger into the
22 Plaintiffs' unit to use the shower and cause water damage to the unit. There is no specific
23 allegation against Tower A in the "shotgun" Complaint or any evidence to support such a
24 claim if made, that anyone associated with Tower A has ever had key access into the
25 Plaintiffs' condominium, or that the alleged wrongdoer was even associated with Tower A.
26 The Plaintiffs have already been given leave to amend their Complaint to correct its defects,
27 but the Plaintiffs failed to correct any pleading defects insofar as Tower A is concerned.

28 ///

1 The Plaintiffs should not be permitted to use a "shotgun pleading" by directing all of
2 their allegations and complaints against Signature to apply with equal force to Tower A when
3 Tower A does not and did not have key access to the Plaintiffs' property, and Tower A has
4 no employees. See, Declaration of Larry Hartman attached as **Exhibit A**. Therefore, an
5 alleged Tower A employee could not have let anyone into the Plaintiffs' property since
6 Tower A does not hire employees.

7 All of the inaccuracies in the Plaintiffs' Complaint are set forth in the Declaration of
8 Larry Hartman attached hereto as Exhibit A. For instance, Mr. Hartman points out that
9 Tower A is a non-profit corporation and is not an LLC as erroneously alleged in the
10 Plaintiffs' Complaint.. Tower A is merely a sub-association within the MGM condominium
11 complex with Signature representing the Master Association. Signature has employees,
12 Tower A has no employees. Mr. Hartman's Declaration points out that the Plaintiffs should
13 be well aware that Tower A does not have a payroll staff because of the amount of
14 assessments that Tower A charges per unit, which would not be sufficient to carry a payroll.
15 For instance, the assessments that Tower A charges are limited to the amount of \$25 to \$50
16 **per year per unit**. Those kind of HOA assessments would not be sufficient to carry a
17 payroll, as explained in Mr. Hartman's Declaration.

18 With regard to the negative treatment given "shotgun pleadings," Tower A refers this
19 court to the aforementioned case of *Strategic Income Fund, LLC v. Spear, supra*, wherein the
20 Appellate Court affirmed a district court's dismissal of a case because the complaint failed to
21 sufficiently allege the relationship of the parties. That is one of the same defects in the
22 Plaintiffs' Complaint in this action. See also *Corbitt v. Home Depo USA, Inc., supra*, which
23 also disapproved of shotgun pleadings.

24 The Plaintiffs' Complaint should also be dismissed against Tower A based upon the
25 case of *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 839 P.2d 599 (1992).
26 In that case the Nevada Supreme Court affirmed a district court's decision that a plaintiff
27 could not introduce any evidence of independent negligence against an insurance company
28 co-defendant during a trial where the allegations of negligence against the insurance

1 company was very vague and indefinite. Just as the plaintiffs' complaint in the *Granite State*
2 case against the insurance company co-defendant was vague and indefinite, the allegations in
3 this case against Tower A, as a co-Defendant, are equally vague and indefinite. When the
4 Supreme Court denied the plaintiff any relief on a negligence claim that was vague and
5 indefinite as against the insurance company, the Court explained its ruling by stating as
6 follows:

7 However, because of the indefiniteness of the pleadings and the
8 absence of the specific allegation of **independent** negligence, we
9 do not agree with Granite State's contentions. Nevada's
10 construction of pleadings, however, liberal it may be, only
11 extends to matters which are fairly noticed to the adverse party.
12 We conclude that the pleadings, due to their vagueness, gave
13 Granite State insufficient notice of the Gift Shop's claim of
14 independent negligence and that the district court committed no
15 error in excluding evidence of Granite State's alleged negligence
16 in writing the policy. (Emphasis added.) 108 Nev. 817.

17 Applying the *Granite State* case to the instant case, the Plaintiffs' Complaint against
18 Tower A, as a co-Defendant, is very vague and very indefinite and does not show any
19 independent action by Tower A that is separate or distinct from the Signature Defendants.
20 Plaintiffs' Complaint basically claims that whatever misdeeds Signature allegedly committed
21 should automatically flow against Tower A as though Tower A is automatically liable for
22 Signature's conduct, even though there is no specific allegation of any independent
23 wrongdoing by Tower A.

24 **2. Plaintiffs' Complaint should also be dismissed because Plaintiffs previously**
25 **agreed to dismiss the case but has since refused to follow through with its**
26 **promise.**

27 On August 11, 2016, counsel for Tower A sent a letter to Plaintiffs' prior counsel,
28 Eric Tran, which contained a demand that the Plaintiffs dismiss Tower A from this case
29 because of the defects in the Plaintiffs' Complaint. That demand letter is attached hereto as
30 **Exhibit B.** After repeated attempts by Tower A's counsel to have the Plaintiffs dismiss
31 Tower A from the case, Mr. Tran finally responded, through an email dated September 19,
32 2016, that he would voluntarily dismiss Tower A from this case. See September 19, 2016

33 ///

email attached hereto as **Exhibit C**. Unfortunately Mr. Tran never followed through with his promise to voluntarily dismiss Tower A from the Plaintiffs' Complaint.

Thereafter, Plaintiffs decided to hire new counsel in the matter. Plaintiffs' new counsel, Mr. Lewis, was also notified on December 12, 2016 of Tower A's demand to be dismissed from this case pursuant to the previous agreement with Mr. Tran, as well as for the reasons set forth in the August 11, 2016 letter from Tower A's counsel. *See Exhibit D* attached hereto, which is the email to Mr. Lewis which also attached the August 11th letter to Mr. Tran. Mr. Lewis has also never responded to Tower A's demand to be dismissed from this case.

CONCLUSION

Based upon the promise from Plaintiffs' prior counsel to dismiss this case, and the total lack of merit that the Plaintiffs' Complaint has against Tower A, this court should readily grant this Motion to Dismiss and enforce the promise of Plaintiffs' prior counsel to dismiss this case. In addition, this court should grant Tower A's Motion to Dismiss since according to the Nevada Supreme Court case of *Grand Gift v. Granite State, supra*, the Plaintiff will not be able to offer any evidence at trial of any independent wrongdoing by Tower A, since the Plaintiff's "shotgun" Complaint is "vague and indefinite" in its allegations against Tower A. In the alternative, this court should grant summary judgment to Tower A based on the Declaration of Larry Hartman, which shows that Tower A has no employees who could have committed the acts alleged in Plaintiffs' Complaint. Therefore, Plaintiffs have no provable case against Tower A and summary judgment should be granted to Tower A.

DATED this 15 day of March, 2017.

Respectfully submitted,

Brent Larsen
BRENT LARSEN, ESQ.
Nevada Bar No. 001184
720 South Fourth St., #300
Las Vegas, Nevada 89101
Attorney for MGM Tower A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of March, 2017, I served a copy of the
above and foregoing MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION
FOR SUMMARY JUDGMENT, by way of:

- ☐ Electronic mail,
- ☒ Electronic means through the Clark County efilng/serving system pursuant to EDCR 8.05(a),
- ☒ Mailing through the United States Postal Service,

to the following address:

Stephen K. Lewis, Esq.
5538 S. Eastern Avenue
Las Vegas, Nevada 89119
steve.lewis@stoamigo.com
Attorney for Plaintiffs

Elisa L. Wyatt, Esq.
Wood, Smith, Henning & Berman
7674 W. Lake Mead Blvd.
Suite 150
Las Vegas, Nevada 89128
ewyatt@wshblaw.com
Attorney for Defendant,
The Signature Condominiums, LLC



An Employee of Deaner, Malan, Larsen
& Ciulla

Exhibit A

Exhibit A

1 DECL
2 BRENT LARSEN, ESQ.
3 Nevada Bar No. 1184
4 4475 S. Pecos Road
5 Las Vegas, Nevada 89121
6 (702) 454-2111
7 blarsen@deanerlaw.com
8 Attorney for Defendant,
9 Residents at MGM Grand Tower -
10 A Owners' Association

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 145 EAST HARMON II TRUST, ANTHONY)
10 TAN AS TRUSTEE OF THE 145 EAST)
11 HARMON II TRUST,)

Case No.: A-16-733764-C
Dept. No.: XVIII

11 Plaintiffs,

12 v.

13 MGM RESORTS INTERNATIONAL; MGM)
14 GRAND CONDOMINIUMS, LLC; THE)
15 SIGNATURE CONDOMINIUMS, LLC;)
16 SIGNATURE TOWER I, LLC; THE)
17 RESIDENCES AT MGM GRAND - TOWER A)
18 OWNERS' ASSOCIATION; and DOES I-X,)

18 Defendants.

19 DECLARATION OF LARRY HARTMAN

20 LARRY HARTMAN, declares under penalty of perjury, states as follows:

21 1. I am employed by Associa Nevada South in North Las Vegas, Nevada. The
22 company I work for is the community manager of the Residences at MGM Grand - Tower A
23 Owners' Association (hereinafter "Tower A"). I have been assigned by my employer as the
24 personal community manager for Tower A. I make this Declaration based upon on my own
25 personal knowledge except as to those matters set forth on information and belief, and as to
26 those matters, I believe them to be true.

27 2. As the community manager for Tower A I am familiar with the allegations that
28 the Plaintiffs have made against Tower A in the Plaintiffs' Complaint filed in District Court

1 Case No. A-16-733764-C. In that case, Tower A is named as a Defendant along with several
2 other Defendants wherein the Plaintiff is 145 EAST HARMON II TRUST, ANTHONY TAN AS
3 TRUSTEE OF THE 145 EAST HARMON II TRUST (hereinafter the "Plaintiff").

4 3. I am making this Declaration in support of Tower A's Motion to Dismiss and/or
5 Motion for Summary Judgment. In this Declaration I want to set forth certain facts to show
6 that many of the allegations in the Plaintiff's Complaint are clearly false and in err. For
7 instance, Paragraph 8 of Plaintiff's Complaint states that Tower A is a Nevada limited liability
8 company. That is not true. Tower A is a non-profit domestic corporation. See printout from
9 Nevada Secretary of State attached as Exhibit 1.

10 4. Paragraph 8 of the Plaintiff's Complaint also erroneously states that Tower A is
11 the owner and operator of a condominium/hotel called the Signature at MGM Grand
12 (hereinafter "Signature"), where the Plaintiff's unit is located. Once again, that is a false
13 allegation. Tower A does not own or operate any condominiums or real property since it is
14 merely a sub-homeowners' association within the MGM Hotel/Condominiums complex
15 operated by Signature, another Defendant in this action.

16 5. The bulk of the Plaintiff's Complaint against Tower A is based upon numerous
17 erroneous allegations by lumping all the Defendants together in a "shotgun fashion." For
18 instance, the Complaint repeatedly uses the phrase "the MGM Defendants and their
19 employees," or "the MGM Defendants," as though every named MGM Defendant's conduct
20 and activity is identical to every other MGM named Defendant. The Complaint makes no
21 attempt to distinguish any of the different roles that Tower A has in relationship to the other
22 "MGM Defendants" named in the Complaint.

23 6. The Complaint's overly broad allegations of the "MGM Defendants and its
24 employees," is an allegation that cannot apply to Tower A because I am informed and believe
25 that Tower A did not have any employees or a payroll in 2015 or 2016. Moreover, Tower A
26 does not even collect a sufficient amount of assessments from its members to be able to
27 afford the hiring of any employees. The Plaintiff should be well aware of this fact based on the
28 amount of assessments it pays to Tower A on an annual basis, by virtue of its ownership of Unit

1 145. The size of assessments depend on the size of the unit but the amount of assessments for
2 each unit in Tower A run in the range of \$25 to \$50 per unit per year. Thus, Tower A has no
3 employees or staff and it did not have or pay any employees or staff in the years 2015 and
4 2016. Tower A's assessment collections are merely used to hire independent contractors,
5 such as Associa Nevada South to help manage its affairs, so that there are no Tower A
6 employees working on site at Tower A. Moreover, the business records of Tower A, which I
7 am familiar with, do not show the existence of any employees in 2015 or 2016.

8 7. The allegations in Paragraphs 16 through 18 of the Complaint are also untrue
9 insofar as Tower A is concerned since Tower A does not control, regulate or issue keys to
10 anyone, nor does it keep any records or inventory of keys, or reports on the use of keys,
11 including the security system. All of these functions are handled through the Signature Master
12 Association. Therefore, whenever the Plaintiff's Complaint refers to "all the MGM
13 Defendants" or "the MGM Defendants employees and staff," such allegations are false and
14 overreaching with reference to Tower A because I am informed and believe that no evidence
15 has ever been brought to Tower A that it ever had any involvement in any of the specific
16 incidences referred to in the Plaintiffs' Complaint. Moreover, no such claim was ever brought
17 to Tower A's attention until it was served with the Plaintiff's Complaint.

18 8. I am informed and believe that Tower A's attorney has made a demand on the
19 Plaintiff's attorney to voluntarily dismiss Tower A from this lawsuit because the allegations
20 against Tower A are unfounded and based upon what I understand to be an irresponsible attempt
21 at "shotgun" allegations. I am also informed and believe, based on emails I have seen in
22 writing, where the Plaintiff's attorney previously agreed in writing to voluntarily dismiss
23 Tower A from this lawsuit. Unfortunately that promise has never been performed. Since the
24 Plaintiff has refused to follow through with its promise, it has become necessary to file this
25 Motion for Summary Judgment. Because the Plaintiff has now put Tower A through the burden
26 of filing this Motion, Tower A will also be seeking a recovery from the Plaintiff of the
27 attorneys fees that Tower A has had to unnecessarily incur in this matter.


28


ERIC N. TRAN
ATTORNEY AT LAW
3536 Eastern Ave. Las Vegas, Nevada 89173
Telephone: (702) 948-9770, Ext. 2033 Fax: (815) 550-2830

1 Turner Gordon LLP, hereby stipulate and agree that Defendant Turnberry/MGM Grand Towers, LLC
2 shall be dismissed from the above entitled action with prejudice. All parties shall bear their own
3 attorneys fee and costs.

4 DATED this 6th day of June, 2016.

DATED this 6th day of June, 2016

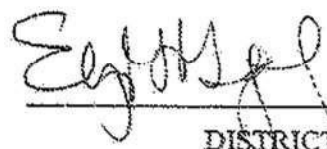
5
6 By: 
7 ERIC N. TRAN
8 Nevada Bar No. 11876
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10 Las Vegas, Nevada 89173
11 Telephone: (702) 948-9770, Ext. 2033
12 Fax: (815) 550-2830
13 E-Mail: Eric.Tran@StoAmigo.com
14 Attorney for Plaintiff

By: 
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Nevada Bar No. 6654
ERIC R. OLSEN
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GABRIELLE A. HAMM
Nevada Bar No. 11588
650 White Drive, Suite 100
Las Vegas Nevada 89119
Telephone: (725) 777-3000
Fax: (725) 777-3112
Attorneys for Defendant
Turnberry/MGM Grand Towers, LLC

17 ORDER

18 IT IS HEREBY ORDERED THAT Defendant Turnberry/MGM Grand Towers, LLC shall be
19 dismissed with prejudice from the above entitled action. Each party shall bear their own attorney's fees
20 and costs.

21 Dated this 7th day of June, 2016

22
23 
24 DISTRICT JUDGE
25
26
27
28


CLERK OF THE COURT

JCCR
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
JOSEPH P. GARIN, ESQ.
Nevada Bar No. 6653
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

145 EAST HARMON II TRUST,
ANTHONY TAN, AS TRUSTEE OF THE
145 EAST HARMON II TRUST,

Plaintiffs,

vs.

MGM RESORTS INTERNATIONAL;
MGM GRAND CONDOMINIUMS, LLC;
THE SIGNATURE CONDOMINIUMS,
LLC; SIGNATURE TOWER I, LLC; THE
RESIDENCES AT MGM GRAND-
TOWER A OWNERS' ASSOCIATION;
and DOES I-X.

Defendants.

Case No.: A-16-733764-C

Dept. No. XI

JOINT CASE
CONFERENCE REPORT

JOINT CASE CONFERENCE REPORT

DISPUTE RESOLUTION
CONFERENCE REQUIRED:

YES NO X ☒

SETTLEMENT CONFERENCE
REQUESTED:

YES NO X ☒

I.

PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

A. DATE OF COMPLAINT: March 21, 2016

*First Amended Complaint filed June 10, 2016

B. DATE OF ANSWER BY EACH DEFENDANT:

May 9, 2016 (Motion to Dismiss filed by Defendants MGM Resorts Int'l and MGM Grand Condominiums LLC);

May 16, 2016 (Joinder to Motion to Dismiss filed by Defendant Turnberry/MGM Grand Towers, LLC.);

June 27, 2016 (Answer to First Amended Complaint filed by Defendants MGM Resorts Int'l, MGM Grand Condominiums, Signature Tower I, LLC, the Signature Condominiums);

June 8, 2016, (Defendant Turnberry/MGM Grand Towers, LLC dismissed by Stipulation and Order)

C. DATE OF EARLY CASE CONFERENCE: September 16, 2016

WHO ATTENDED ECC:

Attorney for Plaintiffs: Eric N. Tran

Attorney for Defendants MGM Resorts Int'l, MGM Grand Condominiums, Signature Tower I, LLC, the Signature Condominiums: Elisa L. Wyatt

II.

A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH CLAIM FOR RELIEF OR DEFENSE:

A. Description of the action:

Plaintiffs herein has filed a Complaint against all Defendants alleging, amongst other things, that on or about November 11, 2015 to December 3, 2015,

1 Defendants and their employees illegally entered Plaintiffs' Condominium Unit while
2 Plaintiffs were away, took a shower, and left the shower running on its hottest
3 temperature and highest pressure which caused damage to the Property.

4 B. Claims for relief: (1) Negligence against all Defendants; (2) Negligence
5 Per Se against all Defendants; (3) Respondent Superior against the MGM Defendants;
6 (4) Conversion against all Defendants; (5) Trespass against all Defendants; and (6)
7 Breach of Contract against the MGM Defendants.

8 C. Defenses: (1) First Amended Complaint ("FAC") fails to state a claim; (2)
9 Plaintiffs could have mitigated the amount of damages but failed, neglected and
10 refused, and continues to fail and refuse to exercise a reasonable effort to mitigate
11 damages; (3) Plaintiff suffered no damages; (4) Relief sought is barred by the doctrine
12 of unclean hands; (5) The claims are not well grounded in fact; (6) Defendants acted in
13 a commercially reasonable manner, dealing fairly and in good-faith, and acted without
14 intent to inflict harm or damage; (7) Defendants are not legally responsible for fictitious
15 DOES named herein; (8) Defendants' actions in no way caused or contributed to
16 Plaintiffs' damages; (9) Any damages claimed by the FAC were proximately caused by
17 the acts of persons other than Defendants; (10) Any damages suffered by Plaintiffs
18 were caused by an independent, which Defendants had no control or authority; (11)
19 Defendants acted pursuant to all of their obligations and were justified or privileged in
20 their actions; (12) Plaintiffs' acts, omissions, negligence, and/or intentional misconduct
21 made it impossible for Defendants to perform their obligation, if any; (13) Any damages
22 suffered by Plaintiffs were a direct and proximate cause by Plaintiffs herein; (14) All
23 events, happenings, injuries, and damages alleged by Plaintiffs are the result of force
24 majeure; (15) Plaintiffs have failed to join all necessary parties to the lawsuit; (16)
25 Plaintiffs' claims are barred as a result of their prior wrongful conduct; (17) Plaintiffs
26
27
28

1 have waived any rights they may have had to seek relief in this action; (18) Each claim
2 for relief is barred by the applicable Statutes of Repose; (19) Each claim for relief is
3 barred by the applicable Statutes of Limitations; (20) Unreasonable delay in advising
4 Defendants of any claims are diminished by the doctrines of estoppel, waiver and/or
5 laches; (21) Plaintiffs modified or altered the Property thus barring Plaintiffs from any
6 recovery against Defendants; (22) Each claim for relief is barred by the Statute of
7 Frauds; (23) Any duty or performance by Defendants are excused by reason of failure
8 of consideration, waiver, breach of condition precedent and breach of Plaintiffs; (24)
9 Plaintiffs' claims of damages are barred due to its own delays, obligations or
10 agreements; (25) Plaintiffs have waived their rights by virtue of their acts, conduct,
11 representations and omissions which constituted a breach of contract by Plaintiffs; (26)
12 Defendants have performed any and all obligations required by it pursuant to any
13 agreements with Plaintiffs; (27) Plaintiffs have failed to satisfy expressed or implied
14 condition precedent to any obligations owed by Defendant; and (28) Defendants have
15 been required to retain legal services to defend against the FAC.

16
17
18 **III.**

19
20 **LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS IN**
21 **THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE**
22 **IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR**
23 **AS A RESULT THEREOF:**

24 Plaintiffs: Bates Documents PLF0001 – PLF0022.

25 Defendants: Bates Documents DEF000001 – DEF000097.

26
27 **IV.**

28 **LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE**
INFORMATION DISCOVERABLE UNDER RULE 26(b), INCLUDING IMPEACHMENT
OR REBUTTAL WITNESSES:

Plaintiffs: Anthony Tan as Trustee of The 145 East Harmon II Trust; NRCP

30(b)(6) Designee of MGM Resorts Int'l; NRCP 30 (b)(6) Designee for MGM Grand Condominiums, LLC; NRCP 30(b)(6) Designee for Signature Tower I, LLC; NRCP 30(b)(6) Designee for The Signature Condominiums, LLC;

Defendants: Anthony Tan as Trustee of The 145 East Harmon II Trust; Representative of Insurance Restoration Services, 4544 W. Russell Road, #A, Las Vegas, NV 89118; Representative of A A Cassaro Construction, 4327 West Sunset Road, Las Vegas, NV 89118; NRCP 30(b)(6) Designee of MGM Resorts Int'l; NRCP 30 (b)(6) Designee for MGM Grand Condominiums, LLC; NRCP 30(b)(6) Designee for Signature Tower I, LLC; and NRCP 30(b)(6) Designee for The Signature Condominiums, LLC.

V.

DISCOVERY PLAN

A. What changes, if any, should be made in the timing, form or requirements for disclosures under 16.1(a):

1. Plaintiffs' view: None

2. Defendants' view: None.

When disclosures under 16.1(a)(1) were made or will be made:

1. Plaintiffs: October 11, 2016

2. Defendants: October 7, 2016

B. Subjects on which discovery may be needed:

1. Plaintiffs' view: Liability and damages and all claims made in Plaintiffs' FAC and all affirmative defenses asserted by Defendants.

2. Defendants' view: Liability and damages and all claims made in Plaintiff's FAC and all affirmative defenses asserted by Defendants.

C. Should discovery be conducted in phases or limited to or focused upon

1 particular issues?

2 1. Plaintiffs' view: No.

3 2. Defendants' view: No.

4 D. What changes, if any, should be made in limitations on discovery imposed
5 under these rules and what, if any, other limitations should be imposed?
6

7 1. Plaintiffs' view: None.

8 2. Defendants' view: None.

9 E. What, if any, other orders should be entered by court under Rule 26(c) or
10 Rule 16(b) and (c):

11 1. Plaintiffs' view: None.

12 2. Defendants' view: None.

13 F. Estimated time for trial:

14 1. Plaintiffs' view: 2 – 3 Days

15 2. Defendants' view: 2 – 3 Days

16 VI.

17 **DISCOVERY AND MOTION DATES [16.1(c)(5)-(8)]**

18 A. Dates agreed by the parties:

19 1. Close of discovery: August 16, 2017 (11 months from ECC on
20 September 16, 2016)

21 2. Final date to file motions to amend pleadings or add parties
22 (without a further court order): May 18, 2017

23 (Not later than 90 days before close of discovery)

24 3. Final dates for expert disclosures:

25 i. initial disclosure: May 18, 2017

26 (Not later than 90 days before discovery cut-off date)

1 ii. rebuttal disclosures: June 19, 2017¹

2 (Not later than 30 days after initial disclosure of experts)

3 4. Final date to file dispositive motions: September 15, 2017

4 (Not later than 30 days after discovery cut-off date)

5 **B.** In the event the parties do not agree on dates, the following section must
6 be completed:

7 1. Plaintiff's suggested close of discovery:

8 Defendant's suggested close of discovery:

9 2. Plaintiff's suggested final date to file motions to amend pleadings or
10 add parties (without a further court order):

11 (Not later than 90 days before close of discovery)

12 Defendant's suggested final date to file motions to amend
13 pleadings or add parties (without a further court order):

14 (Not later than 90 days before close of discovery)

15 3. Final dates for expert disclosures:

16 i. Plaintiff's suggested initial disclosure:

17 (Not later than 90 days before discovery cut-off date)

18 Defendant's suggested initial disclosure:

19 (Not later than 90 days before discovery cut-off date)

20 ii. Plaintiff's suggested rebuttal disclosures:

21 (Not later than 30 days after initial disclosure of experts)

22 Defendant's suggested rebuttal disclosures:

23 (Not later than 30 days after initial disclosure of experts)

24 4. Final date to file dispositive motions:

25 i. Plaintiff's suggested:

26
27 ¹ 30 days after the date of initial disclosure is Saturday June 17, 2017.

(Not later than 30 days after discovery cut-off date)

ii. Defendant's suggested:
Failure to agree on the calendar dates in this subdivision shall result in a
discovery planning conference.

VII.
JURY DEMAND

Has a jury demand been filed? Yes

VIII.

INITIAL DISCLOSURES/OBJECTIONS

If a party objects during the Early Case Conference that initial disclosures are not
appropriate in the circumstances of this case, those objections must be stated herein.
The Court shall determine what disclosures, if any, are to be made and shall set the
time for such disclosure.

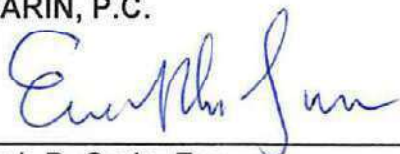
This report is signed in accordance with rule 26(g)(1) of the Nevada Rules of Civil
Procedure. Each signature constitutes a certification that to the best of the signer's
knowledge, information and belief, formed after a reasonable inquiry, the disclosures
made by the signer are complete and correct as of this time.

Dated: 12-05-16

Dated: 11-18-16

LIPSON NEILSON COLE SELTZER
& GARIN, P.C.

WOOD SMITH HENNING & BERMAN LLP



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NV Bar No. 11876
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Attorneys for Plaintiffs

Janice M. Michaels, Esq.
NV Bar No. 6062
Elisa L. Wyatt, Esq.
NV Bar No. 13034
7674 West Lake Mead Blvd., #150
Las Vegas, NV 89128
*Attorneys for Defendant MGM Resorts,
International; MGM Grand Condos LLC,
Signature Tower I, LLC; and The
Signature Condominiums, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing **Joint Case Conference Report**, was made this 5th day of December, 2016 by electronic service on the parties registered to receive such service via Wiznet/Odyssey as follows:

Wood Smith Henning & Berman

Contact	Email
Janice M. Michaels	jmichaels@wshblaw.com
Michael B. Kragness	mkragness@wshblaw.com

Wood Smith Henning & Berman LLP

Contact	Email
Elisa L. Wyatt	ewyatt@wshblaw.com
Rikki Garate	rgarate@wshblaw.com



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

OFFER

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jmichaels@wshblaw.com
Elisa L. Wyatt
Nevada Bar No. 13034
ewyatt@wshblaw.com
Wood, Smith, Henning & Berman LLP
7674 West Lake Mead Boulevard, Suite 150
Las Vegas, Nevada 89128-6644
Telephone: 702 251 4100
Facsimile: 702 251 5405
Attorneys for Defendants, MGM Resorts
International; MGM Grand Condominiums, LLC;
Signature Tower I, LLC; and The Signature
Condominiums, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

145 EAST HARMON II TRUST, ANTHONY
TAN AS TRUSTEE OF THE 145 EAST
HARMON II TRUST,

Plaintiffs,

v.

MGM RESORTS INTERNATIONAL; MGM
GRAND CONDOMINIUMS, LLC; THE
SIGNATURE CONDOMINIUMS, LLC;
SIGNATURE TOWER I, LLC; THE
RESIDENCES AT MGM GRAND - TOWER A
OWNERS' ASSOCIATION; and DOES I-X,

Defendants.

Case No. A-16-733764-C
Dept. No.: XI

OFFER OF JUDGMENT TO PLAINTIFFS

COMES NOW, Defendants, MGM Resorts International; MGM Grand Condominiums, LLC;
Signature Tower I, LLC and The Signature Condominiums, LLC (hereinafter "Defendants"), by and
through their attorneys of record, the law firm of Wood, Smith, Henning & Berman, LLP, and,
pursuant to the provisions of NRCP 68, hereby issue this offer of judgment to allow Plaintiffs,
145 East Harmon II Trust and Anthony Tan, as Trustee of the 145 East Harmon II Trust (hereinafter
"Plaintiffs"), as pursuant to NRCP 68(c)(3)(B) the same entity, person or group (the Trustee), is
authorized to decide whether to settle the claims against Defendants for all Plaintiffs, to take judgment
against Defendants, in the amount of TWENTY THOUSAND DOLLARS and ZERO CENTS

1 (\$20,000.00) in exchange for a Dismissal With Prejudice of any and all of their claims in, and with
2 respect to, this action. The foregoing amount is inclusive of pre-judgment interest, fees and costs, any
3 and all liens, and any and all claims, known and unknown, that were brought or could have been
4 brought against Defendants, their agents, employees, affiliates, related/parent/subsidiary companies,
5 corporations and/or business entities, with respect to this action, with each side bearing their own fees
6 and costs, and neither party will be deemed to be the prevailing party.

7 In the event this Offer of Judgment is timely accepted by Plaintiffs, Defendants will elect to
8 pay the amount offered herein within a reasonable time and obtain a Dismissal with Prejudice of
9 Defendants from the above-entitled action, as provided in NRCP 68(d), and this Offer of Judgment
10 shall be converted to a written settlement agreement in accordance with the terms and conditions set
11 forth herein.

12 As a material condition of this offer, each side shall bear their own fees and costs and neither
13 party will be deemed to be the prevailing party. This Offer is in no way an admission of liability and
14 Defendants do not waive any defenses by virtue of this Offer.

15 This Offer shall be open for a period of ten (10) days from the service of this Offer. If this
16 Offer is not accepted within ten (10) days, Defendants shall seek recovery of their attorney's fees and
17 costs should any judgment or arbitration award rendered in the above captioned case be more
18 favorable for Defendants than this Offer.

19 January 23, 2017

20 WOOD, SMITH, HENNING & BERMAN LLP

21
22 By


23 JANICE M. MICHAELS

24 Nevada Bar No. 6062

25 ELISA L. WYATT

26 Nevada Bar No. 13034

27 7674 West Lake Mead Boulevard, Suite 150

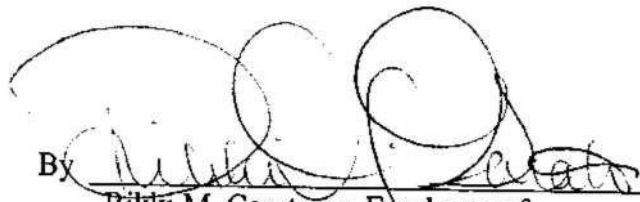
28 Las Vegas, Nevada 89128-6644


Attorneys for Defendants, MGM Resorts
International; MGM Grand Condominiums, LLC;
Signature Tower I, LLC; and The Signature
Condominiums, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2017, I caused a true and correct copy of **OFFER OF JUDGMENT TO PLAINTIFFS** to be placed in the United States Mail, with first class postage prepaid, addressed as follows:

Steve Lewis, Esq.
5538 S. Eastern Avenue
Las Vegas, Nevada 89119
Attorney for Plaintiff

By 
Rikki M. Garate, an Employee of
WOOD, SMITH, HENNING & BERMAN LLP



CLERK OF THE COURT

1 MDSM
2 BRENT LARSEN, ESQ.
3 Nevada Bar No. 1184
4 4475 S. Pecos Road
5 Las Vegas, Nevada 89121
6 (702) 454-2111
7 blarsen@deanerlaw.com
8 Attorney for Defendant,
9 Residents at MGM Grand -
10 Tower A Owners' Association

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 145 EAST HARMON II TRUST, ANTHONY
14 TAN AS TRUSTEE OF THE 145 EAST
15 HARMON II TRUST,

16 Plaintiffs,

17 v.

18 MGM RESORTS INTERNATIONAL; MGM
19 GRAND CONDOMINIUMS, LLC; THE
20 SIGNATURE CONDOMINIUMS, LLC;
21 SIGNATURE TOWER I, LLC; THE
22 RESIDENCES AT MGM GRAND - TOWER
23 A OWNERS' ASSOCIATION; and DOES I-
24 X,

25 Defendants.

Case No.: A-16-733764-C
Dept. No.: XVIII

ORAL ARGUMENT REQUESTED


26 **MOTION TO DISMISS OR, IN THE ALTERNATIVE,**
27 **MOTION FOR SUMMARY JUDGMENT**

28 COMES NOW the Defendant, MGM Grand - Tower A Owners' Association
(hereinafter "Tower A"), by and through its attorney, BRENT LARSEN, ESQ., and hereby
moves this court to dismiss Tower A from all causes of action in Plaintiff's Complaint
pursuant to NRCP 12(b)(5), or, in the alternative, pursuant to NRCP 56, wherein Tower A is
asking that it be dismissed from all claims in Plaintiff's Complaint based upon the Plaintiff's
failure to state a claim against Tower A upon which relief can be granted and based upon
there being no genuine issue of material fact that the Plaintiff has no viable claim against
Tower A, since Tower A is entitled to judgment as a matter of law.

1 This Motion is made and based upon all the pleadings and papers on file herein, the
2 Points and Authorities and exhibits submitted herewith, and any other such argument this
3 court may entertain at the hearing of this matter.

4 DATED this 15 day of March, 2017.


5 Respectfully submitted,

6
7 
8 BRENT LARSEN, ESQ.
9 Nevada Bar No. 001184
10 4475 S. Pecos Road
11 Las Vegas, Nevada 89121
12 Attorney for MGM Tower A
13

14 **NOTICE OF MOTION**

15 PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION TO
16 DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT on for
17 hearing in Department 18 of the above-entitled Court on the 2 day of May,
18 2017, at 9:00 a.m., or as soon thereafter as counsel may be heard.

19 DATED this 15 day of March, 2017.

20
21 
22 BRENT LARSEN, ESQ.
23 Nevada Bar No. 001184
24 4475 S. Pecos Road
25 Las Vegas, Nevada 89121
26 Attorney for MGM Tower A
27
28

POINTS AND AUTHORITIES

1. **The Plaintiffs have not stated a claim against Tower A based on its “shotgun pleadings,” wherein the claims against Tower A are vague and indefinite.**

The Plaintiffs’ Complaint has engaged in the disapproved practice of “shotgun pleading.” See *Strategic Income Fund, LLC v. Spear*, 305 F.3d 1293 (11th Cir. 2002). See also, *Corbitt v. Home Depo USA, Inc.*, 589 F.3d 1136 (11th Cir. 2009), which cases explain the disapproval of shotgun pleadings. Those cases explain their disapproval of shotgun pleadings, because such pleadings attempt to have all causes of action merged into a single cause of action that has been pled. Both of those courts stated that separate causes of action should be pled to allege separate facts applicable to each separate claims and the parties, or the relationships between the parties.

The biggest problem with the Plaintiffs’ “shotgun” Complaint is that all of their claims and allegations against The Signature Condominiums, LLC and The Signature Tower I, LLC (collectively “Signature”), have been wrongfully merged into the Plaintiffs’ Complaint against Tower A, as well as other Defendants in this action. Thus, the Plaintiffs’ “shotgun” Complaint wrongfully assumes that every other Defendant that Plaintiffs have named in this action are automatically guilty of all the same allegedly wrongful acts that the Plaintiffs claim to have been committed by Signature.

The essence of the Plaintiffs’ Complaint alleges that some person, presumably employed by Signature, had access to a key that allowed entry into the Plaintiffs’ condominium unit, and that such employee allegedly allowed himself or a stranger into the Plaintiffs’ unit to use the shower and cause water damage to the unit. There is no specific allegation against Tower A in the “shotgun” Complaint or any evidence to support such a claim if made, that anyone associated with Tower A has ever had key access into the Plaintiffs’ condominium, or that the alleged wrongdoer was even associated with Tower A. The Plaintiffs have already been given leave to amend their Complaint to correct its defects, but the Plaintiffs failed to correct any pleading defects insofar as Tower A is concerned.

///

1 The Plaintiffs should not be permitted to use a "shotgun pleading" by directing all of
2 their allegations and complaints against Signature to apply with equal force to Tower A when
3 Tower A does not and did not have key access to the Plaintiffs' property, and Tower A has
4 no employees. See, Declaration of Larry Hartman attached as **Exhibit A**. Therefore, an
5 alleged Tower A employee could not have let anyone into the Plaintiffs' property since
6 Tower A does not hire employees.

7 All of the inaccuracies in the Plaintiffs' Complaint are set forth in the Declaration of
8 Larry Hartman attached hereto as Exhibit A. For instance, Mr. Hartman points out that
9 Tower A is a non-profit corporation and is not an LLC as erroneously alleged in the
10 Plaintiffs' Complaint.. Tower A is merely a sub-association within the MGM condominium
11 complex with Signature representing the Master Association. Signature has employees,
12 Tower A has no employees. Mr. Hartman's Declaration points out that the Plaintiffs should
13 be well aware that Tower A does not have a payroll staff because of the amount of
14 assessments that Tower A charges per unit, which would not be sufficient to carry a payroll.
15 For instance, the assessments that Tower A charges are limited to the amount of \$25 to \$50
16 **per year per unit**. Those kind of HOA assessments would not be sufficient to carry a
17 payroll, as explained in Mr. Hartman's Declaration.

18 With regard to the negative treatment given "shotgun pleadings," Tower A refers this
19 court to the aforementioned case of *Strategic Income Fund, LLC v. Spear, supra*, wherein the
20 Appellate Court affirmed a district court's dismissal of a case because the complaint failed to
21 sufficiently allege the relationship of the parties. That is one of the same defects in the
22 Plaintiffs' Complaint in this action. See also *Corbitt v. Home Depo USA, Inc., supra*, which
23 also disapproved of shotgun pleadings.

24 The Plaintiffs' Complaint should also be dismissed against Tower A based upon the
25 case of *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 839 P.2d 599 (1992).
26 In that case the Nevada Supreme Court affirmed a district court's decision that a plaintiff
27 could not introduce any evidence of independent negligence against an insurance company
28 co-defendant during a trial where the allegations of negligence against the insurance

1 company was very vague and indefinite. Just as the plaintiffs' complaint in the *Granite State*
2 case against the insurance company co-defendant was vague and indefinite, the allegations in
3 this case against Tower A, as a co-Defendant, are equally vague and indefinite. When the
4 Supreme Court denied the plaintiff any relief on a negligence claim that was vague and
5 indefinite as against the insurance company, the Court explained its ruling by stating as
6 follows:

7 However, because of the indefiniteness of the pleadings and the
8 absence of the specific allegation of **independent** negligence, we
9 do not agree with Granite State's contentions. Nevada's
10 construction of pleadings, however, liberal it may be, only
11 extends to matters which are fairly noticed to the adverse party.
12 We conclude that the pleadings, due to their vagueness, gave
13 Granite State insufficient notice of the Gift Shop's claim of
14 independent negligence and that the district court committed no
15 error in excluding evidence of Granite State's alleged negligence
16 in writing the policy. (Emphasis added.) 108 Nev. 817.

17 Applying the *Granite State* case to the instant case, the Plaintiffs' Complaint against
18 Tower A, as a co-Defendant, is very vague and very indefinite and does not show any
19 independent action by Tower A that is separate or distinct from the Signature Defendants.
20 Plaintiffs' Complaint basically claims that whatever misdeeds Signature allegedly committed
21 should automatically flow against Tower A as though Tower A is automatically liable for
22 Signature's conduct, even though there is no specific allegation of any independent
23 wrongdoing by Tower A.

24 **2. Plaintiffs' Complaint should also be dismissed because Plaintiffs previously**
25 **agreed to dismiss the case but has since refused to follow through with its**
26 **promise.**

27 On August 11, 2016, counsel for Tower A sent a letter to Plaintiffs' prior counsel,
28 Eric Tran, which contained a demand that the Plaintiffs dismiss Tower A from this case
because of the defects in the Plaintiffs' Complaint. That demand letter is attached hereto as
Exhibit B. After repeated attempts by Tower A's counsel to have the Plaintiffs dismiss
Tower A from the case, Mr. Tran finally responded, through an email dated September 19,
2016, that he would voluntarily dismiss Tower A from this case. See September 19, 2016

///

email attached hereto as **Exhibit C**. Unfortunately Mr. Tran never followed through with his promise to voluntarily dismiss Tower A from the Plaintiffs' Complaint.

Thereafter, Plaintiffs decided to hire new counsel in the matter. Plaintiffs' new counsel, Mr. Lewis, was also notified on December 12, 2016 of Tower A's demand to be dismissed from this case pursuant to the previous agreement with Mr. Tran, as well as for the reasons set forth in the August 11, 2016 letter from Tower A's counsel. *See Exhibit D* attached hereto, which is the email to Mr. Lewis which also attached the August 11th letter to Mr. Tran. Mr. Lewis has also never responded to Tower A's demand to be dismissed from this case.

CONCLUSION

Based upon the promise from Plaintiffs' prior counsel to dismiss this case, and the total lack of merit that the Plaintiffs' Complaint has against Tower A, this court should readily grant this Motion to Dismiss and enforce the promise of Plaintiffs' prior counsel to dismiss this case. In addition, this court should grant Tower A's Motion to Dismiss since according to the Nevada Supreme Court case of *Grand Gift v. Granite State, supra*, the Plaintiff will not be able to offer any evidence at trial of any independent wrongdoing by Tower A, since the Plaintiff's "shotgun" Complaint is "vague and indefinite" in its allegations against Tower A. In the alternative, this court should grant summary judgment to Tower A based on the Declaration of Larry Hartman, which shows that Tower A has no employees who could have committed the acts alleged in Plaintiffs' Complaint. Therefore, Plaintiffs have no provable case against Tower A and summary judgment should be granted to Tower A.

DATED this 15 day of March, 2017.

Respectfully submitted,

Brent Larsen
BRENT LARSEN, ESQ.
Nevada Bar No. 001184
720 South Fourth St., #300
Las Vegas, Nevada 89101
Attorney for MGM Tower A

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 15th day of March, 2017, I served a copy of the
3 above and foregoing MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION
4 FOR SUMMARY JUDGMENT, by way of:

- 5 ☐ Electronic mail,
6 ☒ Electronic means through the Clark County efilng/serving system pursuant to
7 EDCR 8.05(a),
8 ☒ Mailing through the United States Postal Service,

9 to the following address:

10 Stephen K. Lewis, Esq.
11 5538 S. Eastern Avenue
12 Las Vegas, Nevada 89119
13 steve.lewis@stoamigo.com
14 Attorney for Plaintiffs

15 Elisa L. Wyatt, Esq.
16 Wood, Smith, Henning & Berman
17 7674 W. Lake Mead Blvd.
18 Suite 150
19 Las Vegas, Nevada 89128
20 ewyatt@wshblaw.com
21 Attorney for Defendant,
22 The Signature Condominiums, LLC


23
24
25
26
27
28

An Employee of Deaner, Malan, Larsen
& Ciulla

Exhibit A

Exhibit A

1 DECL
BRENT LARSEN, ESQ.
2 Nevada Bar No. 1184
4475 S. Pecos Road
3 Las Vegas, Nevada 89121
(702) 454-2111
4 blarsen@deanerlaw.com
Attorney for Defendant,
5 Residents at MGM Grand Tower -
A Owners' Association

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 145 EAST HARMON II TRUST, ANTHONY)
TAN AS TRUSTEE OF THE 145 EAST)
10 HARMON II TRUST,)

Case No.: A-16-733764-C
Dept. No.: XVIII

11 Plaintiffs,

12 v.

13 MGM RESORTS INTERNATIONAL; MGM)
GRAND CONDOMINIUMS, LLC; THE)
14 SIGNATURE CONDOMINIUMS, LLC;)
SIGNATURE TOWER I, LLC; THE)
15 RESIDENCES AT MGM GRAND - TOWER A)
OWNERS' ASSOCIATION; and DOES I-X,)

16 Defendants.
17

18 DECLARATION OF LARRY HARTMAN

19 LARRY HARTMAN, declares under penalty of perjury, states as follows:

20 1. I am employed by Associa Nevada South in North Las Vegas, Nevada. The
21 company I work for is the community manager of the Residences at MGM Grand - Tower A
22 Owners' Association (hereinafter "Tower A"). I have been assigned by my employer as the
23 personal community manager for Tower A. I make this Declaration based upon on my own
24 personal knowledge except as to those matters set forth on information and belief, and as to
25 those matters, I believe them to be true.

26 2. As the community manager for Tower A I am familiar with the allegations that
27 the Plaintiffs have made against Tower A in the Plaintiffs' Complaint filed in District Court
28

1 Case No. A-16-733764-C. In that case, Tower A is named as a Defendant along with several
2 other Defendants wherein the Plaintiff is 145 EAST HARMON II TRUST, ANTHONY TAN AS
3 TRUSTEE OF THE 145 EAST HARMON II TRUST (hereinafter the "Plaintiff").

4 3. I am making this Declaration in support of Tower A's Motion to Dismiss and/or
5 Motion for Summary Judgment. In this Declaration I want to set forth certain facts to show
6 that many of the allegations in the Plaintiff's Complaint are clearly false and in err. For
7 instance, Paragraph 8 of Plaintiff's Complaint states that Tower A is a Nevada limited liability
8 company. That is not true. Tower A is a non-profit domestic corporation. See printout from
9 Nevada Secretary of State attached as Exhibit 1.

10 4. Paragraph 8 of the Plaintiff's Complaint also erroneously states that Tower A is
11 the owner and operator of a condominium/hotel called the Signature at MGM Grand
12 (hereinafter "Signature"), where the Plaintiff's unit is located. Once again, that is a false
13 allegation. Tower A does not own or operate any condominiums or real property since it is
14 merely a sub-homeowners' association within the MGM Hotel/Condominiums complex
15 operated by Signature, another Defendant in this action.

16 5. The bulk of the Plaintiff's Complaint against Tower A is based upon numerous
17 erroneous allegations by lumping all the Defendants together in a "shotgun fashion." For
18 instance, the Complaint repeatedly uses the phrase "the MGM Defendants and their
19 employees," or "the MGM Defendants," as though every named MGM Defendant's conduct
20 and activity is identical to every other MGM named Defendant. The Complaint makes no
21 attempt to distinguish any of the different roles that Tower A has in relationship to the other
22 "MGM Defendants" named in the Complaint.

23 6. The Complaint's overly broad allegations of the "MGM Defendants and its
24 employees," is an allegation that cannot apply to Tower A because I am informed and believe
25 that Tower A did not have any employees or a payroll in 2015 or 2016. Moreover, Tower A
26 does not even collect a sufficient amount of assessments from its members to be able to
27 afford the hiring of any employees. The Plaintiff should be well aware of this fact based on the
28 amount of assessments it pays to Tower A on an annual basis, by virtue of its ownership of Unit

1 145. The size of assessments depend on the size of the unit but the amount of assessments for
2 each unit in Tower A run in the range of \$25 to \$50 per unit per year. Thus, Tower A has no
3 employees or staff and it did not have or pay any employees or staff in the years 2015 and
4 2016. Tower A's assessment collections are merely used to hire independent contractors,
5 such as Associa Nevada South to help manage its affairs, so that there are no Tower A
6 employees working on site at Tower A. Moreover, the business records of Tower A, which I
7 am familiar with, do not show the existence of any employees in 2015 or 2016.

8 7. The allegations in Paragraphs 16 through 18 of the Complaint are also untrue
9 insofar as Tower A is concerned since Tower A does not control, regulate or issue keys to
10 anyone, nor does it keep any records or inventory of keys, or reports on the use of keys,
11 including the security system. All of these functions are handled through the Signature Master
12 Association. Therefore, whenever the Plaintiff's Complaint refers to "all the MGM
13 Defendants" or "the MGM Defendants employees and staff," such allegations are false and
14 overreaching with reference to Tower A because I am informed and believe that no evidence
15 has ever been brought to Tower A that it ever had any involvement in any of the specific
16 incidences referred to in the Plaintiffs' Complaint. Moreover, no such claim was ever brought
17 to Tower A's attention until it was served with the Plaintiff's Complaint.

18 8. I am informed and believe that Tower A's attorney has made a demand on the
19 Plaintiff's attorney to voluntarily dismiss Tower A from this lawsuit because the allegations
20 against Tower A are unfounded and based upon what I understand to be an irresponsible attempt
21 at "shotgun" allegations. I am also informed and believe, based on emails I have seen in
22 writing, where the Plaintiff's attorney previously agreed in writing to voluntarily dismiss
23 Tower A from this lawsuit. Unfortunately that promise has never been performed. Since the
24 Plaintiff has refused to follow through with its promise, it has become necessary to file this
25 Motion for Summary Judgment. Because the Plaintiff has now put Tower A through the burden
26 of filing this Motion, Tower A will also be seeking a recovery from the Plaintiff of the
27 attorneys fees that Tower A has had to unnecessarily incur in this matter.

28

1 I declare under penalty of perjury under the laws of the United States of America and
2 the State of Nevada that the foregoing is true and correct.

3 DATED this 8TH day of March, 2017.

4
5 
6 LARRY HARTMAN
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Exhibit B

Exhibit B

DEANER, MALAN, LARSEN & CIULLA
Attorneys at Law

Charles W. Deaner
Douglas R. Malan
Brent A. Larsen
Anthony Ciulla

Of Counsel:
Thomas D. Beatty

A PROFESSIONAL CORPORATION
720 South Fourth Street, Suite 300
Las Vegas, Nevada 89101
Telephone (702) 382-6911
Fax (702) 366-0854
www.deanerlaw.com

J. Douglas Deaner
(1944-1990)

Also Licensed In:
+ Utah

August 11, 2016

VIA EMAIL (etran@lipsonneilson.com)
and U.S. MAIL

Eric N. Tran, Esq.
Lipson, Neilson, Cole, Seltzer & Garin
9900 Covington Cross Drive, Ste. 120
Las Vegas, Nevada 89144

Re: *145 East Harmon II Trust, et al. v. MGM Resorts International, et al.*
Case No.: A-16-733764-C

Dear Eric:

Since we last spoke on the telephone, I have had the opportunity to review the Complaint in the above-referenced matter. Based on what I saw in the Complaint, I must ask you to voluntarily dismiss my client, The Residences at MGM Grand - Tower A Owners' Association (hereinafter "Tower A"). In your Complaint you state that my client is a limited liability company. In fact, it is a non-profit homeowners' association. This is a fact you could have easily ascertained from the Nevada Secretary of State records prior to filing your Complaint. Please see the enclosed printout from the Secretary of State.

On behalf of my client I must object to the "gunshot method" of your Complaint in that you are seemingly naming as a Defendant every conceivable entity that ever had any association with your client's property, regardless of whether they had anything to do with the employee who you claim made an allegedly unlawful entry into your client's property. Before you named my client as a Defendant, however, I believe that your NRCP 11 obligations required you to do more due diligence in investigating any alleged involvement that Tower A had regarding the particular unauthorized entry that is the subject of your Complaint.

Moreover, your own client should know, based on the amount of annual assessments that it pays into the Tower A Association, that Tower A's assessment collections could not allow it to have a budget to hire employees or a staff. For your information, the **annual** assessments at Tower A run from \$25 to \$50 per unit. Thus, the employee that you are complaining about is clearly an employee of some entity other than my client.

Another objection that I have to your Complaint is that it repeatedly uses the phrase the "MGM Defendants." Your own Complaint identifies certain MGM Defendants as being subsidiaries of MGM International. However, your Complaint very carefully acknowledges that my client is not a subsidiary of MGM International. Yet, while you make a distinction between my client and the other MGM Defendants in terms of its ownership, you make no distinction in any other part of the Complaint as to what my client's alleged involvement is or was with any of the other Defendants' role in dealing with your client's property. Instead, you merely lumped all the Defendants together in alleged wrongdoing, without mentioning any particular act of wrongdoing by my client.

You also make an allegation that each and every Defendant in the Complaint owns an interest in your client's property. Your client knows that my client is merely a sub-association in a condominium hotel development. As such my client does not own any property. Please tell me what your pre-complaint investigation turned up to support any allegation that my client owns any property, and in particular any interest in your client's property.

If you do not voluntarily dismiss my client, you will force my client to incur unnecessary attorneys fees. When we prevail in this matter, my client will have to consider filing a special assessment lien against your client because your client will be the sole cause of having caused my client to unnecessarily incur expenses in the way of attorneys fees. It makes no sense that all the other owners in Tower A should have to pay the cost for attorneys fees in defending your client's frivolous claims, when such expenses should have been avoided if you and your client had been more diligent in ascertaining whether my client was ever involved with the employee's actions that you are complaining about.

Moreover, if you do not dismiss my client from this case, then you are going to compel us to file a motion to dismiss for failure to state a claim, or for a more definite statement, because your Complaint fails to give any particulars as to what role, if any, you allege my client had in entering into your client's property. While it may be true that an employee of one of the other Defendants entered your client's property, your Complaint has no specific or direct allegation that could possibly place any of my client's representatives at the scene of the allegations that are the subject of your Complaint. Your Complaint is completely void of mentioning any such facts.

Based on the foregoing, we respectfully request that you dismiss my client from this case. In our last telephone conversation you stated that it is up to my client to prove to you that my client was not involved. I believe you are proceeding from an erroneous premise because the Plaintiff has the initial burden of proof and persuasion, and even the initial duty, before suing a defendant, to make a proper and diligent investigation as to whether the targeted defendant had any real connection to the allegations being made in the Complaint.

Eric N. Tran, Esq.
August 11, 2016
Page No. 3

I am of the belief that you do not have any evidence to tie my client into any of the allegations in your Complaint setting forth a claim for wrongful entry into the property. If I am correct in that belief, then it is your duty to immediately dismiss my client from this case. The failure to do so will present serious repercussions.

If you are in possession of any facts that can tie my client into your client's claims, then I would be more than happy to receive such information.

I look forward to hearing from you.

Sincerely,

DEANER, MALAN, LARSEN & CIULLA



Brent Larsen, Esq.,

BAL/ss
Encl.
cc: Clients

THE RESIDENCES AT MGM GRAND - TOWER

A OWNERS' ASSOCIATION

Business Entity Information			
Status:	Active	File Date:	1/9/2004
Type:	Domestic Non-Profit Corporation	Entity Number:	C359-2004
Qualifying State:	NV	List of Officers Due:	1/31/2017
Managed By:		Expiration Date:	
NV Business ID:	NV20041348418	Business License Exp:	

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	ASSOCIA NEVADA SOUTH	Address 1:	3675 W CHEYENNE AVE STE 100
Address 2:		City:	NORTH LAS VEGAS
State:	NV	Zip Code:	89032
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Other		
Jurisdiction:	NORTH LAS VEGAS	Status:	Active

Financial Information		
No Par Share Count:	0	Capital Amount:
No stock records found for this company		

<input type="checkbox"/> Officers <input type="checkbox"/> Include Inactive Officers			
Director - JILL ARCHUNDE			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	
City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	
Secretary - ROBERT BERGER			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	
City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	
Treasurer - ROBERT BERGER			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	
City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	
President - TITUS SGRO			
Address 1:	3675 WEST CHEYENNE AVENUE, SUITE 100	Address 2:	

City:	NORTH LAS VEGAS	State:	NV
Zip Code:	89032	Country:	USA
Status:	Active	Email:	

Actions/Amendments			
Action Type:	Articles of Incorporation		
Document Number:	C359-2004-001	# of Pages:	5
File Date:	1/9/2004	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	C359-2004-002	# of Pages:	2
File Date:	6/10/2004	Effective Date:	
List of Officers for 2004 to 2005			
Action Type:	Registered Agent Resignation		
Document Number:	C359-2004-003	# of Pages:	4
File Date:	8/5/2004	Effective Date:	
GORDON & SILVER, LTD. 9TH FLOOR 3960 HOWARD HUGHES PARKWAY LAS VEGAS NV 89109 RAF			
Action Type:	Annual List		
Document Number:	C359-2004-004	# of Pages:	2
File Date:	12/17/2004	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20050067807-84	# of Pages:	1
File Date:	2/22/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20050094483-25	# of Pages:	1
File Date:	3/31/2005	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	20050094482-14	# of Pages:	1
File Date:	3/31/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060014099-01	# of Pages:	2
File Date:	1/10/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060776791-35	# of Pages:	1
File Date:	12/1/2006	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Address Change		
Document Number:	20060812637-45	# of Pages:	1
File Date:	12/19/2006	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	20070001849-31	# of Pages:	1
File Date:	12/28/2007	Effective Date:	
(No notes for this action)			

Action Type:	Annual List	
Document Number:	20080054435-51	# of Pages: 1
File Date:	1/24/2008	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20090064722-72	# of Pages: 1
File Date:	1/26/2009	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20100389707-97	# of Pages: 1
File Date:	5/21/2010	Effective Date:
2010/2011		
Action Type:	Annual List	
Document Number:	20110065985-49	# of Pages: 1
File Date:	1/27/2011	Effective Date:
ALO2011-2012		
Action Type:	Annual List	
Document Number:	20120041128-51	# of Pages: 1
File Date:	1/20/2012	Effective Date:
12-13		
Action Type:	Annual List	
Document Number:	20130223795-25	# of Pages: 1
File Date:	4/3/2013	Effective Date:
(No notes for this action)		
Action Type:	Miscellaneous	
Document Number:	20130311845-98	# of Pages: 1
File Date:	5/6/2013	Effective Date:
Pursuant to NRS 116 & 78.170(2)		
Action Type:	Miscellaneous	
Document Number:	20130451614-57	# of Pages: 1
File Date:	7/3/2013	Effective Date:
PURSUANT TO NRS 116		
Action Type:	Miscellaneous	
Document Number:	20140075614-00	# of Pages: 1
File Date:	1/29/2014	Effective Date:
PURSUANT TO NRS 116		
Action Type:	Miscellaneous	
Document Number:	20140093424-89	# of Pages: 1
File Date:	2/6/2014	Effective Date:
PURSUANT TO NRS 116		
Action Type:	Annual List	
Document Number:	20140123068-95	# of Pages: 1
File Date:	2/20/2014	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20140785767-97	# of Pages: 1
File Date:	12/1/2014	Effective Date:
(No notes for this action)		
Action Type:	Annual List	
Document Number:	20150522920-28	# of Pages: 1

Entity Details - Secretary of State, Nevada

<http://nvsos.gov/sosentitysearch/PrintCorp.aspx?lx&nvq=m%2b7poH...>

File Date:	11/30/2015	Effective Date:	
(No notes for this action)			

Exhibit C

Exhibit C

Brent Larsen

From: Eric Tran <ETran@lipsonneilson.com>
Sent: Monday, September 19, 2016 11:56 AM
To: Brent Larsen
Cc: ewyatt@wshblaw.com; Suzanne Saavedra
Subject: RE: 145 East V. MGM Tower A

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Brent,

I have been swamped at work lately and I will be out of the country for the next two weeks. I'll have the voluntary dismissal of tower A done when I come back.

Eric

From: Brent Larsen [mailto:BLarsen@deanerlaw.com]
Sent: Tuesday, September 13, 2016 5:13 PM
To: Eric Tran <ETran@lipsonneilson.com>
Cc: ewyatt@wshblaw.com; Suzanne Saavedra <SSaavedra@deanerlaw.com>
Subject: RE: 145 East V. MGM Tower A

Hello Eric

On August 26th you telephoned me to tell me that you were going to proceed with filing a voluntary dismissal of the Tower A hoa, and that the dismissal would be without prejudice. You also told me that you would have the dismissal filed by the end of the next week. To date I have not seen the dismissal. Please tell me what is going on. I hope to hear from you soon.

Brent Larsen, Esq.
Deaner, Malan, Larsen & Ciulla
720 S. Fourth Street, #300
Las Vegas, Nevada 89101
(702) 382-6911
(702) 366-0854 (fax)
blarsen@deanerlaw.com

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication (including any attachments) contains confidential and/or privileged information intended only for the addressee, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. If you have received this communication in error, please reply to this e-mail, or call us immediately at (702) 382-6911, and ask to speak to the sender of the communication. Thank you. Deaner, Malan, Larsen & Ciulla - Attorneys at Law.

From: Eric Tran [mailto:ETran@lipsonneilson.com]
Sent: Tuesday, August 02, 2016 10:16 AM
To: Brent Larsen
Cc: Suzanne Saavedra
Subject: RE: 145 East V. MGM Tower A

Exhibit D

Exhibit D

Brent Larsen

From: Brent Larsen
Sent: Monday, December 12, 2016 3:33 PM
To: Steve.lewis@stoamigo.com
Cc: Suzanne Saavedra; etran@lipsonneilson.com; ewyatt@wshblaw.com
Subject: FW: 145 E. Harmon II Trust v. MGM Resorts International, et al.
Attachments: Tran.001 8-11-2016 (w-encl).pdf

Hello Steve

Thank you for your recent email. The letter attached to this email is the letter I sent to Mr. Tran back on August 11th, wherein we made a demand to have my client dismissed from the complaint. As a result of that letter Mr. Tran agreed in writing to dismiss my client from the case. Unfortunately, because of Mr. Tran's lack of diligence we now have to start this process all over again. I hope to hear from you soon.

Brent Larsen, Esq.
Deaner, Malan, Larsen & Ciulla
720 S. Fourth Street, #300
Las Vegas, Nevada 89101
(702) 382-6911
(702) 366-0854 (fax)
blarsen@deanerlaw.com

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From: Suzanne Saavedra
Sent: Thursday, August 11, 2016 2:05 PM
To: Eric N. Tran Esq. (etran@lipsonneilson.com)
Cc: Brent Larsen
Subject: 145 E. Harmon II Trust v. MGM Resorts International, et al.

Letter of today's date from Mr. Larsen and enclosure are attached.

Suzanne Saavedra-Zaranti
Legal Assistant to Brent Larsen, Esq.
Deaner, Malan, Larsen & Ciulla
720 S. Fourth Street, Ste. 300
Las Vegas, Nevada 89101
(702) 382-6911
(702) 366-0854 (fax)
ssaavedra@deanerlaw.com

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Steven D. Grierson

SINGER & LARSEN P.C.

4475 S. Pecos Road

Las Vegas, Nevada 89121

Telephone (702) 454-2111 • Facsimile (702) 454-1333

1 STDM
2 BRENT LARSEN, ESQ.
3 Nevada Bar No. 1184
4 SINGER & LARSEN P.C.
5 4475 S. Pecos Road
6 Las Vegas, Nevada 89121
7 (702) 454-2111
8 blarsen@deanerlaw.com
9 Attorney for Defendant,
10 The Residences at MGM Grand -
11 Tower A Owners' Association

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 145 EAST HARMON II TRUST, ANTHONY
16 TAN AS TRUSTEE OF THE 145 EAST
17 HARMON II TRUST,

18 Plaintiffs,

19 v.

20 MGM RESORTS INTERNATIONAL; MGM
21 GRAND CONDOMINIUMS, LLC; THE
22 SIGNATURE CONDOMINIUMS, LLC;
23 SIGNATURE TOWER I, LLC; THE
24 RESIDENCES AT MGM GRAND - TOWER
25 A OWNERS' ASSOCIATION; and DOES I-
26 X,

27 Defendants.

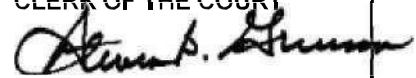
Case No.: A-16-733764-C
Dept. No.: XVIII

28 **STIPULATION AND ORDER FOR DISMISSAL**

COMES NOW the Plaintiff, 145 EAST HARMON II TRUST and ANTHONY TAN AS TRUSTEE OF THE 145 EAST HARMON II TRUST (hereinafter "the Plaintiff"), by and through their attorney, STEPHEN K. LEWIS, ESQ., and the Defendant THE RESIDENCES AT MGM GRAND - TOWER A OWNERS' ASSOCIATION (hereinafter "Defendant/MGM Tower A"), by and through its attorney, BRENT LARSEN, ESQ. of the law firm of SINGER & LARSEN P.C., and hereby stipulate and agree to the following:

1. All claims asserted in the Plaintiff's First Amended Complaint against Defendant MGM Tower A, are hereby dismissed with prejudice.

///



1 MATF
2 BRENT LARSEN, ESQ.
3 Nevada Bar No. 1184
4 SINGER & LARSEN P.C.
5 4475 S. Pecos Road
6 Las Vegas, Nevada 89121
7 (702) 454-2111
8 blarsen@singerlarsen.com
9 Attorney for Defendant,
10 Residents at MGM Grand -
11 Tower A Owners' Association

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 145 EAST HARMON II TRUST, ANTHONY
16 TAN AS TRUSTEE OF THE 145 EAST
17 HARMON II TRUST,

18 Plaintiffs,

19 v.

20 MGM RESORTS INTERNATIONAL; MGM
21 GRAND CONDOMINIUMS, LLC; THE
22 SIGNATURE CONDOMINIUMS, LLC;
23 SIGNATURE TOWER I, LLC; THE
24 RESIDENCES AT MGM GRAND - TOWER
25 A OWNERS' ASSOCIATION; and DOES I-
26 X,

27 Defendants.

Case No.: A-16-733764-C
Dept. No.: XVIII

28
29 **MOTION FOR ATTORNEYS' FEES**

30 COMES NOW the Defendant, THE RESIDENCES AT MGM GRAND - TOWER A
31 OWNERS' ASSOCIATION (hereinafter referred to as either "Tower A" or the "Association"),
32 by and through its attorney, BRENT LARSEN, ESQ. of the law firm of SINGER & LARSEN
33 P.C., and hereby presents this Motion to recover the attorneys' fees that the Defendant
34 wrongfully had to incur in obtaining its dismissal from this case.

35 ///

36 ///

37 ///

38 ///

IN THE SUPREME COURT OF THE STATE OF NEVADA

145 EAST HARMON II TRUST,
ANTHONY TAN AS TRUSTEE OF
THE 145 EAST HARMON II
TRUST,

Appellants,

vs.

THE RESIDENCES AT MGM
GRAND – TOWER A OWNERS'
ASSOCIATION,

Respondent.

Electronically Filed
Jan 30 2019 08:04 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 75920

**APPEAL FROM POST-STIPULATION OF DISMISSAL ORDER
AWARDING ATTORNEY'S FEES AND COSTS;
EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA;
HONORABLE MARK B. BAILUS**

APPELLANTS' APPENDIX VOLUME II

DAVID J. KAPLAN (Bar No. 14022)
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HARMON II TRUST and ANTHONY
TAN AS TRUSTEE OF THE 145 EAST
HARMON II TRUST

**Alphabetical Index of Appendix for 145 East Harmon II Trust *et al.* v.
The Residences at MGM Grand – Tower A Owners’ Association**

<u>No.</u>	<u>Date</u>	<u>Title</u>	<u>Vol No.</u>	<u>Appendix Page Nos.</u>
1.	August 16, 2016	Affidavit of Service (Association)	Vol II	TRUST248-249
2.	April 14, 2016	Affidavit of Service (MGM Grand)	Vol I	TRUST011
3.	April 14, 2016	Affidavit of Service (MGM Resorts)	Vol I	TRUST012
4.	June 21, 2016	Affidavit of Service (Signature Condominiums)	Vol I	TRUST210-212
5.	June 21, 2016	Affidavit of Service (Signature Tower I)	Vol I	TRUST207-209
6.	April 21, 2016	Affidavit of Service (Turnberry)	Vol I	TRUST013
7.	May 18, 2017	Association’s Motion for Attorney Fees	Vol II	TRUST297-370
8.	March 15, 2017	Association’s Motion to Dismiss or in the Alternative for Summary Judgment	Vol II	TRUST271-294
9.	July 10, 2017	Association’s Reply in Support of Its Motion for Attorney Fees	Vol II	TRUST386-427
10.	March 21, 2016	Complaint	Vol I	TRUST001-010

<u>No.</u>	<u>Date</u>	<u>Title</u>	<u>Vol No.</u>	<u>Appendix Page Nos.</u>
11.	August 30, 2016	Entry of Order Denying Motion to Dismiss and Granting Motion to Amend	Vol II	TRUST250-254
12.	October 11, 2016	Entry of Order of Dismissal of Turnberry	Vol II	TRUST255-258
13.	June 10, 2016	First Amended Complaint	Vol I	TRUST197-206
14.	December 5, 2016	Joint Case Conference Report	Vol II	TRUST259-267
15.	January 23, 2017	MGM and Signature Defendants' Offer of Judgment	Vol II	TRUST268-270
16.	June 27, 2016	MGM Defendants' Answer to First Amended Complaint	Vol I	TRUST213-224
17.	May 9, 2016	MGM Defendants' Motion to Dismiss	Vol I	TRUST014-128
18.	April 16, 2018	Notice of Entry of Order Granting Association Attorney Fees and Costs	Vol II	TRUST439-443
19.	September 15, 2017	Notice of Entry of Order of Dismissal of MGM and Signature Defendants	Vol II	TRUST432-438
20.	July 5, 2016	Signature Condominiums' Answer to First Amended Complaint	Vol II	TRUST236-247

<u>No.</u>	<u>Date</u>	<u>Title</u>	<u>Vol No.</u>	<u>Appendix Page Nos.</u>
21.	July 5, 2016	Signature Tower I's Answer to First Amended Complaint	Vol II	TRUST225-235
22.	April 27, 2017	Stipulation and Order of Dismissal of Association	Vol II	TRUST295-296
23.	August 15, 2017	Transcript of Decision Hearing for Association's Motion for Attorney Fees	Vol II	TRUST428-431
24.	May 30, 2018	Trust's Amended Certificate of Service for Notice of Appeal	Vol II	TRUST447-449
25.	May 16, 2018	Trust's Notice of Appeal	Vol II	TRUST444-446
26.	June 5, 2017	Trust's Opposition to Association's Motion for Attorney Fees	Vol II	TRUST371-385
27.	May 19, 2016	Trust's Opposition to MGM Defendants' Motion to Dismiss	Vol I	TRUST135-174
28.	June 7, 2016	Trust's Supplement to Opposition to Motion to Dismiss	Vol I	TRUST175-196
29.	May 16, 2016	Turnberry's Motion to Dismiss	Vol I	TRUST129-134

**Chronological Index of Appendix for 145 East Harmon II Trust *et al.* v.
The Residences at MGM Grand – Tower A Owners’ Association**

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6.	May 16, 2016	Turnberry’s Motion to Dismiss	Vol I	TRUST129-134
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9.	June 10, 2016	First Amended Complaint	Vol I	TRUST197-206
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11.	June 21, 2016	Affidavit of Service (Signature Condominiums)	Vol I	TRUST210-212

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CLERK OF THE COURT

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International; MGM Grand Condominiums, LLC;
Signature Tower I, LLC; and The Signature
9 Condominiums, LLC

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 145 EAST HARMON II TRUST, ANTHONY
13 TAN AS TRUSTEE OF THE 145 EAST
HARMON II TRUST,

14 Plaintiffs,

15 v.

16 MGM RESORTS INTERNATIONAL; MGM
17 GRAND CONDOMINIUMS, LLC; THE
SIGNATURE CONDOMINIUMS, LLC;
18 SIGNATURE TOWER I, LLC; THE
RESIDENCES AT MGM GRAND - TOWER A
19 OWNERS' ASSOCIATION; and DOES I-X,

20 Defendants.

Case No. A-16-733764-C
Dept. No.: XI

**SIGNATURE TOWER I, LLC'S ANSWER
TO PLAINTIFFS' FIRST AMENDED
COMPLAINT**

21
22 COMES NOW, Defendant, Signature Tower I, LLC (collectively, hereinafter "Defendant") by
23 and through its counsel, the law firm of WOOD, SMITH, HENNING & BERMAN, LLP, and hereby
24 answers and responds to Plaintiffs' First Amended Complaint, as follows:

25 **THE PARTIES**

26 1. Answering Paragraphs 1, 2, 3, 4, 5, 7, 8 and 9 of Plaintiffs' First Amended Complaint,
27 the averments contained therein do not assert claims against Defendant; therefore no response is
28 required. To the extent said Paragraphs are determined to contain factual allegations made against

1 Defendant, Defendant is without sufficient knowledge or information to form a belief as to the truth of
2 the allegations therein, and therefore, denies each and every allegation contained therein.

3 2. Answering Paragraph 6 of Plaintiffs' First Amended Complaint, Defendant admits it is
4 a Nevada limited liability company with its principal place of business in Clark County, Nevada and it
5 is the owner of the Signature at MGM Grand located at 145 E. Harmon Ave., Las Vegas Nevada
6 89109 and Defendant MGM Resorts International is the ultimate parent corporation of Defendant. As
7 to the remaining allegations, Defendant is without sufficient knowledge or information to form a
8 belief as to the truth of the allegations therein, and therefore, denies each and every allegation
9 contained therein.

10 3. Answering Paragraph 10 of Plaintiffs' First Amended Complaint, Defendant is without
11 sufficient knowledge or information to form a belief as to the truth of the allegations therein, and
12 therefore, denies each and every allegation contained therein.

13 **STATEMENT OF FACTS**

14 4. Answering Paragraphs 11, 16, 17, 18, 21 and 25 of Plaintiffs' First Amended
15 Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of
16 the allegations therein, and therefore, denies each and every allegation contained therein.

17 5. Answering Paragraphs 12, 13 and 22 of Plaintiffs' First Amended Complaint, the
18 averments contained therein do not assert claims against Defendant; therefore no response is required.
19 To the extent said Paragraphs are determined to contain factual allegations made against Defendant,
20 Defendant is without sufficient knowledge or information to form a belief as to the truth of the
21 allegations therein, and therefore, denies each and every allegation contained therein.

22 6. Answering Paragraph 14 of Plaintiffs' First Amended Complaint, Defendant admits
23 that the Unit has an exterior double door that allows an electronic key card to be inserted to gain entry
24 and the Unit has an interior door that allows the same electronic key card to be inserted to gain entry.
25 As to the remaining allegations, Defendant is without sufficient knowledge or information to form a
26 belief as to the truth of the allegations therein, and therefore, denies each and every allegation
27 contained therein.

28 ///

7. Answering Paragraph 15 of Plaintiffs' First Amended Complaint, Defendant admits there is a system in place that keeps track of use of an electronic key card at the Unit entry doors and that there are security cameras in the hallway. As to the remaining allegations, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore, denies each and every allegation contained therein.

8. Answering Paragraphs 19, 20, 23 and 24 of Plaintiffs' First Amended Complaint, Defendant states that these Paragraphs contain purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent said Paragraphs are determined to contain factual allegations made against Defendant, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore, denies each and every allegation contained therein.

FIRST CLAIM FOR RELIEF

(Negligence against all Defendants)

9. Answering Paragraph 26 of Plaintiffs' First Amended Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 25 of Plaintiffs' First Amended as if fully set forth and incorporated herein.

10. Answering Paragraphs 27, 28 and 29 of Plaintiffs' First Amended Complaint, Defendant states that these Paragraphs contain purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent said Paragraphs are determined to contain factual allegations made against Defendant, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore, denies each and every allegation contained therein.

SECOND CLAIM FOR RELIEF

(Negligence Per Se against all Defendants)

11. Answering Paragraph 30 of Plaintiffs' First Amended Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 29 of Plaintiffs' First Amended as if fully set forth and incorporated herein.

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12. Answering Paragraphs 31, 32, 33, 34, 35, 36 and 37 of Plaintiffs' First Amended Complaint, Defendant states that these Paragraphs contain purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent said Paragraphs are determined to contain factual allegations made against Defendant, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore, denies each and every allegation contained therein.

THIRD CLAIM FOR RELIEF

(Respondent Superior against all Defendants)

13. Answering Paragraph 38 of Plaintiffs' First Amended Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 37 of Plaintiffs' First Amended as if fully set forth and incorporated herein.

14. Answering Paragraphs 39, 40, 41, 42 and 43 of Plaintiffs' First Amended Complaint, Defendant states that these Paragraphs contain purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent said Paragraphs are determined to contain factual allegations made against Defendant, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore, denies each and every allegation contained therein.

FOURTH CLAIM FOR RELIEF

(Conversion against all Defendants)

15. Answering Paragraph 44 of Plaintiffs' First Amended Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 43 of Plaintiffs' First Amended as if fully set forth and incorporated herein.

16. Answering Paragraphs 45, 46 and 47 of Plaintiffs' First Amended Complaint, Defendant states that these Paragraphs contain purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent said Paragraphs are determined to contain factual allegations made against Defendant, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore, denies each and every allegation contained therein.

1 **FIFTH CLAIM FOR RELIEF**

2 (Trespass against all Defendants)

3 17. Answering Paragraph 48 of Plaintiffs' First Amended Complaint, Defendant repeats
4 and realleges its answers to Paragraphs 1 through 47 of Plaintiffs' First Amended as if fully set forth
5 and incorporated herein.

6 18. Answering Paragraphs 49 and 50 of Plaintiffs' First Amended Complaint, Defendant
7 states that these Paragraphs contain purported legal conclusions and/or statements or recitations of
8 law, rather than allegations, and as such, no response is necessary. To the extent said Paragraphs are
9 determined to contain factual allegations made against Defendant, Defendant is without sufficient
10 knowledge or information to form a belief as to the truth of the allegations therein, and therefore,
11 denies each and every allegation contained therein.

12 **SIXTH CLAIM FOR RELIEF**

13 (Breach of Contract against all Defendants)

14 19. Answering Paragraph 51 of Plaintiffs' First Amended Complaint, Defendant repeats
15 and realleges its answers to Paragraphs 1 through 50 of Plaintiffs' First Amended as if fully set forth
16 and incorporated herein.

17 20. Answering Paragraphs 52, 53, 54, 55 and 56 of Plaintiffs' First Amended Complaint,
18 Defendant states that these Paragraphs contain purported legal conclusions and/or statements or
19 recitations of law, rather than allegations, and as such, no response is necessary. To the extent said
20 Paragraphs are determined to contain factual allegations made against Defendant, Defendant is
21 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,
22 and therefore, denies each and every allegation contained therein.

23 **AFFIRMATIVE DEFENSES**

24 **FIRST AFFIRMATIVE DEFENSE**

25 The First Amended Complaint fails to state a claim upon which relief can be granted.

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SECOND AFFIRMATIVE DEFENSE

Plaintiffs, by the exercise of reasonable effort and/or care, could have mitigated the amount of damages alleged to have been suffered, but that Plaintiffs failed, neglected and refused, and continues to fail and refuse to exercise a reasonable effort to mitigate their alleged damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs have suffered no damages.

FOURTH AFFIRMATIVE DEFENSE

The relief sought by Plaintiffs is barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are not well grounded in fact and are not warranted by existing law or good faith argument for the extension or modification of existing law but pursued only for the purpose of harassment, unnecessary delay and the incurrence of needless cost of litigation to Defendant.

SIXTH AFFIRMATIVE DEFENSE

At all times relevant to the First Amended Complaint, Defendant acted in a commercially reasonable manner, dealing fairly and in good-faith, and acted without intent to inflict harm or damage.

SEVENTH AFFIRMATIVE DEFENSE

Defendant is not legally responsible for the acts and/or omissions of those parties named herein as fictitious DOES or named as any other entity.

EIGHTH AFFIRMATIVE DEFENSE

Defendant's actions in no way caused or contributed to the Plaintiffs' injuries and/or damages.

NINTH AFFIRMATIVE DEFENSE

Any damages which the Plaintiffs may have sustained by reason of the allegations contained in the First Amended Complaint were proximately caused by the acts of persons other than Defendant and, therefore, Plaintiffs are not entitled to any relief from Defendant.

TENTH AFFIRMATIVE DEFENSE

Any damages suffered by the Plaintiffs were caused by an independent, superseding cause or causes over which Defendant had no control or authority.

ELEVENTH AFFIRMATIVE DEFENSE

At all times relevant to the First Amended Complaint, Defendant acted pursuant to all of its obligations, if any, and were justified or privileged in its actions.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' acts, omissions, negligence, and/or intentional misconduct made it impossible for Defendant to perform its obligation, if any.

THIRTEENTH AFFIRMATIVE DEFENSE

If Plaintiffs suffered or sustained any loss, injury, damage or detriment, the same was directly and proximately caused and contributed to by the conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of Plaintiffs, thereby completely or partially barring Plaintiffs' recovery herein.

FOURTEENTH AFFIRMATIVE DEFENSE

Any and all events, happenings, injuries, and damages alleged by Plaintiffs are the result of force majeure.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to join all necessary and indispensable parties to this lawsuit.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred as a result of their prior wrongful conduct.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have waived any rights they may have had to seek relief in this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

The First Amended Complaint, and each and every claim for relief contained therein, is barred by the applicable Statutes of Repose.

NINETEENTH AFFIRMATIVE DEFENSE

The First Amended Complaint, and each and every claim for relief contained therein, is barred by the applicable Statutes of Limitations.

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TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' unreasonable delay in advising Defendant of any claims Plaintiffs had in this action bars and/or diminishes Plaintiffs' recovery herein under the doctrines of estoppel, waiver, and/or laches.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs or other unknown third-persons or entities modified or altered the subject property, without the knowledge or consent of Defendant, and such modification or alteration directly and proximately caused the damages suffered by Plaintiffs, if any, thus barring Plaintiffs from any recovery against Defendant.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The First Amended Complaint, and each and every claim for relief contained therein, is barred by the Statute of Frauds.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Any contracts, obligations or agreements as alleged in Plaintiffs' First Amended Complaint have been entered into, any duty or performance owed or due by Defendant is excused by reason of failure of consideration, waiver, breach of condition precedent, breach by Plaintiffs, impossibility of performance, prevention by Plaintiffs, frustration of purpose and/or acceptance by Plaintiffs.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Any delay in performance of any contract, obligation or agreement was caused by the interference, action and/or inaction of Plaintiffs which bars Plaintiffs' claim for damages and/or liquidated damages.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiffs have waived their right to the relief sought in Plaintiffs' First Amended Complaint by virtue of their acts, conduct, representations and omissions which constituted a breach of contract by Plaintiffs.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Defendant has performed any and all obligations required by it pursuant to any agreements with Plaintiffs.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to satisfy one or more express or implied condition precedent to any obligations allegedly owed to Defendant.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendant has been required to retain the services of Wood Smith Henning & Berman, LLP, to defend this action, and reasonable attorneys' fees and costs of suit herein incurred should be awarded therefore.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Pursuant to Rule 11 of NRCP as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry from the filing of Plaintiffs' Amended Complaint. In the event further investigation or discovery in this case reveals the applicability of any additional affirmative defenses, including but not limited to those affirmative defenses enumerated to NRCP 8(c), Defendant reserves the right to specifically assert any such defenses. The defenses contained in NRCP 8(c) are incorporated herein by reference for the specific purpose of not waiving any such defenses.

WHEREFORE, Defendant prays as follows:

1. That Plaintiffs take nothing by their First Amended Complaint;
2. That Plaintiffs' First Amended Complaint be dismissed, in its entirety, with prejudice;
3. That Defendant be awarded its costs of suit incurred in defense of this action;

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1 4. That Defendant be awarded its reasonable attorneys' fees as provided by the
2 applicable statute and/or rule; and

3 5. For such other relief as this Court deems proper.

4 July 5, 2016

5 WOOD, SMITH, HENNING & BERMAN LLP
6 Attorneys at Law

7
8 By 

JANICE M. MICHAELS

Nevada Bar No. 6062

ELISA L. WYATT

Nevada Bar No. 13034

7674 West Lake Mead Boulevard, Suite 150

Las Vegas, Nevada 89128-6644

Tel. 702.251.4100

13 Attorneys for Defendants, MGM Resorts
14 International; MGM Grand Condominiums, LLC;
15 Signature Tower I, LLC; and The Signature
16 Condominiums, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 2016, a true and correct copy of SIGNATURE
TOWER I, LLC'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT was served
by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and
serving all parties with an email-address on record, who have agreed to receive Electronic Service in
this action.

Eric N. Tran, Esq.
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Las Vegas, NV 89173
Fax: 815-550-2830
eric.tran@stoamigo.com
Attorney for Plaintiffs

By


Rikki M. Garate, an Employee of
WOOD, SMITH, HENNING & BERMAN LLP

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8 Attorneys for Defendants, MGM Resorts
International; MGM Grand Condominiums, LLC;
Signature Tower I, LLC; and The Signature
9 Condominiums, LLC

10
11 DISTRICT COURT
CLARK COUNTY, NEVADA

12 145 EAST HARMON II TRUST, ANTHONY
13 TAN AS TRUSTEE OF THE 145 EAST
HARMON II TRUST,

14 Plaintiffs,

15 v.

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17 GRAND CONDOMINIUMS, LLC; THE
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18 SIGNATURE TOWER I, LLC; THE
RESIDENCES AT MGM GRAND - TOWER A
19 OWNERS' ASSOCIATION; and DOES I-X,

20 Defendants.

Case No. A-16-733764-C
Dept. No.: XI

**THE SIGNATURE CONDOMINIUMS,
LLC'S ANSWER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT**

21
22 COMES NOW, Defendant, The Signature Condominiums, LLC (collectively, hereinafter
23 "Defendant") by and through its counsel, the law firm of WOOD, SMITH, HENNING & BERMAN,
24 LLP, and hereby answers and responds to Plaintiffs' First Amended Complaint, as follows:

25 **THE PARTIES**

26 1. Answering Paragraphs 1, 2, 3, 4, 6, 7, 8 and 9 of Plaintiffs' First Amended Complaint,
27 the averments contained therein do not assert claims against Defendant; therefore no response is
28 required. To the extent said Paragraphs are determined to contain factual allegations made against

WOOD, SMITH, HENNING & BERMAN LLP
Attorneys at Law
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LAS VEGAS, NEVADA 89128-6644
TELEPHONE 702 251 4100 • FAX 702 251 5405

1 Defendant, Defendant is without sufficient knowledge or information to form a belief as to the truth of
2 the allegations therein, and therefore, denies each and every allegation contained therein.

3 2. Answering Paragraph 5 of Plaintiffs' First Amended Complaint, Defendant admits the
4 allegations therein.

5 3. Answering Paragraph 10 of Plaintiffs' First Amended Complaint, Defendant is without
6 sufficient knowledge or information to form a belief as to the truth of the allegations therein, and
7 therefore, denies each and every allegation contained therein.

8 **STATEMENT OF FACTS**

9 4. Answering Paragraph 11 of Plaintiffs' First Amended Complaint, Defendant admits
10 that an electronic key card for the Unit was used on November 11, 2015, as to the remaining
11 allegations Defendant is without sufficient knowledge or information to form a belief as to the truth of
12 the allegations therein, and therefore, denies each and every allegation contained therein.

13 5. Answering Paragraphs 12 of Plaintiffs' First Amended Complaint, the averments
14 contained therein do not assert claims against Defendant; therefore no response is required. To the
15 extent said Paragraph is determined to contain factual allegations made against Defendant, Defendant
16 is without sufficient knowledge or information to form a belief as to the truth of the allegations
17 therein, and therefore, denies each and every allegation contained therein.

18 6. Answering Paragraph 13 of Plaintiffs' First Amended Complaint, Defendant admits
19 that on December 3, 2016 an electronic key card was used at the Unit, as to the remaining allegations
20 Defendant is without sufficient knowledge or information to form a belief as to the truth of the
21 allegations therein, and therefore, denies each and every allegation contained therein.

22 7. Answering Paragraph 14 of Plaintiffs' First Amended Complaint, Defendant admits
23 that the Unit has an exterior double door that allows an electronic key card to be inserted to gain entry
24 and the Unit has an interior door that allows the same electronic key card to be inserted to gain entry.
25 Further, Defendant admits an electronic key card is issued to the owner of the Unit and Defendant has
26 a staff electronic key card that allows entry to the Unit. As to the remaining allegations, Defendant is
27 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,
28 and therefore, denies each and every allegation contained therein.

1 8. Answering Paragraph 15 of Plaintiffs' First Amended Complaint, Defendant admits
2 there is a system in place that keeps track of use of an electronic key card at the Unit entry doors and
3 that there are security cameras in the hallway. As to the remaining allegations, Defendant is without
4 sufficient knowledge or information to form a belief as to the truth of the allegations therein, and
5 therefore, denies each and every allegation contained therein.

6 9. Answering Paragraph 16 of Plaintiffs' First Amended Complaint, Defendant admits the
7 incident and alleged damages were reported and further information was requested. As to the
8 remaining allegations, Defendant is without sufficient knowledge or information to form a belief as to
9 the truth of the allegations therein, and therefore, denies each and every allegation contained therein.

10 10. Answering Paragraph 17 of Plaintiffs' First Amended Complaint, Defendant admits it
11 investigated the alleged incident. As to the remaining allegations, Defendant is without sufficient
12 knowledge or information to form a belief as to the truth of the allegations therein, and therefore,
13 denies each and every allegation contained therein.

14 11. Answering Paragraph 18 of Plaintiffs' First Amended Complaint, Defendant admits on
15 November 26, 2015 an electronic key staff card was used at the exterior door of the Unit. As to the
16 remaining allegations, Defendant is without sufficient knowledge or information to form a belief as to
17 the truth of the allegations therein, and therefore, denies each and every allegation contained therein.

18 12. Answering Paragraphs 19, 20, 23 and 24 of Plaintiffs' First Amended Complaint,
19 Defendant states that these Paragraphs contain purported legal conclusions and/or statements or
20 recitations of law, rather than allegations, and as such, no response is necessary. To the extent said
21 Paragraphs are determined to contain factual allegations made against Defendant, Defendant is
22 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,
23 and therefore, denies each and every allegation contained therein.

24 13. Answering Paragraph 21 of Plaintiffs' First Amended Complaint, Defendant admits it
25 opened a claim with Fireman's Fund Insurance Company and has not completed any repairs at the
26 Unit. As to the remaining allegations, Defendant is without sufficient knowledge or information to
27 form a belief as to the truth of the allegations therein, and therefore, denies each and every allegation
28 contained therein.

1 14. Answering Paragraph 22 of Plaintiffs' First Amended Complaint, Defendant admits
2 that the claim was denied. As to the remaining allegations Defendant is without sufficient knowledge
3 or information to form a belief as to the truth of the allegations therein, and therefore, denies each and
4 every allegation contained therein.

5 15. Answering Paragraph 25 of Plaintiffs' First Amended Complaint, Defendant is without
6 sufficient knowledge or information to form a belief as to the truth of the allegations therein, and
7 therefore, denies each and every allegation contained therein.

8 **FIRST CLAIM FOR RELIEF**

9 **(Negligence against all Defendants)**

10 16. Answering Paragraph 26 of Plaintiffs' First Amended Complaint, Defendant repeats
11 and realleges its answers to Paragraphs 1 through 25 of Plaintiffs' First Amended as if fully set forth
12 and incorporated herein.

13 17. Answering Paragraphs 27, 28 and 29 of Plaintiffs' First Amended Complaint,
14 Defendant states that these Paragraphs contain purported legal conclusions and/or statements or
15 recitations of law, rather than allegations, and as such, no response is necessary. To the extent said
16 Paragraphs are determined to contain factual allegations made against Defendant, Defendant is
17 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,
18 and therefore, denies each and every allegation contained therein.

19 **SECOND CLAIM FOR RELIEF**

20 **(Negligence Per Se against all Defendants)**

21 18. Answering Paragraph 30 of Plaintiffs' First Amended Complaint, Defendant repeats
22 and realleges its answers to Paragraphs 1 through 29 of Plaintiffs' First Amended as if fully set forth
23 and incorporated herein.

24 19. Answering Paragraphs 31, 32, 33, 34, 35, 36 and 37 of Plaintiffs' First Amended
25 Complaint, Defendant states that these Paragraphs contain purported legal conclusions and/or
26 statements or recitations of law, rather than allegations, and as such, no response is necessary. To the
27 extent said Paragraphs are determined to contain factual allegations made against Defendant,

28 ///

1 Defendant is without sufficient knowledge or information to form a belief as to the truth of the
2 allegations therein, and therefore, denies each and every allegation contained therein.

3 **THIRD CLAIM FOR RELIEF**

4 **(Respondeat Superior against all Defendants)**

5 20. Answering Paragraph 38 of Plaintiffs' First Amended Complaint, Defendant repeats
6 and realleges its answers to Paragraphs 1 through 37 of Plaintiffs' First Amended as if fully set forth
7 and incorporated herein.

8 21. Answering Paragraphs 39, 40, 41, 42 and 43 of Plaintiffs' First Amended Complaint,
9 Defendant states that these Paragraphs contain purported legal conclusions and/or statements or
10 recitations of law, rather than allegations, and as such, no response is necessary. To the extent said
11 Paragraphs are determined to contain factual allegations made against Defendant, Defendant is
12 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,
13 and therefore, denies each and every allegation contained therein.

14 **FOURTH CLAIM FOR RELIEF**

15 **(Conversion against all Defendants)**

16 22. Answering Paragraph 44 of Plaintiffs' First Amended Complaint, Defendant repeats
17 and realleges its answers to Paragraphs 1 through 43 of Plaintiffs' First Amended as if fully set forth
18 and incorporated herein.

19 23. Answering Paragraphs 45, 46 and 47 of Plaintiffs' First Amended Complaint,
20 Defendant states that these Paragraphs contain purported legal conclusions and/or statements or
21 recitations of law, rather than allegations, and as such, no response is necessary. To the extent said
22 Paragraphs are determined to contain factual allegations made against Defendant, Defendant is
23 without sufficient knowledge or information to form a belief as to the truth of the allegations therein,
24 and therefore, denies each and every allegation contained therein.

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26 ///

27 ///

28 ///

FIFTH CLAIM FOR RELIEF

(Trespass against all Defendants)

24. Answering Paragraph 48 of Plaintiffs' First Amended Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 47 of Plaintiffs' First Amended as if fully set forth and incorporated herein.

25. Answering Paragraphs 49 and 50 of Plaintiffs' First Amended Complaint, Defendant states that these Paragraphs contain purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent said Paragraphs are determined to contain factual allegations made against Defendant, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore, denies each and every allegation contained therein.

SIXTH CLAIM FOR RELIEF

(Breach of Contract against all Defendants)

26. Answering Paragraph 51 of Plaintiffs' First Amended Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 50 of Plaintiffs' First Amended as if fully set forth and incorporated herein.

27. Answering Paragraphs 52, 53, 54, 55 and 56 of Plaintiffs' First Amended Complaint, Defendant states that these Paragraphs contain purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent said Paragraphs are determined to contain factual allegations made against Defendant, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations therein, and therefore, denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The First Amended Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs, by the exercise of reasonable effort and/or care, could have mitigated the amount of damages alleged to have been suffered, but that Plaintiffs failed, neglected and refused, and continues to fail and refuse to exercise a reasonable effort to mitigate their alleged damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs have suffered no damages.

FOURTH AFFIRMATIVE DEFENSE

The relief sought by Plaintiffs is barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are not well grounded in fact and are not warranted by existing law or good faith argument for the extension or modification of existing law but pursued only for the purpose of harassment, unnecessary delay and the incurrence of needless cost of litigation to Defendant.

SIXTH AFFIRMATIVE DEFENSE

At all times relevant to the First Amended Complaint, Defendant acted in a commercially reasonable manner, dealing fairly and in good-faith, and acted without intent to inflict harm or damage.

SEVENTH AFFIRMATIVE DEFENSE

Defendant is not legally responsible for the acts and/or omissions of those parties named herein as fictitious DOES or named as any other entity.

EIGHTH AFFIRMATIVE DEFENSE

Defendant's actions in no way caused or contributed to the Plaintiffs' injuries and/or damages.

NINTH AFFIRMATIVE DEFENSE

Any damages which the Plaintiffs may have sustained by reason of the allegations contained in the First Amended Complaint were proximately caused by the acts of persons other than Defendant and, therefore, Plaintiffs are not entitled to any relief from Defendant.

TENTH AFFIRMATIVE DEFENSE

Any damages suffered by the Plaintiffs were caused by an independent, superseding cause or causes over which Defendant had no control or authority.

ELEVENTH AFFIRMATIVE DEFENSE

At all times relevant to the First Amended Complaint, Defendant acted pursuant to all of its obligations, if any, and were justified or privileged in its actions.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' acts, omissions, negligence, and/or intentional misconduct made it impossible for Defendant to perform its obligation, if any.

THIRTEENTH AFFIRMATIVE DEFENSE

If Plaintiffs suffered or sustained any loss, injury, damage or detriment, the same was directly and proximately caused and contributed to by the conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of Plaintiffs, thereby completely or partially barring Plaintiffs' recovery herein.

FOURTEENTH AFFIRMATIVE DEFENSE

Any and all events, happenings, injuries, and damages alleged by Plaintiffs are the result of force majeure.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to join all necessary and indispensable parties to this lawsuit.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred as a result of their prior wrongful conduct.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have waived any rights they may have had to seek relief in this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

The First Amended Complaint, and each and every claim for relief contained therein, is barred by the applicable Statutes of Repose.

NINETEENTH AFFIRMATIVE DEFENSE

The First Amended Complaint, and each and every claim for relief contained therein, is barred by the applicable Statutes of Limitations.

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TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' unreasonable delay in advising Defendant of any claims Plaintiffs had in this action bars and/or diminishes Plaintiffs' recovery herein under the doctrines of estoppel, waiver, and/or laches.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs or other unknown third-persons or entities modified or altered the subject property, without the knowledge or consent of Defendant, and such modification or alteration directly and proximately caused the damages suffered by Plaintiffs, if any, thus barring Plaintiffs from any recovery against Defendant.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The First Amended Complaint, and each and every claim for relief contained therein, is barred by the Statute of Frauds.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Any contracts, obligations or agreements as alleged in Plaintiffs' First Amended Complaint have been entered into, any duty or performance owed or due by Defendant is excused by reason of failure of consideration, waiver, breach of condition precedent, breach by Plaintiffs, impossibility of performance, prevention by Plaintiffs, frustration of purpose and/or acceptance by Plaintiffs.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Any delay in performance of any contract, obligation or agreement was caused by the interference, action and/or inaction of Plaintiffs which bars Plaintiffs' claim for damages and/or liquidated damages.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiffs have waived their right to the relief sought in Plaintiffs' First Amended Complaint by virtue of their acts, conduct, representations and omissions which constituted a breach of contract by Plaintiffs.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Defendant has performed any and all obligations required by it pursuant to any agreements with Plaintiffs.

1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 Plaintiffs have failed to satisfy one or more express or implied condition precedent to any
3 obligations allegedly owed to Defendant.

4 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

5 Defendant has been required to retain the services of Wood Smith Henning & Berman, LLP, to
6 defend this action, and reasonable attorneys' fees and costs of suit herein incurred should be awarded
7 therefore.

8 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

9 Pursuant to Rule 11 of NRCP as amended, all possible affirmative defenses may not have been
10 alleged herein insofar as sufficient facts are not available after reasonable inquiry from the filing of
11 Plaintiffs' Amended Complaint. In the event further investigation or discovery in this case reveals the
12 applicability of any additional affirmative defenses, including but not limited to those affirmative
13 defenses enumerated to NRCP 8(c), Defendant reserves the right to specifically assert any such
14 defenses. The defenses contained in NRCP 8(c) are incorporated herein by reference for the specific
15 purpose of not waiving any such defenses.

16 **WHEREFORE**, Defendant prays as follows:

- 17 1. That Plaintiffs take nothing by their First Amended Complaint;
18 2. That Plaintiffs' First Amended Complaint be dismissed, in its entirety, with prejudice;
19 3. That Defendant be awarded its costs of suit incurred in defense of this action;

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1 4. That Defendant be awarded its reasonable attorneys' fees as provided by the applicable
2 statute and/or rule; and

3 5. For such other relief as this Court deems proper.

4 July 5, 2016

5 WOOD, SMITH, HENNING & BERMAN LLP
6 Attorneys at Law

7
8 By


9 JANICE M. MICHAELS

10 Nevada Bar No. 6062

11 ELISA L. WYATT

12 Nevada Bar No. 13034

13 7674 West Lake Mead Boulevard, Suite 150

14 Las Vegas, Nevada 89128-6644

15 Tel. 702 251 4100

16 Attorneys for Defendants, MGM Resorts
17 International; MGM Grand Condominiums, LLC;
18 Signature Tower I, LLC; and The Signature
19 Condominiums, LLC
20
21
22
23
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2016, a true and correct copy of **THE SIGNATURE CONDOMINIUMS, LLC'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** was served by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

Eric N. Tran, Esq.
5538 S. Eastern Ave.
Las Vegas, NV 89173
Fax: 815-550-2830
eric.tran@stoamigo.com
Attorney for Plaintiffs

By


Rikki M. Garate, an Employee of
WOOD, SMITH, HENNING & BERMAN LLP

AFFIDAVIT OF SERVICE

DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

CLERK OF THE COURT

145 East Harmon II Trust, Anthony Tan, as Trustee of
the 145 East Harmon II Trust,

Plaintiff(s)

v.

MGM Resorts International; et al.,

Defendant(s)

Case No.: A-16-733764-C

Joseph P. Garin 6653

LIPSON, NEILSON, COLE, SELTZER & GARAIN

9900 Covington Cross Drive, Suite 120

Las Vegas, NV 89144

(702) 382-1500

Attorneys for the Plaintiffs

Client File# 145 East Harmon Trust (A733764)

I, Judith Mae All, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Three Day Notice of Intent to Default Against the Residences at MGM Grand - Tower A Owners' Association from LIPSON, NEILSON, COLE, SELTZER & GARAIN

That on 8/1/2016 at 3:03 PM I served the above listed documents to The Residences at MGM Grand - Tower A Owners' Association - c/o Associa Nevada South, Registered Agent by personally delivering and leaving a copy at 3675 West Cheyenne Avenue, Suite 100, Las Vegas, NV 89032 with Robin Styles - Supervising Community Manager, a person of suitable age and discretion, authorized by Registered Agent to accept service of process at the above address shown on the current certificate of designation filed with the Secretary of State.

That the description of the person actually served is as follows:

Gender: Female, Race: Caucasian, Age: 50's, Height: 5'6", Weight: 140 lbs., Hair: Brown, Eyes: Blue

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Date: 8/12/16

Judith Mae All

Registered Work Card# R-040570

State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:

Nationwide Legal Nevada, LLC

720 S. 4th Street, Suite 305

Las Vegas, NV 89101

(702) 385-5444

Nevada Lic # 1656



Order #: NV29992

Their File 145 East Harmon Trust (A733764)

TRUST248

PM/ENT 5

AFFIDAVIT OF SERVICE

DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

145 East Harmon II Trust, Anthony Tan, as Trustee of
the 145 East Harmon II Trust,

Plaintiff(s)

v.

MGM Resorts International; et al.,

Defendant(s)

Case No.:A-16-733764-C

Joseph P. Garin 6653

LIPSON, NEILSON, COLE, SELTZER & GARAIN

9900 Covington Cross Drive, Suite 120

Las Vegas, NV 89144

(702) 382-1500

Attorneys for the Plaintiffs

Client File# 145 East Harmon Trust (A733764)

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Date: 8/12/16

Judith Mae All

Judith Mae All
Registered Work Card# R-040570
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
720 S. 4th Street, Suite 305
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656



Order #:NV29992

Their File 145 East Harmon Trust (A733764)

TRUST249


CLERK OF THE COURT

1 **NEOJ**
2 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
3 JOSEPH P. GARIN, ESQ.
4 Nevada Bar No. 6653
5 ERIC N. TRAN, ESQ.
6 Nevada Bar No. 11876
7 9900 Covington Cross Drive, Suite 120
8 Las Vegas, Nevada 89144
9 (702) 382-1500 - Phone
10 (702) 382-1512 - Fax
11 jgarin@lipsonneilson.com
12 etran@lipsonneilson.com
13

14 Attorneys for Plaintiffs

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 145 EAST HARMON II TRUST,
18 ANTHONY TAN, AS TRUSTEE OF THE
19 145 EAST HARMON II TRUST,

20 Plaintiffs,

21 vs.

22 MGM RESORTS INTERNATIONAL;
23 MGM GRAND CONDOMINIUMS, LLC;
24 THE SIGNATURE CONDOMINIUMS,
25 LLC; SIGNATURE TOWER I, LLC; THE
26 RESIDENCES AT MGM GRAND-
27 TOWER A OWNERS' ASSOCIATION;
28 and DOES I-X.

Defendants.

Case No.: A-16-733764-C

Dept. No. XI

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANTS' MOTION TO
DISMISS AND GRANTING PLAINTIFF'S
COUNTER MOTION TO AMEND**

22 PLEASE TAKE NOTICE that an Order Denying Defendants' Motion to Dismiss
23 and Granting Plaintiff's Counter Motion to Amend was filed on July 25, 2016 in the
24 above entitled matter.

25 ///

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27 ///

1 A copy of said Order is attached hereto and made part hereof.

2 DATED this 30th day of August, 2016.

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

4
5 By: /s/ Eric N. Tran

6 Joseph P. Garin, Esq. (Bar No. 6653)
7 Eric N. Tran, Esq. (Bar No. 11876)
8 9900 Covington Cross Drive, Suite 120
9 Las Vegas, Nevada 89144
10 (702) 382-1500/FAX (702) 382-1512
11 jgarin@lipsonneilson.com
12 etran@lipsonneilson.com

13 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of August, 2016, service of the foregoing
**NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO DISMISS
 AND GRANTING PLAINTIFF'S COUNTER MOTION TO AMEND** was made by
 delivering a copy thereof by electronic means to the Clerk's Office using the Odyssey E-
 File & Serve System for transmittal to the following Odyssey E-File & Serve registrants:

Garman Turner Gordon

Contact

Email

Eric R. Olsen

erolsen@gtg.legal

Gabrielle A. Hamm, Esq.

ghamm@gtg.legal

Wood Smith Henning & Berman

Contact

Email

Janice M. Michaels

jmichaels@wshblaw.com

Michael B. Kragness

mkragness@wshblaw.com

Wood Smith Henning & Berman LLP

Contact

Email

Elisa L. Wyatt

ewyatt@wshblaw.com

Rikki Garate

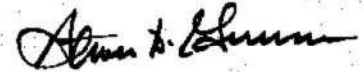
rgarate@wshblaw.com

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

ORDER

ERIC N. TRAN, Esq.
Nevada Bar No. 11876
5538 S. Eastern Ave
Las Vegas, Nevada 89119
Telephone: (702) 948-9770, Ext. 2033
Fax: (815) 550-2830
E-Mail: Eric.Tran@StoAmigo.com
Attorney for Plaintiffs

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CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

145 EAST HARMON II TRUST

Plaintiff,

v.

TURNBERRY/MGM GRAND TOWERS, LLC
MGM RESORTS INTERNATIONAL, THE
RESIDENCES AT MGM GRAND TOWER A,
LLC; MGM GRAND CONDOMINIUMS, LLC;
JOHN DOES I-X.

Defendants.

Case No. : A-16-733764-C
Dept. No.: XI

**ORDER DENYING DEFENDANTS' MOTION
TO DISMISS AND GRANTING PLAINTIFF'S
COUNTER MOTION TO AMEND**

Defendants MGM Resorts International and MGM Grand Condominiums, LLC's (collectively referred to as "Defendants") Motion to Dismiss Plaintiff's Complaint; Defendants' request for attorney's fees and costs; and Plaintiff 145 East Harmon II Trust's Countermotion to Amend the Complaint came before the Court on June 9, 2016 at 8:30 a.m.

Eric Tran, Esq. appearing on behalf of Plaintiff 145 East Harmon II Trust.

Elisa Wyatt, Esq. of Wood, Smith, Henning & Berman appearing on behalf of Defendants MGM Resorts International and MGM Grand Condominiums, LLC.

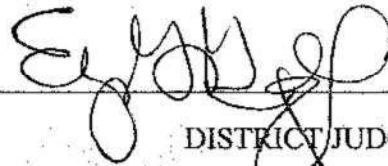
The Court, having fully read the briefs filed by the parties, and after oral arguments, hereby orders as follows:

ERIC N. TRAN
ATTORNEY AT LAW
5538 Eastern Ave Las Vegas, Nevada 89119
Telephone: (702) 948-9770, Ext. 2033 Fax: (815) 550-2830

IT IS HEREBY ORDERED that:

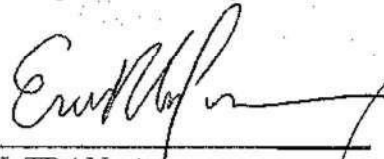
- 1) Defendants' Motion to Dismiss Plaintiff's Complaint is DENIED without prejudice. Defendants MGM Resorts International and MGM Grand Condominiums, LLC must file their Answers within ten (10) days after service of the First Amended Complaint.
- 2) Defendants' request for attorney's fees and costs is DENIED.
- 3) Plaintiff's Countermotion to Amend the Complaint is GRANTED. Plaintiff shall file the First Amended Complaint within 10 days of the date of the hearing.


DATED this 21 day of June, 2016.


DISTRICT JUDGE

Respectfully Submitted by:

Approved as to Form and Content:

By: 
ERIC N. TRAN
Nevada Bar No. 11876
5538 S. Eastern Ave
Las Vegas, Nevada 89173
Telephone: (702) 948-9770, Ext. 2033
Facsimile: (815) 550-2830
E-Mail: Eric.Tran@StoAmigo.com
Attorney for Plaintiff

By: 
WOOD, SMITH, HENNING & BERMAN
JANICE M. MICHAELS
Nevada Bar No. 6062
ELISA WYATT
Nevada Bar No. 13034
7674 West lake Mead Boulevard, Suite 150
Las Vegas, Nevada 89127-664
Telephone: (702) 251-4100
Facsimile: (702) 251-5405
Attorney for Defendants


CLERK OF THE COURT

NEO
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
JOSEPH P. GARIN, ESQ.
Nevada Bar No. 6653
ERIC N. TRAN, ESQ.
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etran@lipsonneilson.com
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

145 EAST HARMON II TRUST,
ANTHONY TAN, AS TRUSTEE OF THE
145 EAST HARMON II TRUST,

Case No.: A-16-733764-C

Dept. No. XI

vs.
MGM RESORTS INTERNATIONAL;
MGM GRAND CONDOMINIUMS, LLC;
THE SIGNATURE CONDOMINIUMS,
LLC; SIGNATURE TOWER I, LLC; THE
RESIDENCES AT MGM GRAND-
TOWER A OWNERS' ASSOCIATION;
and DOES I-X.

Defendants.

NOTICE OF ENTRY OF STIPULATION
AND ORDER FOR DISMISSAL OF
DEFENDANT TURNBERRY/MGM
GRAND TOWERS, LLC

PLEASE TAKE NOTICE that a *Stipulation and Order for Dismissal of Defendant Turnberry/MGM Grand Towers, LLC*, was entered in the above-captioned matter on June 8, 2016, a copy of which is attached hereto.

Dated this 11 day of October, 2016.

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

By: 

Joseph P. Garin, Esq. (Bar No. 6653)
Eric N. Tran, Esq. (Bar No. 11876)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Plaintiffs

Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing *Notice of Entry of Stipulation and Order for Dismissal of Defendant Turnberry/MGM Grand Towers, LLC*, was made this 11th day of October, 2016 by electronic service on the parties registered to receive such service via Wiznet/Odyssey as follows:

Garman Turner Gordon

Contact

Email

Eric R. Olsen

eolsen@gtg.legal

Gabrielle A. Hamm, Esq.

ghamm@gtg.legal

Wood Smith Henning & Berman

Contact

Email

Janice M. Michaels

jmichaels@wshblaw.com

Michael B. Kragness

mkragness@wshblaw.com

Wood Smith Henning & Berman LLP

Contact

Email

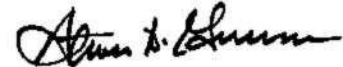
Elisa L. Wyatt

ewyatt@wshblaw.com

Rikki Garate

rgarate@wshblaw.com

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



CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

145 EAST HARMON II TRUST
Plaintiff,

v.

TURNBERRY/MGM GRAND TOWERS, LLC
MGM RESORTS INTERNATIONAL, THE
RESIDENCES AT MGM GRAND TOWER A,
LLC; MGM GRAND CONDOMINIUMS, LLC;
JOHN DOES I-X.

Defendants.

Case No. : A-16-733764-C
Dept. No.: XI

STIPULATION AND ORDER FOR DISMISSAL
OF DEFENDANT TURNBERRY/MGM GRAND
TOWERS, LLC

Plaintiff 145 East Harmon II Trust, by and through its attorney of record, Eric N. Tran, Esq.,
and Defendant Turnberry/MGM Grand Towers, LLC, by and through its attorneys of record, Garman

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