

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

G.L. CONSTRUCTION, INC., A NEVADA  
CORPORATION,  
Appellant,  
vs.  
NORTHERN NEVADA HOMES, LLC, A  
NEVADA LIMITED LIABILITY COMPANY,  
Respondent.

No. 77145      Electronically Filed  
Oct 11 2018 12:30 p.m.  
**DOCKETING STATEMENT**  
**CIVIL APPEALS** Brown  
Clerk of Supreme Court

## GENERAL INFORMATION

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

## WARNING

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

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

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

1. Judicial District Second Department 8  
County Washoe Judge Barry L. Breslow  
District Ct. Case No. CV13-01468

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

Attorney James Shields Beasley Telephone 775-329-6852

Firm LAW OFFICE OF JAMES SHIELDS BEASLEY

Address 435 Court Street  
P.O. Box 2936  
Reno, Nevada 89505

Client(s) Appellant G.L. Construction, Inc.

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

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

Attorney Christopher M. Rusby Telephone 775-409-4037

Firm Rusby Law

Address 36 Stewart Street  
Reno, Nevada 89501

Client(s) Respondent Northern Nevada Homes, LLC

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

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

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

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody  
☐ Venue  
☐ Termination of parental rights

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

"Northern Nevada Homes, LLC, a Nevada limited liability company, Appellant, vs. GL Construction, Inc., a Nevada corporation, Respondent," Supreme Court Case No. 71899.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

"Cerberus Holdings, LLC, a Nevada limited liability company; Northern Nevada Homes, LLC, a Nevada limited liability company, Plaintiffs, vs. GL Construction, Inc., a Nevada corporation; Gordon Lemich, an individual; and Does 1-10, inclusive, Defendants," Case No. CV13-01468, was settled on August 5, 2016, when plaintiff agreed to dismiss their claims

"GL Construction, Inc., a Nevada corporation, Counterclaimant, vs. Northern Nevada Homes, LLC, Counterdefendant," Case No.13-01468, was disposed of on October 4, 2018, when the district court denied Counterclaimant's Motion for Attorney Fees.

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

The district court bifurcated the case into a jury trial concerning NNH's claims against G.L. and Gordon Lemich, and a bench trial concerning G.L.'s counterclaim for breach of contract against NNH. NNH settled its claims, and after a bench trial, the district court awarded G.L. \$7,811 in damages and \$10,000 in fees. NNH took an appeal from the district court's fee award, but that appeal was dismissed. Following remand, G.L. moved the district court pursuant to NRS 18.010(2)(a) to award it those fees which it had incurred in successfully defending against NNH's appeal. The district court denied G.L.'s motion for the fees incurred in connection with NNH's appeal based upon this Court's decision in Bobby Berosini, Ltd., v. People for the Ethical Treatment of Animals.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

This Court's decision in Berosini did not decide the issue of whether a district court has the authority under NRS 18.010(2)(a) to award a prevailing party the attorney fees which the prevailing party incurs in successfully defending against an appeal taken by the opposing party which attacks the judgment the prevailing party has obtained in the trial court. Berosini only decided the issue of whether a district court had the authority to award a prevailing party's appellate attorney fees pursuant to NRS 18.010(2)(b) and/or NRAP 38 where this Court had already decided in connection with an earlier appeal in the same case that NRAP 38 did not warrant an award of the prevailing party's appellate attorney fees. Thus, the issue is whether a district court has the authority pursuant to NRS 18.010(2)(1) to award a prevailing party which has not recovered more than \$20,000 its appellate fees.

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

N/A.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☐ A ballot question

If so, explain: The issue of whether a district court has the authority under NRS 18.010 (2)(a) to award a prevailing party which does not recover more than \$20,000 the attorney fees which it incurs in successfully defending against an appeal taken by the opposing party, attacking the judgment entered in favor of the prevailing party, has not been cogently addressed and decided by a published Decision of this Court. Because there is NO language appearing in NRS 18.010(2)(a) which states that appellate

12. (Continued)

attorney fees cannot be awarded under its provisions, based upon this Court's decisions in In re Estate and Living Trust of Miller (2009) 125 Nev. 550, 555, 216 P.3d 239, 243, Musso v. Binick (1988) 104 Nev. 613, 614-615, 764 P.2d 477, 477, and the California appellate court's decision in Rosenauer v. Scherer (2001) 88 Cal.App. 4<sup>th</sup> 260, 105 Cal.Rptr. 2d 674, 693, holding that a statute authorizing an attorney fees award at the trial court level includes appellate attorney fees unless the statute specifically provides otherwise, this Court should hold that NRS 18.010(2)(a) vests in the district court this power when the prevailing party has not recovered more than \$20,000.

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

This appeal presents the issue of whether a district court, pursuant to NRS 18.010(2)(a), may award a prevailing party which has not recovered more than \$20,000 the attorney fees which the prevailing party has incurred in successfully defending against an appeal taken by the opposing party which challenges the award obtained by the prevailing party in the district court. As such, the matter is presumptively retained by this Court under NRAP 17 (a)(11). This Court, in an unpublished Opinion in "Tulelake Horseradish, Inc., Appellant, v. Santa Margarita Ranch, LLC," Case No. 69305, filed on June 20, 2016, (Cont. next page)

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 1 day.

Was it a bench or jury trial? Bench Trial.

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

No.

13. (Continued)

stated that “no fees should have been awarded (to the appellant in that case) for time frames 3 and 5 (i.e., appellate fees), as NRS 18.010(2) does not authorize an award of appellate attorney fees,” citing two of its prior published Opinions, i.e., Bd. of Gallery of History, Inc. v. Datecs Corp. (2000) 116 Nev. 286, 288, 994 P.2d 1149, 1150, and Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals (1998) 114 Nev. 1348, 1356-57, 971 P.2d 383, 388. This unpublished Opinion was wrongfully decided and its overly-broad statement that “NRS 18.010(2) does not authorize an award of appellate attorney fees” runs directly contrary to the rationale upon which two of this Court’s published decisions, i.e., In re Estate and Living Trust of Miller (2009) 125 Nev. 550, 555, 216 P.3d 239, 243, Musso v. Binick (1988) 104 Nev. 613, 614-615, 764 P.2d 477, and the California appellate court’s decision in Rosenauer v. Scherer (2001) 88 Cal. App. 4<sup>th</sup> 260, 105 Cal.Rptr. 2d 674, 693, are founded (i.e., that a statute authorizing an attorney fees award at the trial court level includes appellate attorney fees unless the statute specifically provides otherwise.) In the unpublished Opinion, this Court failed to recognize that NRS 18.010(2)(a) and NRS 18.010(2)(b) address two entirely different situations. This Court erroneously conflated the two situations to which subsections (a) and (b) apply. NRS 18.010(2)(a) applies to the situation where a “prevailing party has not recovered more than \$20,000” – a situation in which the district court has the authority to award a prevailing party the attorney fees which it has incurred on an appeal because there is no language in that provision which states that appellate fees are excluded; while NRS 18.010(2)(b) applies to the situation where the district “court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party – a situation in which the district court has NO authority to award a prevailing party the attorney fees which the prevailing party has incurred on appeal inasmuch the award of appellate attorney fees in that specific situation is governed exclusively by NRAP 38. Appellant G.L. Construction, Inc., is calling upon this Court to reconcile its prior published Opinions with respect to this issue.



## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** October 4, 2018

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

**17. Date written notice of entry of judgment or order was served** October 5, 2018

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

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

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

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

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** October 8, 2018

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

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

NRAP 4(a)

### **SUBSTANTIVE APPEALABILITY**

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

(a)

☐ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☒ Other (specify) NRAP 3A(b)(8)

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

The district court's Order denying Counterclaimant G.L. Construction, Inc.'s Motion for Attorney Fees Incurred Post Order for Fees was a special order entered after Final Judgment.

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

**(a) Parties:**

Cerberus Holdings, LLC -- Plaintiff

Northern Nevada Homes, LLC - Plaintiff and Counterdefendant

G.L. Construction, Inc. - Defendant and Counterclaimant

Gordon Lemich - Defendant

Truckee Meadows Water Authority - Plaintiff in Intervention

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

Cerberus Holdings, LLC -- Complaint dismissed August 5, 2016; Northern Nevada Homes, LLC -- Trespass Complaint dismissed September 16, 2016; Truckee Meadows Water Authority - Complaint in Intervention dismissed on August 4, 2016.

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

Cerberus Holdings, LLC's Complaint for Negligence, Negligent Misrepresentation, Intentional Misrepresentation, Intentional Damage to Property, Breach of Contract and Quantum Meruit was dismissed on August 5, 2016. NNH's Complaint for Trespass against G.L. and Gordon Lemich was settled on August 11, 2016. G.L. was awarded \$7,811 on its Counterclaim against NNH on October 17, 2016.

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

☒ Yes

☐ No

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

**(a) Specify the claims remaining pending below:**

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

## VERIFICATION

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

G.L. CONSTRUCTION, INC.

Name of appellant

10/10/2018

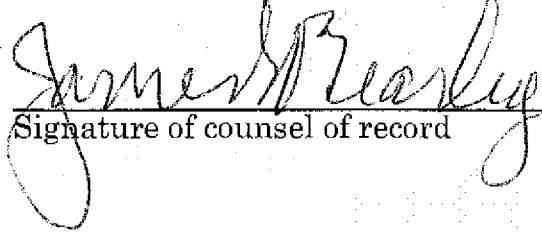
Date

NEVADA, WASHOE COUNTY

State and county where signed

JAMES SHIELDS BEASLEY

Name of counsel of record



Signature of counsel of record

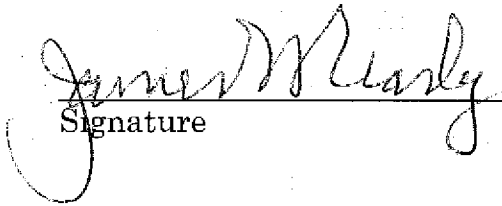
## CERTIFICATE OF SERVICE

I certify that on the 11th day of October, 2018, I served a copy of this completed docketing statement upon all counsel of record:

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

Christopher M. Rusby  
36 Stewart Street  
Reno, Nevada 89501

Dated this 11th day of October, 2018

  
Signature

#27

1. Amended Answer and Counterclaim, filed October 28, 2013.
2. First Amended Complaint, filed February 11, 2014.
3. Judgment, filed April 29, 2014.
4. Truckee Meadows Water Authority's Complaint in Intervention, filed June 20, 2014.
5. Stipulation for Dismissal with Prejudice of TMWA's Complaint in Intervention, filed 08/03/2016.
6. Order Granting Stipulation for Dismissal with Prejudice of TMWA's Complaint in Intervention, filed 08/04/2016.
7. Notice of Entry of Order. Filed 08/04/2016.
8. Order Bifurcating Claims, filed 08/05/2016.
9. Stipulation and Order to Dismiss Certain Causes of Action, filed 08/05/2016.
10. Minutes 08/08-11/2016 – Jury Trial, filed 09/02/2016.
11. Minutes 08/11-12/2016 – Bench Trial, filed 09/07/2016.
12. Notice of Entry of Order dismissing NNH's Claims, filed 09/20/2016.
13. Notice of Entry of Order After Trial awarding G.L. Damages, filed 10/17/2016.
14. Judgment on Counterclaim, filed 10/31/2016.
15. Notice of Entry of Judgment on Counterclaim, filed 10/31/2016.
16. Notice of Entry of Order for Fees and Costs, filed 12/02/2016.
17. Notice of Entry of Order denying Counterclaimant's Motion for Attorney Fees Incurred Post-Order, filed 10/05/2018.

# **Exhibit 1**

# **Exhibit 1**

ORIGINAL

FILED

2013 OCT 28 PM 4:30

JULIE GORDON HASTINGS  
CLERK OF THE COURT

*Alone*  
DEPUTY

CODE: 1085  
JAMES SHIELDS BEASLEY  
Nev. Bar No. 1733  
LAW OFFICE OF JAMES SHIELDS BEASLEY  
435 Court Street  
Post Office Box 2936  
Reno, Nevada 89505  
(775) 329-6852  
(775) 329-2174 - Fax  
Attorney for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CERBERUS HOLDINGS, LLC, a Nevada  
limited liability company; NORTHERN  
NEVADA HOMES, LLC, a Nevada  
limited liability company,

Case No. CV13-01468

Plaintiffs,

Dept. No. 8

vs.

GL CONSTRUCTION, INC., a Nevada  
corporation; GORDON LEMICH, an  
individual; and DOES 1 through 10  
inclusive,

Defendants.

GL CONSTRUCTION, INC., a Nevada  
corporation,

Counterclaimant,

vs.

NEVADA HOMES, LLC, a Nevada  
limited liability company,

Counterdefendant.

**AMENDED ANSWER AND COUNTERCLAIM**

Defendants GL Construction, Inc., and Gordon Lemich, by and through their attorney,  
James Shields Beasley, for their Answer to the Complaint of plaintiffs Cerberus Holdings, LLC,



1 and Northern Nevada Homes, LLC, admit, deny and specifically allege as follows:

2 As to Plaintiffs' General Allegations:

3 I

4 Answering paragraphs 1, 2, 5, 13, and 16 of plaintiffs' General Allegations, these  
5 answering defendants are without information or knowledge sufficient to form a belief as to the  
6 truth of said allegations contained therein and based thereon deny the same.

7 II

8 Answering paragraph 3 and 21 of plaintiffs' General Allegations, these answering  
9 defendants admit the truth of each and every allegation contained therein.

10 III

11 Answering paragraph 4 of plaintiffs' General Allegations, these answering defendants deny  
12 the truth of plaintiffs' allegation that "Gordon Lemich is, and at all relevant times was, a resident  
13 of Washoe County, Nevada. With respect to each and every of the remaining allegations contained  
14 in said paragraph 4, these answering defendants specifically deny the true of the same.

15 IV

16 Answering paragraphs 6 through 12, 14 through 15, 17 through 20, and 22 through 25 of  
17 plaintiffs' General Allegations, these answering defendants specifically deny the true of the same.

18 As to Plaintiffs' First Claim for Relief:

19 V

20 Answering paragraph 26 of plaintiffs' First Claim for Relief, these answering defendants  
21 refer to their answers to paragraphs 1 through 25 of Plaintiffs' Complaint and incorporate the same  
22 herein by this reference.

23 VI

24 Answering paragraphs 27 through 32 of Plaintiffs' First Claim for Relief, these answering  
25 defendants specifically deny the true of the same.

26 As to Plaintiffs' Second Claim for Relief:

27 VII

28 Answering paragraph 33 of Plaintiffs' Second Claim for Relief, these answering

1 defendants refer to their answers to paragraphs 1 through 32 of Plaintiffs' Complaint and  
2 incorporate the same herein by this reference.

3 VIII

4 Answering paragraphs 34 and 36 through 38 of Plaintiffs' Second Claim for Relief, these  
5 answering defendants specifically deny the truth of the same.

6 IX

7 Answering paragraph 35 of Plaintiffs' Second Claim for Relief, these answering  
8 defendants deny the truth of said allegations on the basis that GL Construction made no  
9 representations to plaintiffs.

10 As to Plaintiffs' Third Claim for Relief:

11 X

12 Answering paragraph 39 of Plaintiffs' Third Claim for Relief, these answering defendants  
13 refer to paragraph 1 through 38 of Plaintiffs' Complaint and incorporate the same herein by this  
14 reference.

15 XI

16 Answering paragraphs 40, 42, and 43 of Plaintiffs' Third Claim for Relief, these answering  
17 defendants specifically deny the truth of each and every allegation contained therein.

18 XII

19 Answering paragraph 41 of Plaintiffs' Third Claim for Relief, these answering defendants  
20 deny the truth of each and every allegation contained in said paragraph on the basis that GL  
21 Construction made no representations to defendants.

22 As to Plaintiffs' Fourth Claim for Relief:

23 XIII

24 Answering paragraph 44 of Plaintiffs' Fourth Claim for Relief, these answering defendants  
25 refer to their answers to paragraph 1 through 43 of Plaintiffs' Complaint and incorporate the same  
26 herein by this reference.

27 XIV

28 Answering paragraphs 45 through 48 of Plaintiffs' Fourth Claim for Relief, these

1 answering defendants specifically deny the truth of the same.

2 As to Plaintiffs' Fifth Claim for Relief:

3 XV

4 Answering paragraph 49 of Plaintiffs' Complaint, these answering defendants refer to their  
5 answers to paragraphs 1 through 48 of Plaintiffs' Complaint and incorporate the same herein by  
6 this reference.

7 XVI

8 Answering paragraphs 50, 52, and 53 of Plaintiffs' Fifth Claim for Relief, these answering  
9 defendants specifically deny the truth of each and every allegation contained therein.

10 XVII

11 Answering paragraph 51 of Plaintiffs' Fifth Claim for Relief, these answering defendants  
12 deny the truth of each and every allegation contained therein on the basis that defendants have not  
13 dumped any dirt and/or debris onto the property owned by NNH.

14 As to Plaintiffs' Sixth Claim for Relief:

15 XVIII

16 Answering paragraph 54 of Plaintiffs' Sixth Claim for Relief, these answering defendants  
17 refer to their answers to paragraphs 1 through 53 of Plaintiffs' Complaint and incorporate the same  
18 herein by this reference.

19 XIX

20 Answering paragraphs 55 through 57 of Plaintiffs' Sixth Claim for Relief, these answering  
21 defendants deny the truth of each and every allegation contained therein.

22 **AFFIRMATIVE DEFENSES**

23 FIRST AFFIRMATIVE DEFENSE

24 Plaintiffs' Complaint fails to state a claim upon which relief may be validly granted against  
25 defendants.

26 SECOND AFFIRMATIVE DEFENSE

27 Neither G.L. Construction, Inc., nor Gordon Lemich owed any type of duty, contractual or  
28 otherwise, to maintain that property commonly known as Comstock Storage in good condition or

1 to insure that said property complied with any applicable laws and/or building code provisions.

2 THIRD AFFIRMATIVE DEFENSE

3 Neither G.L. Construction, Inc., nor Gordon Lemich owed any duty to plaintiffs to properly  
4 construct, repair, and/or remodel any improvements made to that real property commonly known  
5 as Comstock Storage either prior to or after the date on which plaintiffs acquired title to such  
6 property.

7 FOURTH AFFIRMATIVE DEFENSE

8 Plaintiffs' claims for Economic Loss are barred by the Economic Loss Doctrine.

9 Wherefore, defendants G.L. Construction, Inc., Gordon Lemich request that this Court  
10 enter judgment in their favor and against plaintiffs Cerberus Holdings, LLC, and Northern Nevada  
11 Homes, LLC, as follows:

- 12 1. That plaintiffs' Complaint be dismissed with prejudice;  
13 2. That this Court award defendants their attorney's fees and costs; and  
14 3. That this Court award defendants such other and further relief as it may deem just and  
15 proper in the premises.

16 COUNTERCLAIM

17 Defendant/Counterclaimant G.L. Construction, Inc., by and through its attorney, James Shields  
18 Beasley, for its Counterclaim against Plaintiff/Counterdefendant Northern Nevada Homes, LLC,  
19 specifically avers and alleges as follows:

20 I

21 Counterclaimant is now, and at all times herein mentioned has been, a duly and regularly  
22 licensed contractor under the laws of the State of Nevada, doing business in the City of Reno, County  
23 of Washoe, State of Nevada.

24 II

25 Counterclaimant is informed and believes and based thereon alleges that counterdefendant  
26 Northern Nevada Homes, LLC, is, and at all times herein mentioned was, a limited liability company  
27 organized and existing under and by virtue of Nevada law.

28 III

1 On or about March 4, 2013, counterclaimant and counterdefendant entered into an oral contract  
2 which provided that counterclaimant would furnish the necessary labor and materials for the  
3 performance of excavation work on the property of defendant situated on DeChardin Street in the  
4 Mountreaux Estates, Washoe County, Nevada. This contract was on a time and materials basis.

5 IV

6 Counterclaimant has performed all conditions, covenants and promises under the contract to  
7 be performed on its part.

8 V

9 On or about April 16, 2013, counterdefendant breached the contract by failing and refusing to  
10 pay plaintiff all of that compensation which was in fact due and owing to counterclaimant. As of the  
11 present date, the sum of \$7,811.00 remains due and owing to counterclaimant for the labor and  
12 materials which counterclaimant furnished to counterdefendant during the period March 4, 2013  
13 through March 13, 2013 at counterdefendant's specific instance and request.

14 VI

15 As a result of counterdefendant's breach of contract, counterclaimant has suffered damages  
16 for labor and materials furnished and used in the amount of \$7,811.00, and for interest on said  
17 damages from and after the date on which said damages became legally due and owing at the legal  
18 rate.

19 VII

20 On or about March 14, 2013, counterclaimant made demand upon counterdefendant for the  
21 payment of such sum, but counterdefendant has failed and refused and still fails and refuses to pay the  
22 sum, and the whole thereof, together with interest at the rate provided by law, remains due, owing, and  
23 unpaid.

24 WHEREFORE, counterclaimant prays judgment against counterclaimant as follows:

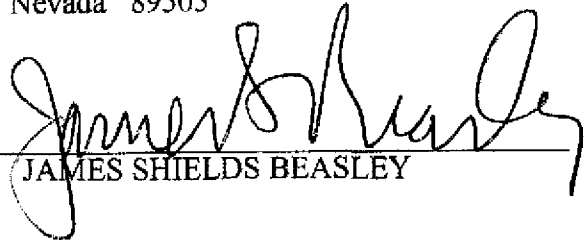
- 25 1. For compensatory damages in the sum of \$7,811.00;  
26 2. For interest on the sum of \$7,811.00 at the legal rate allowed by law from and after  
27 March 14, 2013;  
28 3. For costs of suit herein incurred;

1 4. For such other and further relief as the court may deem just and proper in the premises.

2 DATED this 17<sup>th</sup> day of September, 2013.

3 LAW OFFICE OF JAMES SHIELDS BEASLEY  
4 Attorney for Counterclaimant  
5 435 Court Street  
6 P.O. Box 2936  
7 Reno, Nevada 89505

8 By

9   
JAMES SHIELDS BEASLEY

10 VERIFICATION

11 I, Gordon Lemich, am President of G.L. Construction, the counterclaimant in this action, and  
12 a person who is authorized to make this Verification on its behalf. I have read the foregoing  
13 Counterclaim and know the contents thereof. The same is true of my own knowledge, except as to  
14 those matters which are therein stated on information and belief, and, as to those matters, I believe it  
15 to be true.

16 I declare under penalty of perjury that the foregoing is true and correct and that this declaration  
17 was executed on September 17, 2013.

18 

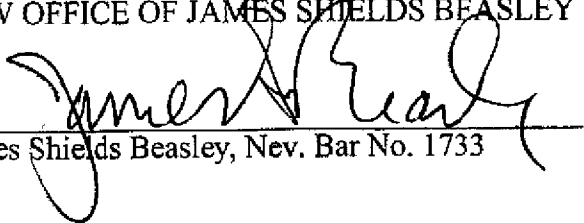
19 GORDON LEMICH  
20  
21  
22  
23  
24  
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27  
28

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, filed in Case Number CV11-00509, does not contain the social security number of any person.

DATED September 17, 2013.

LAW OFFICE OF JAMES SHIELDS BEASLEY

By:   
James Shields Beasley, Nev. Bar No. 1733

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this date I deposited a true copy of the foregoing document in the United States mail at Reno, Nevada, by first class mail, postage prepaid, addressed to the following:

Leslie Bryan Hart, Esq.  
Lionel Sawyer & Collins  
50 West Liberty Street, #1100  
Reno, Nevada 89501

DATED this 28<sup>th</sup> day of October, 2013.

Gail Lee



# **Exhibit 2**

# **Exhibit 2**

1090  
Leslie Bryan Hart, Esq. (SBN 4932)  
LIONEL SAWYER & COLLINS  
50 West Liberty Street, Suite 1100  
Reno, Nevada 89501  
Telephone (775) 788-8666  
[lhart@lionelsawyer.com](mailto:lhart@lionelsawyer.com)

Attorneys for Plaintiffs Cerberus Holdings, LLC  
and Northern Nevada Homes, LLC and  
Counterdefendant Northern Nevada Homes, LLC

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

CERBERUS HOLDINGS, LLC, a Nevada  
limited liability company; NORTHERN  
NEVADA HOMES, LLC, a Nevada  
limited liability company,

CASE NO. CV13-01468

DEPT. NO. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC., a Nevada  
corporation; GORDON LEMICH, an  
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC., a Nevada  
Corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

Counterdefendant.

**FIRST AMENDED COMPLAINT**

Plaintiffs Cerberus Holdings, LLC ("Cerberus") and Northern Nevada Homes, LLC and  
Counterdefendant Northern Nevada Homes, LLC ("NNH") by and through their counsel, Leslie  
Bryan Hart and Lionel Sawyer & Collins, hereby allege as follows:

///

1. Cerberus is, and at all relevant times was, a Nevada limited liability company.
2. Northern Nevada Homes, LLC ("NNH") is, and at all relevant times was, a Nevada limited liability company.
3. GL Construction, Inc. ("GL Construction") is, and at all relevant times was, a Nevada corporation and a construction contractor, licensed by the State of Nevada.
4. Gordon Lemich is, and at all relevant times was, a resident of Washoe County, State of Nevada, and is the principal of GL Construction.
5. Plaintiffs are currently unaware of the designations of DOES 1-10, and thereby sue the fictitious entities and individuals in absentia. Currently, Plaintiffs do not have knowledge of the actual names, business entities, or individuals sued herein as fictitious defendants and as such, reserve the right upon knowledge and notice of actual designation, name and identity of the fictitious entities and individuals to amend this pleading to assert the appropriate allegations against them.
6. Prior to December 28, 2012, GL Construction and/or Gordon Lemich owned, constructed, repaired and remodeled the real property and improvements located in Washoe County, commonly known as 2605 Comstock Drive, Reno, Nevada ("Real Property").
7. Prior to December 28, 2012, GL Construction, Gordon Lemich and Cerberus were involved in negotiations and discussions for the purchase and sale of the Real Property from GL Construction to Cerberus.
8. Prior to December 28, 2012, GL Construction and/or Gordon Lemich represented that the improvements on the Real Property were properly permitted, constructed, repaired, and remodeled and otherwise complied with all applicable laws and building code provisions.
9. In addition to the representations made by GL Construction and/or Gordon Lemich prior to December 28, 2012, GL Construction and/or Gordon Lemich again continued to

1 represent after that date, that the improvements on the Real Property were properly permitted,  
2 constructed, repaired, and remodeled and otherwise complied with all applicable laws and  
3 building code provisions.

4 10. On or about May 9, 2011, the Real Property and improvements were foreclosed  
5 upon by Acquired Capital I, LP ("Bank").  
6

7 11. After the foreclosure, GL Construction and/or Gordon Lemich became a tenant of  
8 the Real Property, leased by Bank, but the tenancy was uncertain given that the Real Property  
9 was available for sale.

10 12. After the foreclosure, Cerberus and GL Construction and/or Gordon Lemich  
11 continued to discuss Cerberus's involvement in the Real Property and GL Construction and/or  
12 Gordon Lemich recommended that Cerberus purchase the Real Property from Bank.

13 13. Bank would only sell the Real Property to Cerberus on an "as-is" basis.  
14

15 14. GL Construction and/or Gordon Lemich informed Cerberus that it wanted  
16 Cerberus to purchase the Real Property because GL Construction and Gordon Lemich believed  
17 they had developed a good working relationship with Cerberus.

18 15. GL Construction and Gordon Lemich informed Cerberus that they believed that  
19 ownership by Cerberus would increase the possibility that they would be allowed to remain as a  
20 tenant of the Real Property and retain some of the rents relating to the Real Property.  
21

22 16. Cerberus was not interested in purchasing the Real Property on an "as-is" basis  
23 without assurances from GL Construction and/or Gordon Lemich that the improvements on the  
24 Real Property were: (a) properly constructed, repaired and remodeled; (b) properly approved,  
25 permitted and constructed; and (c) otherwise complied with applicable laws.

26 17. GL Construction and/or Gordon Lemich affirmatively and expressly represented  
27 that the improvements on the Real Property were: (a) properly constructed, repaired and  
28

1 remodeled; (b) properly approved, permitted and constructed; and (c) otherwise in compliance  
2 with applicable laws.

3 18. On or about December 28, 2012, relying heavily upon the assurances provided by  
4 GL Construction and Gordon Lemich, Cerberus purchased the Real Property from Bank.

5 19. The improvements on the Real Property were not properly constructed, repaired,  
6 remodeled, approved, permitted or constructed and did not otherwise comply with applicable  
7 laws for many reasons, including but not limited to the following:  
8

9 a. The primary building on the Real Property was inspected by the City of  
10 Reno on or about April 5, 2013 and April 11, 2013 and determined to be riddled with  
11 negligent and defective work and uninhabitable. Upon information and belief, the  
12 primary building will require hundreds of thousands of dollars to obtain necessary  
13 approvals, permitting and to cure substandard construction, repairs and remodeling to  
14 allow for the uses GL Construction represented the Real Property and improvements  
15 allowed for and to generate the revenue the Real Property and improvements were  
16 represented to generate.  
17

18 b. The defective construction and remodeling performed by GL Construction  
19 has caused further damage to the physical structure on the Real Property, other than, and  
20 in addition to, the defects themselves.  
21

22 c. Electrical wiring was determined to be noncompliant with the applicable  
23 building code. As a result, Cerberus was fined by NV Energy and was required to pay to  
24 correct the problem.

25 20. After Cerberus's purchase of the Real Property from Bank, Cerberus and GL  
26 Construction and/or Gordon Lemich had a month to month lease agreement relating to the Real  
27 Property.  
28

21. Cerberus provided GL Construction and/or Gordon Lemich with a 30-day notice to quit on or about April 16, 2013. That 30-day notice period has run, Cerberus has terminated the lease agreement and GL Construction and/or Gordon Lemich were required to vacate the Real Property.

22. GL Construction and/or Gordon Lemich has caused damage to the Real Property, improvements and personal property prior to Cerberus's purchase of the Real Property, during Cerberus's ownership of the Property and after termination of the lease agreement.

23. The damage caused by GL Construction and/or Gordon Lemich to the Real Property and improvements and personal property therein include, but are not limited to vandalizing, tearing down and otherwise damaging shell and other aspects of the Real Property and improvements.

24. GL Construction and/or Gordon Lemich has caused Cerberus lost rents and additional cost and expense relating to required storage, removal and disposition of personal property and equipment located on the Real Property after the eviction.

25. During their ownership and tenancy of the Real Property, GL Construction and/or Gordon Lemich dumped vast amounts of dirt and other debris onto real property owned by NNH, which is adjacent to the Real Property causing damage to the Real Property.

**FIRST CLAIM FOR RELIEF**  
**(Negligence)**

26. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

27. Defendants constructed, repaired and remodeled improvements to the Real Property and claimed to have obtained all necessary permits and approvals, and claimed to have otherwise complied with all applicable laws relating to said improvements.

28. Defendants had a duty, as a licensed contractor in the State of Nevada, to: (a) properly construct, repair and remodel the improvements on the Real Property; (b) properly approve, permit and construct the improvements to the Real Property; and (c) otherwise comply with applicable laws.

29. Defendants negligently failed to: (a) properly construct, repair and remodel the improvements on the Real Property; (b) properly approve, permit and construct the improvements to the Real Property; and (c) otherwise comply with applicable laws.

30. The defective construction and remodeling performed by Defendants has caused further damage to the physical structure on the Real Property, other than, and in addition to, the defects themselves.

31. Defendants' negligent and defective failure to properly construct, repair and remodel the improvements on the Real Property, obtain proper approvals and/or permits and otherwise comply with all applicable law, is the proximate cause of Cerberus's damages.

32. As a direct and proximate result of Defendants' negligence, Cerberus has sustained damages in excess of \$10,000.

**SECOND CLAIM FOR RELIEF**  
**(Negligent Misrepresentation)**

33. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

34. GL Construction and/or Gordon Lemich negligently represented that it: (a) properly constructed, repaired and remodeled all improvements on the Real Property; (b) received all proper approvals and permits for the improvements on the Real Property; and (c) otherwise comply with applicable laws with respect to the Real Property.

///

35. Defendants' representations were false and Defendants should have known them to be false.

36. Cerberus justifiably relied to its detriment on the representations of Defendants and even reviewed a significant number of permits and approvals provided by Defendants prior to purchasing the Real Property and improvements from Bank.

37. Defendants' negligent misrepresentations are the proximate cause of Cerberus's damages.

38. As a direct and proximate result of Defendants' negligent misrepresentations, Cerberus has sustained damages in excess of \$10,000.

**THIRD CLAIM FOR RELIEF**  
**(Intentional Misrepresentation)**

39. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

40. Defendants intentionally represented that it: (a) properly constructed repaired and remodeled all improvements on the Real Property; (b) received all proper approvals and permits for the improvements on the Real Property; and (c) otherwise comply with applicable laws with respect to the Real Property.

41. Defendants' representations were intentionally false.

42. Cerberus justifiably relied to its detriment on the misrepresentations of Defendants and even reviewed a significant number of permits and approvals provided by Defendants prior to purchasing of the Real Property and improvements from Defendants.

43. Defendants' intentional misrepresentations directly and proximately caused Cerberus damages in excess of \$10,000.

///



**FOURTH CLAIM FOR RELIEF**  
**(Intentional Damage to Property)**

44. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

45. Defendants have intentionally damaged the Real Property and improvements and personal property on the Real Property.

46. Upon information and belief, the damage caused by Defendants to the Real Property and improvements and personal property therein include, but are not limited to: (a) vandalizing, tearing down and otherwise damaging the shell and structural elements of the Real Property and improvements; (b) storing and spilling hazardous waste on the Real Property and improvements; (c) removing personal property from the Real Property and improvements not owned by or belonging to Defendants.

47. Upon information and belief, Cerberus alleges that Defendants have caused Cerberus loss in rents and additional cost and expense relating to required storage, removal and disposition of personal property and equipment located on the Real Property after the eviction.

48. As a direct and proximate result of Defendants' intentional damage to the aforementioned property, Cerberus has sustained damages in excess of \$10,000.

**FIFTH CLAIM FOR RELIEF**  
**(Breach of Contract)**

49. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

50. Cerberus and Defendants entered a contract pursuant to which Defendants leased the Real Property on a month to month basis for an agreed upon price.

51. Defendants used and occupied the Real Property and made monthly payments for the right to do so until April 2013.

1           52. Defendants breached by the contract by failing to make monthly rental payments  
2 beginning in April 2013.

3           53. Defendants continued to occupy the Real Property without paying rent from April  
4 2013 until their eviction in August 2013.

5           54. Cerberus has been damaged by Defendants' failure to make monthly rental  
6 payments which exceed \$2,500 per month, plus other fees associated with Defendants' breach,  
7 including the costs of evictions, fines, and repairing damages to the Real Property.  
8

9                                   **SIXTH CLAIM FOR RELIEF**  
10                                  **(Quantum Meruit)**

11           55. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth  
12 herein in full.

13           56. Prior to April 2013 Defendants entered a contract pursuant to which Defendants  
14 leased the Real Property on a month to month basis for an agreed upon price.

15           57. Prior to April 2013 Defendants occupied the Real Property and made monthly  
16 rental payments for the right to occupy and use the Real Property.  
17

18           58. Beginning in April 2013 Defendants refused to make monthly payments for the  
19 right to use and occupy the Real Property, but remained in the premises without paying until  
20 their eviction in August 2013.

21           59. During the time period in which Defendants refused to make monthly rental  
22 payments to Cerberus, Defendants unjustly used and occupied the Real Property, which conduct  
23 is contrary to fundamental principles of justice and equity and good conscience.  
24

25           60. Cerberus has been damaged by Defendants failure to make monthly rent  
26 payments in the amount of the reasonable monthly rental rate for the Real Property, which is in  
27 an amount in excess of \$2,500 plus other fees associated with Defendants' breach, including the  
28

costs of evictions, fines, and repairing damages to the leased premises.

**FIFTH CLAIM FOR RELIEF**  
**(Negligent Trespass)**

61. Plaintiff NNH reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

62. Defendants owed a duty as an adjacent landowner to refrain from activities that would cause injury to the adjacent property owned by NNH ("Adjacent Property").

63. During their ownership and tenancy of the Real Property, Defendants breached that duty by negligently dumping vast amounts of dirt and other debris onto the Adjacent Property, owned by NNH, causing physical harm to the Adjacent Property, including loss of use.

64. Defendants' dumping of dirt and debris onto property owned by NNH was conducted without NNH's authorization or permission.

65. Defendants' unauthorized act of going onto NNH's property constitutes a trespass, and the dirt and debris continuing to remain on NNH's property constitutes a continuing trespass.

66. As a direct and proximate result of Defendants' negligence causing physical harm to the Adjacent Property, NNH has sustained damages in excess of \$10,000.

**FIFTH CLAIM FOR RELIEF**  
**(Intentional Trespass)**

67. Plaintiff NNH reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

68. During their ownership and tenancy of the Real Property, Defendants intentionally and in violation of NNH's right of exclusive possession dumped vast amounts of dirt and other debris onto property adjacent to the Real Property, property that is owned by NNH ("Adjacent Property").

///

1           69.    The dumping of vast amounts of dirt and other debris onto the Adjacent Property  
2 has caused physical harm to the property owned by NNH, including loss of use.

3           70.    Defendants' dumping of dirt and debris onto property owned by NNH was  
4 conducted without NNH's authorization or permission.

5           71.    Defendants' unauthorized act on NNH's property constitutes a trespass, and the  
6 dirt and debris continuing to remain on NNH's property constitutes a continuing trespass.

7           72.    As a result of Defendants' intentional trespass causing physical harm to the  
8 Adjacent Property, NNH has sustained damages in excess of \$10,000.

9  
10                               **SEVENTH CLAIM FOR RELIEF**  
11                               **(Temporary, Preliminary and Permanent Injunctive Relief)**

12           73.    Plaintiffs reassert paragraphs 1-25 of this Complaint as though set forth herein in  
13 full.

14           74.    Defendants continue to damage the Real Property and improvements.

15           75.    Cerberus needs protection against further damage caused by Defendants to the  
16 Real Property and improvements.

17           76.    Cerberus is entitled under NRS 33.010 to temporary, preliminary and permanent  
18 injunctive relief as follows:

19           a.    Locking and securing the Real Property and improvements to protect against  
20 further damage and loss by Defendants.

21           b.    Ordering Defendants and any employee, partner, contractor, subcontractor,  
22 representative or agent of Defendants from entering on the Real Property or improvements for  
23 any reason.  
24  
25

26           WHEREFORE, Plaintiffs pray for the following relief:

27           1.    For general damages in a just and reasonable amount in excess of \$10,000;

2. For special damages according to proof;
3. For temporary, preliminary and permanent injunctive relief, as set forth above;
4. For reasonable attorney's fees if any may be allowed under the law;
5. For costs of suit incurred herein; and
6. For such other and further relief as the court deems appropriate.

**AFFIRMATION**  
**(Pursuant to NRS 239B.030)**

The undersigned does hereby affirm that the foregoing does not contain the social security number of any person.

DATED: This 5<sup>th</sup> day of February, 2014.

LIONEL SAWYER & COLLINS

By: 

Leslie Bryan Hart, Esq.

Attorneys for Plaintiffs and Counterdefendant

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Lionel Sawyer &  
3 Collins; that on the 11<sup>th</sup> day of February, 2014, a true and correct copy of the **FIRST**  
4 **AMENDED COMPLAINT**, was enclosed in a sealed envelope and delivered, as indicated  
5 below, to the following:

6 James Shields Beasley, Esq.  
7 Law Office of James Shields Beasley  
8 435 Court St.  
9 Reno, NV 89501

- 10 ☒ Via First Class Mail, with postage pre-paid and deposited for mailing in Reno, Nevada  
11 ☐ Via Hand Delivery  
12 ☐ Via E-Mail and U.S. Mail, with postage pre-paid and deposited for mailing in Reno, NV  
13 ☐ Via Facsimile and U.S. Mail with postage pre-paid and deposited for mailing in Reno, NV

14   
15 \_\_\_\_\_  
16 Pamela Carmon

# **Exhibit 3**

# **Exhibit 3**

1880

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

CERBERUS HOLDINGS, LLC, a Nevada  
limited liability company; NORTHERN  
NEVADA HOMES, LLC, a Nevada  
limited liability company,

CASE NO. CV13-01468

DEPT. NO. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC., a Nevada  
corporation; GORDON LEMICH, an  
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC., a Nevada  
Corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

Counterdefendant.

**JUDGMENT**

The Court being fully advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED that final and binding judgment is entered in  
favor of Plaintiff Cerberus Holdings, LLC and against Defendant Gordon Lemich, in the amount



1 of \$20,000.00 ("Judgment Amount"), with post judgment interest that continues to accrue on the  
2 Judgment Amount at the statutory rate of 5.25% per annum from the date this Judgment is  
3 entered until the Judgment is satisfied, in the amount of \$2.87 per day.

4 IT IS ORDERED that this Judgment shall be further augmented in the amount of  
5 reasonable costs expended in pursuing this Judgment as ordered by the Court and in collecting  
6 said Judgment by execution or otherwise as shall have been established by affidavit, and offset in  
7 the amount of any payments made by Defendant Gordon Lemich toward the Judgment amount.  
8

9 This Judgment constitutes a final and binding decision on all claims in the First Amended  
10 Complaint asserted by Plaintiff Cerberus Holdings, LLC against Defendant Gordon Lemich, and  
11 any and all defenses thereto, and as to those claims only, shall constitute a final judgment.  
12

13 Date: 04-29-2014

14 *Tricia A. Stiglich*  
DISTRICT COURT JUDGE

15 Respectfully Submitted:

16 Leslie Bryan Hart, Esq.  
17 Nevada State Bar No. 4932  
18 LIONEL SAWYER & COLLINS  
19 50 West Liberty Street, Suite 1100  
20 Reno, Nevada 89501  
Telephone (775) 788-8666

21 Attorneys for Plaintiff Cerberus Holdings, LLC  
22  
23  
24  
25  
26  
27  
28

# **Exhibit 4**

# **Exhibit 4**

1 **CODE: 1445**

2 Paul J. Georgeson, Esq.

3 Nevada Bar No. 5322

4 Adam Hosmer-Henner, Esq.

5 Nevada Bar No. 12779

6 MCDONALD CARANO WILSON LLP

100 West Liberty Street, 10th Floor

P.O. Box 2670

Reno, NV 89505

775-788-2000 - phone

775-788-2020 - facsimile

7 *Attorneys for Truckee Meadows Water Authority*

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR THE COUNTY OF WASHOE**

10 CERBERUS HOLDINGS, LLC, a Nevada  
11 limited liability company; NORTHERN  
12 NEVADA HOMES, LLC, a Nevada limited  
liability company,

13 Plaintiffs,

14 vs.

15 GL CONSTRUCTION, INC., a Nevada  
16 corporation; GORDON LEMICH, an  
individual; and DOES 1-10, Inclusive,

17 Defendants.

Case No. CV13-01468

Dept. No. 8

18 **TRUCKEE MEADOWS WATER  
19 AUTHORITY'S COMPLAINT IN  
20 INTERVENTION**

21 TRUCKEE MEADOWS WATER

22 AUTHORITY, Intervenor.

23 AND RELATED ACTIONS.

24  
25 TRUCKEE MEADOWS WATER AUTHORITY ("TMWA"), as and for its Complaint  
26 in Intervention, complains and alleges as follows:  
27  
28

**GENERAL ALLEGATIONS**

1  
2 1. TMWA is a Joint Powers Authority entity created pursuant to a cooperative  
3 agreement among the cities of Reno, Nevada, and Sparks, Nevada, and the County of Washoe,  
4 Nevada, pursuant to NRS Chapter 277.

5 2. TMWA is informed and believes and thereupon alleges that Cerberus Holdings,  
6 LLC ("Cerberus"), is a Nevada limited liability company.

7 3. TMWA is informed and believes and thereupon alleges that Northern Nevada  
8 Homes, LLC, ("Northern Nevada"), is a Nevada limited liability company.

9 4. TMWA is informed and believes and thereupon alleges that GL Construction,  
10 Inc., ("GL Construction") is a Nevada corporation.

11 5. TMWA is informed and believes and thereupon alleges that Gordon Lemich,  
12 ("Lemich") is an individual residing in Washoe County, Nevada.

13 6. That the true names and capacities, whether individual, corporate, associate or  
14 otherwise of Defendants DOES I through X, inclusive, and each of them, are unknown to  
15 TMWA at this time, who therefore sues said Defendants by such fictitious names and when the  
16 true names and capacities are ascertained, Plaintiff will amend this Complaint in Intervention  
17 accordingly. TMWA is informed and believes and therefore alleges that each of the Defendants  
18 designated herein as DOE are responsible for placing soils on property owned by TMWA and/or  
19 on TMWA's Easement Rights on other properties.

20 7. TMWA owns property in north Reno (APN 003-362-07) on which it has  
21 constructed and maintains a water tank and associated improvements. The property is referred to  
22 herein as the "Comstock Tank Property."

23 8. Most of the Comstock Tank Property is surrounded by properties owned by  
24 Cerberus and/or Northern Nevada.

25 9. Pursuant to a Grant of Access Easement ("Easement Agreement") dated August  
26 21, 2013 and recorded with the Washoe County Recorder's Office on August 23, 2013 as  
27 Document No 4272069, Cerberus, the then-owner of the parcel immediately to the west of the  
28

1 Comstock Tank Property, (APN 002-030-05), granted an Easement to TMWA for the purpose of  
2 constructing, maintaining, and operating water facilities and other utilities (as well as other  
3 purposes) ("TMWA Easement").

4 10. TMWA is informed and believes and thereupon alleges that Cerberus  
5 subsequently transferred ownership of the parcel to Northern Nevada, and therefore, the parcel is  
6 presently owned by Northern Nevada ("Northern Nevada Parcel").

7 11. TMWA owns, uses, and maintains two 16-inch water pipelines buried within the  
8 TMWA Easement area on the Northern Nevada Parcel.

9 12. The water pipelines, which TMWA is informed and believes were installed in or  
10 about 1964 by its predecessor, are connected to the Comstock Tank and used for water  
11 distribution and drain purposes.

12 13. TMWA is informed and believes that prior to Cerberus, Defendants GL  
13 Construction and/or Lemich owned, leased, and/or otherwise occupied the Northern Nevada  
14 Parcel.

15 14. TMWA is informed and believes that during the time GL Construction and/or  
16 Lemich possessed or used the Northern Nevada Parcel, GL Construction and/or Lemich  
17 deposited large amounts of the unclassified fill material on the Northern Nevada Parcel,  
18 including within the TMWA Easement area, as well as on the Comstock Tank Property.

19 15. GL Construction and/or Lemich deposited unclassified fill material on the  
20 TMWA Easement and the Comstock Tank Property without TMWA's knowledge or permission.

21 16. TMWA is informed and believes that GL Construction and/or Lemich deposited  
22 unclassified fill material as high as 27 feet above the surface elevation of the land as it existed  
23 when the water pipelines were installed.

24 17. The unclassified fill material remains on the TMWA Easement and the Comstock  
25 Tank Property at this time.

26 18. The unclassified fill material on the TMWA Easement area violates the Grant of  
27 Easement, interferes with the TMWA's Easement, impairs access to water facilities in the  
28

1 TMWA Easement area owned and operated by TMWA for municipal water supply, and may  
2 exceed the load capacity to which the water pipelines were designed to withstand.

3 19. In or about June of 1993, TMWA's predecessor in interest leased a portion of the  
4 Comstock Tank Property to Gordon Lemich and Dale Landon, for use as an outdoor storage yard  
5 ("1993 Lemich Lease").

6 20. TMWA is informed and believes and thereupon alleges that the 1993 Lemich  
7 Lease expired by its terms, but Lemich and Landon continued to occupy the leased property as  
8 holdover tenants.

9 21. Thereafter, in May of 2004, TMWA entered into a Real Property Lease with  
10 Gordon Lemich and Carolyn Cox, doing business as Comstock Storage, for the same portion of  
11 the Comstock Tank Property ("2004 Lemich Lease").

12 22. The 2004 Lemich Lease permitted Lemich and Cox to construct, operate, and  
13 maintain an outdoor storage yard and other facilities necessary and incidental thereto, provided  
14 that such actions and improvements did not interfere in any way with TMWA's operations and  
15 activities on the remainder of the Comstock Tank Property.

16 23. The 2004 Lemich Lease provided that on termination, Lemich and Cox were  
17 required to remove all improvements that had been placed in or upon the property or TMWA  
18 could remove the improvements and recover from Lemich and Cox all costs of such removal,  
19 including attorney's fees and court costs.

20 24. The 2004 Lemich Lease required that Lemich and Cox maintain the property and  
21 improvements in a clean, safe, and sanitary condition.

22 25. The 2004 Lemich Lease provided that Lemich and Cox shall not allow any waste  
23 or nuisance on the property.

24 26. The 2004 Lemich Lease provided that at the termination of the lease, Lemich and  
25 Cox would surrender the property "in good condition and repair."  
26  
27  
28

1           27.     The 2004 Lemich Lease provided that Lemich and Cox must indemnify TMWA  
2     for any and all costs TMWA may incur in response to the remediation of any pollution or  
3     contamination of TMWA's property.

4           28.     Lemich and Cox continued to occupy the leased premises, as holdover tenants,  
5     until July 2010.

6           29.     Based on recent information obtained by TMWA, TMWA is informed and  
7     believes that during the above-described tenancies, the lessees placed contaminated soils on the  
8     leased property without TMWA's knowledge or permission and/or stored materials, equipment,  
9     or other products that caused soils contamination on the leased property.

10                               **1<sup>st</sup> CLAIM FOR RELIEF**

11                               **(Breach of Easement Agreement: Northern Nevada)**

12           30.     TMWA hereby repeats, realleges and incorporates each and every allegation set  
13     forth in paragraphs 1 through 29 of this Complaint in Intervention as if set forth at length and in  
14     full.

15           31.     TMWA is the holder of a real property interest in the form of an easement on the  
16     Northern Nevada Parcel and is party to an Easement Agreement that runs with the land as an  
17     encumbrance on the Northern Nevada Parcel.

18           32.     The Easement Agreement is a valid and enforceable contract.

19           33.     TMWA is informed and believes that Northern Nevada is the present owner of the  
20     Northern Nevada Parcel.

21           34.     The unclassified fill material on the TMWA Easement portion of the Northern  
22     Nevada Parcel violates the Easement Agreement and interferes with TMWA's valid and  
23     enforceable easement rights.

24           35.     Northern Nevada continues to allow the unclassified fill material to remain on the  
25     TMWA Easement.

26           36.     TMWA has performed all conditions required of it pursuant to the Easement  
27     Agreement.

28

1 37. Northern Nevada has breached the Easement Agreement.

2 38. As a proximate result of Northern Nevada's breach of the Easement Agreement,  
3 TMWA has been damaged in an amount in excess of \$10,000.

4 39. Additionally, TMWA has been forced to employ the undersigned attorneys to  
5 prosecute this action. TMWA has incurred, and will continue to incur, attorney's fees and costs  
6 in an amount that cannot presently be determined.

7 **SECOND CLAIM FOR RELIEF**  
8 **(Trespass Upon Easement: Northern Nevada, Cerberus, GL Construction, and Lemich)**

9 40. TMWA hereby repeats, realleges and incorporates each and every allegation set  
10 forth in paragraphs 1 through 39 of this Complaint in Intervention as if set forth at length and in  
11 full.

12 41. TMWA is informed and believes and thereupon alleges that GL Construction and  
13 Lemich placed a substantial amount of unclassified fill material on the TMWA Easement area.

14 42. As owners of the property, Plaintiffs Northern Nevada and Cerberus continued to  
15 allow the unclassified fill material to remain on the TMWA Easement area.

16 43. The unclassified fill material, which has been deposited on the TMWA Easement  
17 and continue to remain on the TMWA Easement, interferes with TMWA's Easement and real  
18 property rights.

19 44. The existence of the unclassified fill material on TMWA's Easement constitutes a  
20 trespass, which trespass continues to this date.

21 45. TMWA has demanded that the responsible parties remove the unclassified fill  
22 material from the TMWA Easement area.

23 46. Plaintiffs and Defendants have failed and refused to remove the unclassified fill  
24 material from the TMWA Easement area.

25 47. As a proximate result of the parties' trespass on TMWA's Easement, TMWA has  
26 been damaged in an amount in excess of \$10,000.



1 48. Additionally, TMWA has been forced to employ the undersigned attorneys to  
2 prosecute this action. TMWA has incurred, and will continue to incur, attorney's fees and costs  
3 in an amount that cannot presently be determined.

4 **THIRD CLAIM FOR RELIEF**  
5 **(Breach of Lease: Lemich)**

6 49. TMWA hereby repeats, realleges and incorporates each and every allegation set  
7 forth in paragraphs 1 through 48 of this Complaint in Intervention as if set forth at length and in  
8 full.

9 50. TMWA and Lemich entered into a valid, binding, and enforceable Lease  
10 Agreement whereby Lemich leased certain portions of the Comstock Tank Property.

11 51. Pursuant to the Lease Agreement, Lemich was prohibited from damaging or  
12 harming the leased property. Further, Lemich was required, at the termination of the Lease, to  
13 surrender the property in "good condition and repair." In addition, Lemich is required to  
14 indemnify TMWA from any and all claims related to the remediation of any pollution or  
15 contamination of TMWA's property.

16 52. Lemich continued to occupy the subject property as a holdover tenant until July of  
17 2010.

18 53. TMWA has performed all obligations required of it with respect to the Lease.

19 54. By engaging in the activities discussed herein, Lemich has breached the Lease  
20 Agreement.

21 55. As a proximate result of Lemich's breach of the Lease Agreement, TMWA has  
22 been damaged in an amount in excess of \$10,000.

23 56. Additionally, TMWA has been forced to employ the undersigned attorneys to  
24 prosecute this action. TMWA has incurred, and will continue to incur, attorney's fees and costs  
25 in an amount that cannot presently be determined.

McDONALD-CARANO-WILSON  
100 WEST LIBERTY STREET, 10<sup>th</sup> FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-786-2000 • FAX 775-786-2020

**PRAYER FOR RELIEF**

WHEREFORE, TMWA prays for judgment against the Northern Nevada and Defendants and each of them, as follows:

1. For judgment in favor of TMWA and against Northern Nevada and Defendants.
2. For general and special damages in a sum in excess of \$10,000.00 as determined at trial.
3. For an order from this Court requiring Northern Nevada and Defendants to remove the soil at issue from the TMWA Easement and the Comstock Tank Property.
4. For reasonable attorney's fees and costs of the suit incurred herein, and
5. For such other and further relief as the Court deems just and proper.

**Affirmation**

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document entitled does not contain the social security number of any person.

DATED: June 20, 2016.

McDONALD CARANO WILSON LLP

By /s/ Paul J. Georgeson  
Paul J. Georgeson  
Adam Hosmer-Henner  
100 West Liberty Street, 10<sup>th</sup> Floor  
P.O. Box 2670  
Reno, Nevada 89505-2670

*Attorneys for Truckee Meadows Water Authority*

450258.1

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of McDONALD CARANO WILSON LLP and that on June 20, 2016, I served the within **TRUCKEE MEADOWS WATER AUTHORITY'S COMPLAINT IN INTERVENTION** on the parties in said case electronically filing via the Court's e-filing system. The participants in this case are registered e-filing users and that service will be accomplished by e-filing to the following e-filing participants:

Chris Rusby, Esq.  
Rusby Law Office  
36 Stewart Street  
Reno, NV 89501

James Shields Beasley, Esq.  
Beasley Law Office  
435 Court Street  
Reno, NV 89505

John C. Boyden, Esq.  
Andrea Pressler, Esq.  
Brett Dieffenbach, Esq.  
Erickson Thorpe & Swainston, Ltd.  
P.O. Box 3559  
Reno, NV 89505

and by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10<sup>th</sup> Floor, Reno, Nevada 89501

addressed as follows:

Thomas Drendel, Esq.  
Bradley Drendel & Jeanney  
6900 S. McCarran Blvd, Suite 2000  
Reno, NV 89509

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

Executed on June 20, 2016 at Reno, Nevada.

By /s/ Jill Nelson  
Jill Nelson

454893.1

# **Exhibit 5**

# **Exhibit 5**

1 **CODE: 3985**

2 Paul J. Georgeson, Esq.

3 Nevada Bar No. 5322

4 Adam Hosmer-Henner, Esq.

5 Nevada Bar No. 12779

6 MCDONALD CARANO WILSON LLP

7 100 West Liberty Street, 10th Floor

8 P.O. Box 2670

9 Reno, NV 89505

10 775-788-2000 – phone

11 775-788-2020 – facsimile

12 *Attorneys for Truckee Meadows Water Authority*

13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

14 **IN AND FOR THE COUNTY OF WASHOE**

15 CERBERUS HOLDINGS, LLC, a Nevada  
16 limited liability company; NORTHERN  
17 NEVADA HOMES, LLC, a Nevada limited  
18 liability company,

19 Plaintiffs,

20 vs.

21 GL CONSTRUCTION, INC., a Nevada  
22 corporation; GORDON LEMICH, an  
23 individual; and DOES 1-10, Inclusive,

24 Defendants.  
25 \_\_\_\_\_/

26 TRUCKEE MEADOWS WATER  
27 AUTHORITY,

28 Intervener,

29 vs.

30 CERBERUS HOLDINGS, LLC, a Nevada  
31 limited liability company; NORTHERN  
32 NEVADA HOMES, LLC, a Nevada limited  
33 liability company; GL CONSTRUCTION,  
34 INC., a Nevada corporation; GORDON  
35 LEMICH, an individual; and DOES 1-10,  
36 Inclusive,

37 Defendants.  
38 \_\_\_\_\_/

Case No. CV13-01468

Dept. No. 8

**STIPULATION FOR DISMISSAL WITH  
PREJUDICE OF TMWA'S COMPLAINT  
IN INTERVENTION**

MCDONALD-CARANO-WILSON  
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501  
PO BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020



1 Plaintiffs Cerberus Holdings, LLC, and Northern Nevada Homes, LLC, by and through  
2 their counsel Chris Rusby, Esq. of Rusby Law, PLLC.; Defendants GL Construction, Inc., and  
3 Gordon Lemich, by and through their counsel John C. Boyden, Esq., of Erickson, Thorpe &  
4 Swainston, Ltd.; Plaintiff in Intervention Truckee Meadows Water Authority ("TMWA"), by and  
5 through its counsel Paul J. Georgeson, Esq., and Adam Hosmer-Henner, Esq. of McDonald  
6 Carano Wilson, LLP, hereby stipulate and agree as follows:

7 IT IS HEREBY STIPULATED AND AGREED that all claims brought by TMWA in  
8 TMWA's Complaint in Intervention filed on or about June 20, 2016 against all parties shall be  
9 dismissed, with prejudice, each party to bear their own fees and costs.

10 IT IS FURTHER STIPULATED AND AGREED that the Motion to Continue Trial filed  
11 by TMWA on July 25, 2016, and Joinder to the Motion to Continue filed by GL Construction  
12 and Gordon Lemich on July 27, 2016, shall be withdrawn.

13 IT IS FURTHER STIPULATED AND AGREED that Plaintiffs' Motion to Bifurcate or  
14 Sever TMWA's Claims filed on July 27, 2016, shall be withdrawn.

15 IT IS FURTHER NOTED that TMWA will not be filing a separate Motion to Dismiss its  
16 trespass claims against GL Construction and Gordon Lemich, as this Dismissal encompasses that  
17 claim.

18 AFFIRMATION

19 The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding  
20 document does not contain the social security number of any person.

21  
22  
23 Dated: July 28, 2016.

RUSBY LAW OFFICE


By 

Chris Rusby,  
36 Stewart Street  
Reno, NV 89501

24  
25  
26 *Attorneys for Plaintiffs, Cerberus Holdings,*  
27 *LLC, and Northern Nevada Homes, LLC*  
28

1 Dated: 7/28, 2016.

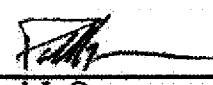
ERICKSON THORPE & SWAINSTON, LTD.

2  
3 By   
4 John C. Boyden, Esq.  
5 P.O. Box 3559  
6 Reno Nevada 89505

7 *Attorney for Defendants GL Construction, Inc.*  
8 *and Gordon Lemich*

9 Dated: 7/28, 2016.

McDONALD CARANO WILSON LLP

10 By   
11 Paul J. Georgeson, Esq.  
12 Adam Hosmer-Henner, Esq.  
13 100 West Liberty Street, 10<sup>th</sup> Floor  
14 P.O. Box 2670  
15 Reno, Nevada 89505

16 *Attorneys for Plaintiff in Intervention Truckee*  
17 *Meadows Water Authority*

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McDONALD-CARANO-WILSON  
100 WEST LIBERTY STREET, 10<sup>th</sup> FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

# **Exhibit 6**

# **Exhibit 6**



1 Paul J. Georgeson, Esq.  
2 Nevada Bar No. 5322  
3 Adam Hosmer-Henner, Esq.  
4 Nevada Bar No. 12779  
5 MCDONALD CARANO WILSON LLP  
6 100 West Liberty Street, 10th Floor  
7 P.O. Box 2670  
8 Reno, NV 89505  
9 775-788-2000 – phone  
10 775-788-2020 – facsimile

11 *Attorneys for Truckee Meadows Water Authority*

12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

13 **IN AND FOR THE COUNTY OF WASHOE**

14 CERBERUS HOLDINGS, LLC, a Nevada  
15 limited liability company; NORTHERN  
16 NEVADA HOMES, LLC, a Nevada limited  
17 liability company,

18 Plaintiffs,

19 vs.

20 GL CONSTRUCTION, INC., a Nevada  
21 corporation; GORDON LEMICH, an  
22 individual; and DOES 1-10, Inclusive,

23 Defendants.  
24 \_\_\_\_\_/

25 TRUCKEE MEADOWS WATER  
26 AUTHORITY,

27 Intervener,

28 vs.

29 CERBERUS HOLDINGS, LLC, a Nevada  
30 limited liability company; NORTHERN  
31 NEVADA HOMES, LLC, a Nevada limited  
32 liability company; GL CONSTRUCTION,  
33 INC., a Nevada corporation; GORDON  
34 LEMICH, an individual; and DOES 1-10,  
35 Inclusive,

36 Defendants.  
37 \_\_\_\_\_/

Case No. CV13-01468

Dept. No. 8

**ORDER GRANTING STIPULATION FOR  
DISMISSAL WITH PREJUDICE OF  
TMWA'S COMPLAINT IN  
INTERVENTION**

1       Whereas, all parties to this action filed a STIPULATION FOR DISMISSAL WITH  
2 PREJUDICE OF TMWA'S COMPLAINT IN INTERVENTION on or about July 28, 2016.

3       Good cause appearing:

4       IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all claims brought by  
5 TMWA in TMWA's Complaint in Intervention filed on or about June 20, 2016 against all parties  
6 are dismissed, with prejudice, each party to bear their own fees and costs.

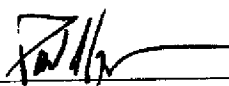
7       IT IS HEREBY FURTHER ORDERED that the Motion to Continue Trial filed by  
8 TMWA on July 25, 2016, and Joinder to the Motion to Continue filed by GL Construction and  
9 Gordon Lemich on July 27, 2016, is withdrawn.

10       IT IS HEREBY FURTHER ORDERED that Plaintiffs' Motion to Bifurcate or Sever  
11 TMWA's Claims filed on July 27, 2016, are withdrawn.

12  
13       IT IS SO ORDERED this 4 day of AUGUST, 2016.

14  
15       Patrick Flanagan  
16       DISTRICT JUDGE

17       Submitted by:  
18       McDONALD CARANO WILSON LLP

19       By   
20       Paul J. Georgeson  
21       100 West Liberty Street, 10th Floor  
22       P.O. Box 2670  
23       Reno, NV 89505

24       Attorneys for Plaintiff in Intervention  
25  
26  
27  
28

# **Exhibit 7**

# **Exhibit 7**

1 CODE: 2540  
2 Paul J. Georgeson, Esq.  
3 Nevada Bar No. 5322  
4 Adam Hosmer-Henner, Esq.  
5 Nevada Bar No. 12779  
6 MCDONALD CARANO WILSON LLP  
7 100 West Liberty Street, 10th Floor  
8 P.O. Box 2670  
9 Reno, NV 89505  
10 775-788-2000 - phone  
11 775-788-2020 - facsimile  
12  
13 *Attorneys for Truckee Meadows Water Authority*

14  
15  
16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
17  
18 **IN AND FOR THE COUNTY OF WASHOE**

19 CERBERUS HOLDINGS, LLC, a Nevada  
20 limited liability company; NORTHERN  
21 NEVADA HOMES, LLC, a Nevada limited  
22 liability company,

23 Plaintiffs,

24 vs.

25 GL CONSTRUCTION, INC., a Nevada  
26 corporation; GORDON LEMICH, an  
27 individual; and DOES 1-10, Inclusive,

28 Defendants.

Case No. CV13-01468

Dept. No. 8

**NOTICE OF ENTRY OF ORDER**

AND RELATED ACTIONS.

PLEASE TAKE NOTICE that on the 4<sup>th</sup> day of August, 2016, the above entitled Court entered its Order Granting Stipulation for Dismissal with Prejudice of TMWA's Complaint in Intervention. A true and correct copy of the Order is attached hereto as Exhibit 1.

//

//

//

//

MCDONALD-CARANO-WILSON  
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

1 The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding  
2 document does not contain the social security number of any person.

3 DATED: August 4, 2016.

4 McDONALD CARANO WILSON LLP

5  
6 By /s/ Paul J. Georgeson

7 Paul J. Georgeson  
8 Adam Hosmer-Henner  
9 100 West Liberty Street, 10<sup>th</sup> Floor  
10 P.O. Box 2670  
11 Reno, Nevada 89505-2670

12 *Attorneys for Truckee Meadows Water Authority*  
13  
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 McDONALD-CARANO-WILSON  
100 WEST LIBERTY STREET, 10<sup>th</sup> FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of McDONALD CARANO WILSON LLP and that on August 4, 2016, I served the within **NOTICE OF ENTRY OF ORDER** on the parties in said case electronically filing via the Court's e-filing system. The participants in this case are registered e-filing users and that service will be accomplished by e-filing to the following e-filing participants:

Chris Rusby, Esq.  
Rusby Law Office  
36 Stewart Street  
Reno, NV 89501

James Shields Beasley, Esq.  
Beasley Law Office  
435 Court Street  
Reno, NV 89505

John C. Boyden, Esq.  
Andrea Pressler, Esq.  
Brett Dieffenbach, Esq.  
Erickson Thorpe & Swainston, Ltd.  
P.O. Box 3559  
Reno, NV 89505

and by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10<sup>th</sup> Floor, Reno, Nevada 89501 addressed as follows:


Thomas Drendel, Esq.  
Bradley Drendel & Jeanney  
6900 S. McCarran Blvd, Suite 2000  
Reno, NV 89509

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

Executed on August 4, 2016 at Reno, Nevada.

By /s/ Jill Nelson  
Jill Nelson

454893.1

 **MCDONALD-CARANO-WILSON**  
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

**INDEX OF EXHIBITS**

EXHIBIT #	DESCRIPTION	NUMBER OF PAGES
1	Order Granting Stipulation for Dismissal with Prejudice of TMWA's Complaint in Intervention	2

1 Paul J. Georgeson, Esq.  
2 Nevada Bar No. 5322  
3 Adam Hosmer-Henner, Esq.  
4 Nevada Bar No. 12779  
5 MCDONALD CARANO WILSON LLP  
6 100 West Liberty Street, 10th Floor  
7 P.O. Box 2670  
8 Reno, NV 89505  
9 775-788-2000 – phone  
10 775-788-2020 – facsimile

11 *Attorneys for Truckee Meadows Water Authority*

12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

13 **IN AND FOR THE COUNTY OF WASHOE**

14 CERBERUS HOLDINGS, LLC, a Nevada  
15 limited liability company; NORTHERN  
16 NEVADA HOMES, LLC, a Nevada limited  
17 liability company,

18 Plaintiffs,

19 vs.

20 GL CONSTRUCTION, INC., a Nevada  
21 corporation; GORDON LEMICH, an  
22 individual; and DOES 1-10, Inclusive,

23 Defendants.  
24 \_\_\_\_\_/

25 TRUCKEE MEADOWS WATER  
26 AUTHORITY,

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29 CERBERUS HOLDINGS, LLC, a Nevada  
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31 NEVADA HOMES, LLC, a Nevada limited  
32 liability company; GL CONSTRUCTION,  
33 INC., a Nevada corporation; GORDON  
34 LEMICH, an individual; and DOES 1-10,  
35 Inclusive,

36 Defendants.  
37 \_\_\_\_\_/

Case No. CV13-01468

Dept. No. 8

**ORDER GRANTING STIPULATION FOR  
DISMISSAL WITH PREJUDICE OF  
TMWA'S COMPLAINT IN  
INTERVENTION**



1       Whereas, all parties to this action filed a STIPULATION FOR DISMISSAL WITH  
2 PREJUDICE OF TMWA'S COMPLAINT IN INTERVENTION on or about July 28, 2016.

3       Good cause appearing:

4       IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all claims brought by  
5 TMWA in TMWA's Complaint in Intervention filed on or about June 20, 2016 against all parties  
6 are dismissed, with prejudice, each party to bear their own fees and costs.

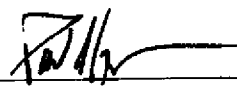
7       IT IS HEREBY FURTHER ORDERED that the Motion to Continue Trial filed by  
8 TMWA on July 25, 2016, and Joinder to the Motion to Continue filed by GL Construction and  
9 Gordon Lemich on July 27, 2016, is withdrawn.

10       IT IS HEREBY FURTHER ORDERED that Plaintiffs' Motion to Bifurcate or Sever  
11 TMWA's Claims filed on July 27, 2016, are withdrawn.

12  
13       IT IS SO ORDERED this 4 day of AUGUST, 2016.

14  
15       Patrick Flanagan  
16       DISTRICT JUDGE

17       Submitted by:  
18       McDONALD CARANO WILSON LLP

19       By   
20       Paul J. Georgeson  
21       100 West Liberty Street, 10th Floor  
22       P.O. Box 2670  
23       Reno, NV 89505

24       Attorneys for Plaintiff in Intervention  
25  
26  
27  
28

# **Exhibit 8**

# **Exhibit 8**

1 **3370**  
2 Christopher Rusby, Esq.  
3 Nevada State Bar No. 11452  
4 RUSBY CLARK PLLC  
5 36 Stewart Street  
6 Reno, NV 89505  
7 T: (775) 409-4037  
8 and  
9 Thomas E. Drendel, Esq.  
10 BRADLEY, DRENDEL & JEANNEY, LTD.  
11 6900 S. McCarran Blvd., Suite 2000  
12 P.O. Box 1987  
13 Reno, NV 89505  
14 (775) 335-9999  
15 *Attorneys for Plaintiffs*

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

12 CERBERUS HOLDINGS, LLC, a Nevada  
13 limited liability company; NORTHERN  
14 NEVADA HOMES, LLC, a Nevada limited  
15 liability company,

Case No. CV13-01468

Dept. No. 8

16 Plaintiffs,

17 v.

18 GL CONSTRUCTION, INC., a Nevada  
19 corporation; GORDON LEMICH, an  
20 individual; and DOES I through X,  
21 inclusive,

22 Defendants.

23  
24 AND RELATED CLAIMS  
25  
26

27 **ORDER**

28 Pursuant to the stipulation of the parties hereto, and good cause appearing,

IT IS HEREBY ORDERED that the counterclaim in the above-captioned matter be  
bifurcated from the claims being presented at the jury trial scheduled for August 8, 2016 between  
Northern Nevada Homes, LLC and GL Construction, Inc. and Gordon Lemich.

1 IT IS HEREBY FURTHER ORDERED that the counterclaim will be presented to the  
2 Court as a bench trial following the jury verdict in the primary trial.

3 Dated this 5<sup>th</sup> day of August, 2016

4   
5 DISTRICT JUDGE  
6  
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# **Exhibit 9**

# **Exhibit 9**

3985

1 JOHN C. BOYDEN, ESQ. (SBN 3917)  
2 BRETT A. DIEFFENBACH, ESQ. (SBN 11370)  
3 ERICKSON, THORPE & SWAINSTON, LTD.  
4 P.O. Box 3559  
5 Reno, NV 89505  
6 (775) 786-3930  
7 Attorneys for Defendants  
8 GL Construction, Inc. & Gordon Lemich

9  
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IN AND FOR THE COUNTY OF WASHOE

CERBERUS HOLDINGS, LLC, a Nevada limited  
liability company; NORTHERN NEVADA  
HOMES, LLC, a Nevada limited liability company,

Plaintiffs,

CASE NO: CV13-01468

vs.

DEPT. NO: 8

GL CONSTRUCTION, INC., a Nevada  
corporation; GORDON LEMICH, an  
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC., a Nevada corporation

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC, a Nevada  
limited liability company,

Counterdefendant.

**STIPULATION AND ORDER TO DISMISS CERTAIN CAUSES OF ACTION**

Plaintiffs, CERBERUS HOLDINGS, LLC (SUREBREC HOLDINGS, LLC) and NORTHERN NEVADA  
HOMES, LLC, by and through their counsel of record, RUSBY CLARK, PLLC, and CHRISTOPHER RUSBY,  
ESQ., Defendants, GL CONSTRUCTION, INC., and GORDON LEMICH, by and through their counsel of record,  
ERICKSON, THORPE & SWAINSTON, LTD., JOHN C. BOYDEN, ESQ., and BRETT A. DIEFFENBACH,  
ESQ., and, Intervenor, TRUCKEE MEADOWS WATER AUTHORITY, by and through its counsel of record,  
MCDONAL CARANO WILSON, LLP, PAUL J. GEORGESON, ESQ., and ADAM HOSMER-HENNER, ESQ.,

1 and hereby stipulate that Cerberus Holdings, LLC's Claims for Relief for Negligence, Negligent Misrepresentation,  
2 Intentional Misrepresentation, Intentional Damage to Property, Breach of Contract, and Quantum Meruit shall be  
3 dismissed with prejudice. As to these causes of action only each party is to bear its own attorneys' fees and costs.  
4 Because these claims include all of the claims asserted be Plaintiff Cerberus Holdings, LLC, the parties stipulate to  
5 dismiss Cerberus Holdings, LLC as a party to this case.

6 Plaintiff, NORTHERN NEVADA HOMES, LLC's Claims for Relief for Negligent Trespass, Intentional  
7 Trespass, and Injunctive Relief are not affected by this stipulation.

8 The parties further agree and stipulate that the caption attached as Exhibit A shall be the caption used from  
9 the date the Court signs the Order below.

10 Affirmation

11 The undersigned does hereby affirm that the preceding document does not contain the social security  
12 number of any person.

13 DATED this 5<sup>th</sup> day of August, 2016.

DATED this 5<sup>th</sup> day of August, 2016.

14 RUSBY CLARK, PLLC

ERICKSON, THORPE & SWAINSTON, LTD.

15 BY 

BY: 

16 CHRISTOPHER RUSBY, ESQ.  
17 Attorneys for Plaintiffs  
18 Cerberus Holdings, LLC &  
19 Northern Nevada Homes, LLC.

JOHN C. BOYDEN, ESQ.  
BRETT A. DEFFENBACH, ESQ.  
Attorneys for Defendants  
GL Construction, Inc. & Gordon Lemich

20 ORDER

21 Pursuant to the stipulation of the parties hereto, and good cause appearing, IT IS HEREBY ORDERED that  
22 Plaintiffs' Claims for Relief for Negligence, Negligent Misrepresentation, Intentional Misrepresentation, Intentional  
23 Damage to Property, Breach of Contract, and Quantum Meruit are dismissed with prejudice, and Plaintiff Cerberus  
24 Holdings, LLC is dismissed as a party to the case. As to these causes of action only each party shall bear its own  
25 attorneys fees and costs.

26 Dated this 5<sup>th</sup> day of August, 2016

27   
28 DISTRICT JUDGE

# **Exhibit 10**

# **Exhibit 10**



CASE NO. CV13-01468

CERBERUS HOLDINGS, LLC ETAL VS. GL CONSTRUCTION ETAL

Page One

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

**APPEARANCES-HEARING**

08/08/2016

**JURY TRIAL – Day One**

HONORABLE  
LIDIA  
STIGLICH  
DEPT. NO. 8  
A. DeGayner  
(Clerk)  
I. Zihn  
(Reporter)

Christopher Rusby, Esq. and Thomas Drendel, Esq. were preset in Court on behalf of Plaintiff, Northern Nevada Homes, LLC, who was also present.  
John Boyden, Esq. and Brett Dieffenbach, Esq. were present in Court on behalf of G & L Construction, Inc. and Gordon Lemich, who was also present.

9:30 a.m. – Court convened with Court, Counsel, Plaintiff and Defendant present.  
Counsel Rusby addressed and advised the Court of a few pretrial issues to include an objection to any cross examination of Mr. Fitzgerald as to if or when he had knowledge that a trespass had occurred. Counsel Rusby further argued that the evidence submitted on market value has no relevance.  
Counsel Dieffenbach addressed the Court and argued the relevance of the evidence to include that the appraisal is only 3 years old.  
Counsel Rusby argued that the 2013 appraisal is prejudicial and not competent evidence.

**Court** inquired as to why the evidence would be prejudicial.

Counsel Rusby responded to the Court's inquiry and advised that Mr. Fitzgerald would have to explain the bankruptcy in 2009, when a sale is not a "full arms length" sale it is not relevant as to market value and the appraisal is not probative of current value.

Counsel Dieffenbach argued in support of the appraisal and advised that there is no reason to bring up the bankruptcy.

Counsel Rusby requested that Mr. Fitzgerald be allowed to talk about the current appraisal.

**COURT ORDERED:** Mr. Fitzgerald can testify about the recent appraisal as to his knowledge of the value and any reference to the bankruptcy or the \$33k transfer in 2013 is EXCLUDED. Unless Mr. Fitzgerald denies the appraisal happened, no other documents shall come in.

Counsel Rusby argued in support of allowing in the settlement agreement with TMWA. Counsel Dieffenbach argued in opposition of the TMWA settlement and inquired if Plaintiff will concede that the property has no value with dirt there.

Counsel Rusby advised that if going down the road of diminished value then the TMWA agreement must come in, if not, then it is not necessary.

**COURT ORDERED:** Will wait to see what the Defense is, if the parties want to bring something in they shall first seek leave of Court.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES-HEARING

08/08/2016  
HONORABLE  
LIDIA  
STIGLICH  
DEPT. NO. 8  
A. DeGayner  
(Clerk)  
I. Zihn  
(Reporter)

**JURY TRIAL – Day One**

Counsel Dieffenbach argued that the elements of trespass are all relevant as to implied consent.

Counsel Rusby advised of the Court's ruling that the statute of limitations is not a defense.

Counsel Boyden advised that consent is an element of trespass.

Counsel Rusby argued for exclusion of cross examination of Mr. Fitzgerald as to whether he should have known prior to when he did know of the trespass in 2013.

Counsel Dieffenbach confirmed that the Defense will not move to amend the answer.

**COURT ORDERED:** Inquiry in that area is allowed a limiting instruction will be given if needed. Counsel to prepare the redaction for the TMWA letter.

*Discussion ensued as to scheduling the bifurcated issue.*

*Prior to Court, roll taken by Bailiff Natasha Rickey. Forty-Four (44) of Forty-Four (44) prospective jurors were present.*

*Prior to the commencement of Court, Plaintiff's Exhibits 1-32 and Defendant's Exhibits 33-59 were marked for identification and Proposed Jury Instructions were provided to the Court by Counsel.*

11:39 a.m. – Court convened with Court, Counsel and prospective jurors present.

Court addressed the prospective jurors.

Introduction of Court staff, respective counsel, Plaintiff and Defendant were made to the prospective jurors.

Counsel Rusby provided a brief statement of the case to the prospective jurors.

All prospective jurors were sworn to answer questions touching upon their qualifications to serve as trial jurors in this case.

The Court ordered that Nineteen (19) names be drawn, consisting of Eight (8) jurors and One (1) alternate, who were called and seated in the jury box.

At the direction of the Court, the Nineteen (19) prospective jurors introduced themselves.

Court read the list of witnesses expected to be called in the case.

The Court conducted general and specific voir dire examination of the potential jurors in the box.

Potential Juror Krymsen Hernandez was excused by the Court and replaced with potential juror Megan Medeiros.

*Sidebar between Court and Counsel.*

**DATE, JUDGE  
OFFICERS OF  
COURT PRESENT****APPEARANCES-HEARING**

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**08/08/2016****JURY TRIAL – Day One****HONORABLE**

Potential Juror Glenda Bacon was excused by the Court and replaced with potential juror Ronald Seagraves.

**LIDIA**

Potential Juror Connie Lowe excused by Court and replaced with potential juror Pisek Praphatanant.

**STIGLICH****DEPT. NO. 8****A. DeGayner**

Potential Juror Joseph Metzger advised the Court of inability to serve as a Juror in this case and offered to meet with the Court privately to explain.

**(Clerk)**

Recess to meet with potential Juror Metzger in chambers.

**I. Zihn**

Court met in Chamber and on the record with Court, Counsel and potential Juror Joseph Metzger present.

**(Reporter)**

Potential Juror Joseph Metzger provided explanation to the Court as to the reason he is unable to serve as a Juror in this case.

Respective Counsel stated no objection to potential Juror Joseph Metzger being excused.

Recess.

Court reconvened with Court and Counsel present.

Potential Juror Joseph Metzger excused by Court and replaced with potential Juror Lisa Marotta.

Potential Juror Pizek Praphatanant excused by Court and replaced with potential Juror Terry Hutsell.

12:30 p.m. – Counsel Drendel, on behalf of the Plaintiff, conducted general and specific voir dire of the potential Jurors in the box.

Counsel Drendel passed the panel for cause.

12:50 p.m. – Counsel Boyden, on behalf of the Defendants, conducted general and specific voir dire of the potential Jurors in the box.

Counsel Boyden passed the panel for cause.

The Court admonished the Jury.

12:55 p.m. – Recess to conduct challenges.

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

---

08/08/2016

JURY TRIAL – Day One

HONORABLE

1:08 p.m. – Court reconvened in chambers with Court and Counsel present where preemptory challenges were exercised, Four (4) per side plus One (1) alternate.

LIDIA

The following panel was selected and stipulated to:

STIGLICH

DEPT. NO. 8

Linda Carson, Terry Perez, Su Suh, Matthew Gardner, Gerald Sliker, Megan Medeiros, Oscar Correa, Ronald Seagraves and alternate Franklyn Christian.

A. DeGayner  
(Clerk)

I. Zihn

(Reporter)

1:16 p.m. – Court reconvened with Court, Counsel, Prospective Jurors, Plaintiff and Defendant present.

The selected and stipulated jurors were seated in the jury box and sworn. The Court thanked and excused the un-reached and unselected prospective Jurors.

The court addressed the Jury, provided preliminary admonishments and an anticipated trial schedule for the week.

1:25 p.m. – Noon Recess. Jury and Counsel ordered to return to Court at 2:30 p.m.

2:32 p.m. – Court reconvened with Court, Counsel, Plaintiff, Defendant and Jury present.

Court provided preliminary instructions to the Jury.

2:41 p.m. – Counsel Drendel, on behalf of the Plaintiff, presented Opening Statement.

3:06 p.m. – Counsel Boyden, on behalf of the Defendants, presented Opening Statement.

Jury admonished and ordered to return to Court on Tuesday, August 9, 2016 at 10:15 a.m.

3:28 p.m. – Court stood in Recess.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES-HEARING

08/09/2016

JURY TRIAL – Day TwoHONORABLE  
LIDIA  
STIGLICH  
DEPT. NO. 8  
A. DeGayner  
(Clerk)  
I. Zihn  
(Reporter)

Christopher Rusby, Esq. and Thomas Drendel, Esq. were preset in Court on behalf of Plaintiff, Northern Nevada Homes, LLC, who was also present.

John Boyden, Esq. and Brett Dieffenbach, Esq. were present in Court on behalf of G & L Construction, Inc. and Gordon Lemich, who was also present.

10:26 a.m. – Court convened with Court, Counsel, Plaintiff and Defendant present. Counsel Drendel addressed and advised the Court that parties have stipulated to a number of exhibits and would like to admit them as a matter of housekeeping.

**Exhibit 1** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 2** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 3** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 4** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 5** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 6** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 7** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 17** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 18** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 19** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 20** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 23** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 33** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 48** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 54** offered; previously stipulated to by Counsel; ADMITTED.

**Exhibit 58** offered; previously stipulated to by Counsel; ADMITTED.

Counsel Rusby advised the Court that he has prepared two redacted letters from TMWA and provided said letters to the Court for review.

10:28 a.m. – Jury escorted into the Courtroom.

Counsel Drendel called **Gordon Lemich** who was sworn and direct examined.

**Exhibit 8** offered; objection – overruled; ADMITTED.

Continued direct examination conducted by Counsel Drendel.

**Exhibit 9** offered; no objection; ADMITTED.

Continued direct examination conducted by Counsel Drendel.

**Exhibit 30** offered; no objection; ADMITTED.

Continued direct examination conducted by Counsel Drendel; cross examination conducted by Counsel Boyden.

**Exhibit 60** marked; offered; no objection; ADMITTED.

DATE, JUDGE  
OFFICERS OF

## COURT PRESENT

## APPEARANCES-HEARING

08/09/2016

HONORABLE

LIDIA

STIGLICH

DEPT. NO. 8

A. DeGayner

(Clerk)

I. Zihn

(Reporter)

JURY TRIAL – Day Two

Continued cross examination conducted by Counsel Boyden.

**Exhibit 61** marked.

Continued cross examination conducted by Counsel Boyden.

The Court admonished the Jury, which was presented prior to every recess.

11:55 a.m. – Noon Recess. Jury ordered to return at 1:15 p.m.

1:21 p.m. – Court convened with Court, Counsel, Plaintiff and the Defendant present.

*Outside the presence of the Jury, Counsel Rusby inquired the Court if the redacted TMWA letter could be addressed at this time.**Counsel Dieffenbach argued that everything following "scope of proposed work" on page 2 of the letter be redacted; no objection stated.**Counsel Rusby made additional redactions to the TMWA letter.*

1:29 p.m. – Jury escorted into the Courtroom.

Court instructed the Jury as to questions.

Continued cross examination of **Gordon Lemich** conducted by Counsel Boyden; re-direct examination conducted by Counsel Drendel; witness thanked and excused.Counsel Rusby called **Robert Rice**.

Counsel Boyden addressed the Court and moved for an offer of proof for the Plaintiff's witness Robert Rice.

*Sidebar conducted between Court and Counsel.*

Plaintiff's witness Robert Rice took the witness stand and was sworn.

Matt Jensen, Esq. addressed the Court from behind the bar and introduced himself as counsel for the Plaintiff's witness Robert Rice and further requested permission of the Court to sit in front of the bar and raise objections if necessary.

**COURT ORDERED:** Matt Jensen, Esq. may sit in front of the bar but shall leave any objections to Counsel of record in the case.Direct examination of **Robert Rice** conducted by Counsel Rusby; witness thanked and excused.Counsel Rusby called **John Erwin** who was sworn.*Sidebar conducted between Court and Counsel.*Direct examination of **John Erwin** conducted by Counsel Rusby.**Exhibit 16** offered; no objection; ADMITTED.

Continued direct examination conducted by Counsel Rusby.

*Sidebar conducted between Court and Counsel.*

Continued direct examination conducted by Counsel Rusby; witness thanked and excused.

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

**APPEARANCES-HEARING**

---

08/09/2016

HONORABLE

LIDIA

STIGLICH

DEPT. NO. 8

A. DeGayner

(Clerk)

I. Zihn

(Reporter)

**JURY TRIAL – Day Two**

The Court admonished the Jury, which was presented prior to every recess.

2:59 p.m. – Afternoon Recess.

3:11 p.m. – Court convened with Court, Counsel, Plaintiff and Defendant present.

3:12 p.m. – Jury escorted into the Courtroom.

Counsel Rusby called **Robert Fitzgerald** who was sworn and direct examined.**Exhibit 15** offered; no objection; ADMITTED.

Continued direct examination conducted by Counsel Rusby; cross examination

conducted by Counsel Boyden; re-direct examination conducted by Counsel Rusby;  
witness thanked and excused.**Exhibit 42** offered; no objection; ADMITTED.**Exhibit 17** offered; no objection; ADMITTED.The Court admonished the Jury. Ordered to return on Wednesday, August 10, 2016 at 9:30  
a.m.

4:31 p.m. – Jury escorted out.

*Outside the presence of the Jury Court reviewed admitted exhibits.***Exhibit 61** offered; no objection; ADMITTED.*Discussion ensued as to scheduling for the remainder of the trial.*

4:34 p.m. – Court stood in Recess.

DATE, JUDGE  
OFFICERS OF

## COURT PRESENT

## APPEARANCES-HEARING

08/10/2016

HONORABLE

LIDIA

STIGLICH

DEPT. NO. 8

A. DeGayner

(Clerk)

I. Zihn

(Reporter)

**JURY TRIAL – Day Three**

Christopher Rusby, Esq. and Thomas Drendel, Esq. were preset in Court on behalf of Plaintiff, Northern Nevada Homes, LLC, who was also present.

John Boyden, Esq. and Brett Dieffenbach, Esq. were present in Court on behalf of G & L Construction, Inc. and Gordon Lemich, who was also present.

10:02 a.m. – Court convened with Court, Counsel, Plaintiff and Defendant present.

Counsel Drendel called **Raymond Pezonella** who was sworn and direct examined; cross examination conducted by Counsel Dieffenbach.

**Exhibit 25** offered; objection – overruled; ADMITTED.

Continued cross examination conducted by Counsel Dieffenbach; re-direct examination conducted.

**Exhibit 24** offered; no objection; ADMITTED.

Witness thanked and excused.

Counsel Drendel called **John Munson** who was sworn and direct examined by Counsel Rusby.

*Sidebar conducted between Court and Counsel.*

Continued direct examination conducted by Counsel Rusby.

Jury Admonished as presented prior to every recess and ordered to return to Court at 12:45 p.m.

11:29 a.m. – Jury escorted out of the Courtroom.

*Outside the presence of the Jury Counsel Boyden moved for a mistrial and presented argument in support of his motion.*

*Counsel Rusby addressed the Court and argued in opposition of the Motion for a Mistrial, Counsel Rusby advised that witness John Munson's testimony is not materially different from his report or deposition.*

*Counsel Boyden argued that he is entitled to the witness' final opinion at the deposition and he did not get that.*

**COURT ORDERED:** Motion for Mistrial – UNDER SUBMISSION.

11:36 a.m. – Recess.

12:45 p.m. – Court reconvened with Court, Counsel, Plaintiff and Defendant present.

**COURT ORDERED:** Motion for Mistrial – DENIED. To the extent that the parties feel a jury instruction is appropriate, the Court will consider that at the time instructions are settled.

12:47 p.m. – Jury escorted into the Courtroom.

Plaintiff's witness **John Munson** resumed the witness stand.

Cross examination conducted by Counsel Boyden; witness thanked and excused.



DATE, JUDGE  
OFFICERS OF

## COURT PRESENT

## APPEARANCES-HEARING

08/10/2016

HONORABLE

LIDIA

STIGLICH

DEPT. NO. 8

A. DeGayner

(Clerk)

I. Zihn

(Reporter)

JURY TRIAL – Day Three

Counsel Rusby called **Nathan Roach** who was sworn and direct examined by Counsel Drendel.

**Page 2 of Exhibit 26** offered; no objection; ADMITTED.

Cross examination conducted by Counsel Dieffenbach; witness thanked and excused.

1:29 p.m. – Counsel Rusby advised the Court that he would not be calling any additional witnesses and rested the Plaintiff's case in chief.

The Court admonished the Jury, which was presented prior to every recess.

1:31 p.m. – Recess.

1:56 p.m. – Court reconvened with Court, Counsel, Plaintiff and Defendant present.

*Outside the presence of the Jury, Counsel Dieffenbach moved for a 50 A Motion and presented argument in support of said motion.*

*Counsel Rusby argued in opposition of the 50A motion.*

**COURT ORDERED:** Defendant's 50A Motion – UNDER SUBMISSION.

1:58 p.m. – Jury escorted into the Courtroom.

Counsel Boyden called **Lorin Mark Chapman** who was sworn and direct examined; cross examination conducted by Counsel Rusby; re-direct examination conducted by Counsel Boyden.

*Sidebar conducted between Court and Counsel.*

Re-direct examination conducted by Counsel Boyden; witness thanked and excused.

Counsel Boyden re-called **Gordon Lemich** who was previously sworn and advised by the Court that he is still under oath; direct examination conducted; cross examination conducted; witness thanked and excused.

Counsel Boyden, on behalf of the Defendant, advised he would not be calling additional witnesses and rested the Defendant's case.

Jury admonished and ordered to return to Court on Thursday, August 11, 2016 at 10:00 a.m.

*Outside the presence of the Jury, Counsel Drendle moved for a Judgment in favor of the Plaintiff on the negligent trespass issue.*

*Counsel Dieffenbach argued that negligence is for the Jury to decide.*

*Counsel Boyden argued that the Plaintiff has to bring in proof of ownership.*

**Court** inquired, what fact/issues remain for Jury as to the negligent trespass.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

08/10/2016  
HONORABLE  
LIDIA  
STIGLICH  
DEPT. NO. 8  
A. DeGayner  
(Clerk)  
I. Zihn  
(Reporter)

JURY TRIAL – Day Three

*Counsel Dieffenbach responded to the Court's inquiry and argued that the Defendant did not know where the property line was, he was negligent as to not knowing where the line was, he believed he was dumping on TMWA land which he thought he had permission to do.*

*Counsel Drendle argued that a trespass by mistake is not an excuse as to negligent trespass. Counsel Drendle further advised that the Plaintiff will dismiss the other 2 causes in the complaint as to intentional trespass as well as the injunction. Counsel Drendle moved for a Judgment under Rule 50 in favor of the Plaintiff.*

*Counsel Dieffenbach presented further argument in opposition of Plaintiff's Rule 50 Motion.*

**COURT ORDERED:** Plaintiff's Rule 50 Motion – UNDER SUBMISSION.

*3:34 p.m. – Court reconvened outside the presence of the Jury with Court, Counsel, Plaintiff and Defendant present.*

**COURT ORDERED:** Defendant's Rule 50A Motion – DENIED. Plaintiff's Rule 50A Motion – GRANTED as to negligent trespass. Jury shall decide damages.

*Counsel Drendle moved to dismiss the intentional trespass claim and the injunction; no objection stated; SO ORDERED.*

**Court** advised of a Juror question from Juror #9. Court inclined to tell the Jury to rely upon the state of the evidence unless there is an agreement by counsel otherwise. Discussion ensued as to Jury Instructions.

*3:42 p.m. – Court stood in Recess. Counsel to return on Thursday, August 11, 2016 at 9:30 a.m. to settle Jury Instructions.*

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

08/11/2016

HONORABLE  
LIDIA

STIGLICH

DEPT. NO. 8

A. DeGayner

(Clerk)

I. Zihn

(Reporter)

JURY TRIAL – Day Four

Christopher Rusby, Esq. and Thomas Drendel, Esq. were preset in Court on behalf of Plaintiff, Northern Nevada Homes, LLC, who was also present.

John Boyden, Esq. and Brett Dieffenbach, Esq. were present in Court on behalf of G & L Construction, Inc. and Gordon Lemich, who was also present.

9:37 a.m. – Court convened with Court, Counsel, Plaintiff and Defendant present.

*Outside the presence of the Jury, Jury Instructions were informally settled. Respective counsel stated applicable objections and had no additional Jury Instructions to proffer. Respective counsel argued as to who maintained the burden of proof on fair market value.*

**Court** advised the parties that the Defendant had been found negligent by the Court, the Jury is to determine damages.

10:12 a.m. – Court stood in Recess.

11:20 a.m. – Court convened with Court, Counsel and Plaintiff present.

*Counsel Rubsy addressed and advised the Court that the parties have come to a resolution as to damages in the amount of \$362,500 to include a release of all claims except as to the prior \$20k judgment that Cerberus Holdings has against G.L.*

*Construction and Gordon Lemich. Counsel Rusby advised that the Counterclaim is not included in the Judgment and they are trying to work out the counterclaim with Counsel Beasley.*

**Court** canvassed Counsel Boyd as to the Defendant's understanding of the agreement. Counsel Drendle advised that if the Counterclaim is not resolved it will be a bench trial with the Court and Counsel Beasley would like that bench trial heard tomorrow, Friday, August 12, 2016 as he is concerned about the timing of the offer of judgment.

*Discussion ensued as to trial schedule for the bifurcated claim.*

11:37 a.m. – Recess. Counsel shall return to Court at 1:30 p.m. to speak to the Jury. Counsel shall be prepared to discuss the jurisdiction of the counterclaim.

1:31 p.m. – Court convened with Court, Counsel and Jury present.

Court addressed the Jury and advised that the case has been resolved.

The Jury was thanked by the Court for their service and released.

1:35 p.m. – Recess.

# **Exhibit 11**

# **Exhibit 11**

CASE NO. CV13-01468

GL CONSTRUCTION, INC. VS NORTHERN NEVADA HOMES, LLC.

Page One

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

**APPEARANCES-HEARING**

---

08/11/2016  
HONORABLE  
LIDIA  
STIGLICH  
DEPT. NO. 8  
A. DeGayner  
(Clerk)  
I. Zihn  
(Reporter)

**BENCH TRIAL – (pre-trial)**

*Prior to the commencement of Court, Counterclaimant's **Exhibits 1-53** marked for identification with the Court Clerk.*

James Shields Beasley, Esq. was present in Court on behalf of the Counterclaimant, GL Construction, Inc. and Gordon Lemich, who was not present.

Christopher Rusby, Esq. was present in Court on behalf of the Counter-defendant, Northern Nevada Homes, LLC., who not present.

2:02 p.m. – Court convened with Court, Counsel Rusby and Counsel Beasley present. Counsel Rusby advised the Court that he has filed a motion to dismiss on the basis that the underlying claims have settled.

Counsel Beasley advised the Court that up until the settlement of the underlying claims today, this Court had jurisdiction of the bifurcated claim and the counterclaimant has incurred attorney's fees and costs. Counsel Beasley further argued that Northern Nevada Homes' is attempting to extinguish the right of GL Construction to seek attorney's fees by making a belated motion. If this case goes to the Reno Justice Court, GL Construction will have lost the right to recover attorney's fees.

2:10 p.m. – Court stood in Recess. Counsel shall return on Friday, August 12, 2016 at 9:00 a.m. Bench Trial scheduled for Friday, August 12, 2016 at 11:00 a.m., if needed. If counsel files any pleadings overnight they shall also be e-mailed directly to the Court.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES-HEARING

08/12/2016  
HONORABLE  
LIDIA  
STIGLICH  
DEPT. NO. 8  
A. DeGayner  
(Clerk)  
I. Zihn  
(Reporter)

**BENCH TRIAL – Day One**

James Shields Beasley, Esq. was present in Court on behalf of the Counterclaimant, GL Construction, Inc. and Gordon Lemich, who was not present.

Christopher Rusby, Esq. was present in Court on behalf of the Counter-defendant, Northern Nevada Homes, LLC., who was present through Robert Fitzgerald.

9:05 a.m. – Court convened with Court, Counsel and Mr. Lemich present.

**COURT ORDERED:** Counter-defendant's Motion to Dismiss – DENIED. The Court will proceed with the previously scheduled Bench Trial on the Counterclaim. Counsel and parties are ordered to appear today, August 12, 2016 at 11:00 a.m. for Bench Trial.

9:07 a.m. – Court stood in recess.

*Counter-defendant's Exhibits 54-58 marked for identification.*

11:07 a.m. – Court convened with Court, Counsel, Counterclaimant and Counter-defendant present.

Counsel Beasley called **Gordon Lemich** who was sworn and direct examined.

**Exhibit 34** offered; no objection; ADMITTED.

Continued direct examination conducted by Counsel Beasley; cross examination conducted.

**Exhibit 58** offered; objection – sustained; Counsel Rusby to lay foundation for page 2.

**Exhibit 58 page 1** offered; no objection; ADMITTED.

Continued cross examination conducted by Counsel Rusby.

**Exhibit 59** marked.

Continued cross examination conducted by Counsel Rusby.

**Exhibit 55** offered; no objection; ADMITTED.

**Exhibit 59** offered; no objection; ADMITTED.

Continued cross examination conducted; re-direct examination conducted; witness thanked and excused.

Counsel Rusby called **Robert Fitzgerald** who was sworn and direct examined.

**Exhibit 56** offered; no objection; ADMITTED.

Continued direct examination conducted.

**Exhibit 58** offered; no objection; ADMITTED.

Continued direct examination conducted.

**Exhibit 57** offered; objection – overruled; ADMITTED.

Cross examination conducted; witness thanked and excused.

Counsel Rusby rested the Defendant's case.

Counsel Beasley recalled **Gordon Lemich** who was advised by the Court that he is still under oath and direct examined; witness inquired by the Court; witness thanked and

excused.

CASE NO. CV13-01468

GL CONSTRUCTION, INC. VS NORTHERN NEVADA HOMES, LLC.

Page Three

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

---

08/12/2016  
HONORABLE  
LIDIA  
STIGLICH  
DEPT. NO. 8  
A. DeGayner  
(Clerk)  
I. Zihn  
(Reporter)

**BENCH TRIAL – Day One**

Counsel Beasley addressed the Court and argued in support of the Counterclaim.  
Counsel Rusby addressed and advised the Court that all claims being sought today have been resolved and further argued that there is no basis for the Counterclaim.

**COURT ORDERED:** GL Construction, Inc.'s Counterclaim – UNDER SUBMISSION.  
Court stood in Recess.

# **Exhibit 12**

# **Exhibit 12**



1 2545  
JOHN C. BOYDEN, ESQ. (SBN 3917)  
2 BRETT A. DIEFFENBACH, ESQ. (SBN 11370)  
ANDREA K. PRESSLER, ESQ. (SBN 8620)  
3 ERICKSON, THORPE & SWAINSTON, LTD.  
P.O. Box 3559  
4 Reno, NV 89505  
(775) 786-3930  
5 *Attorneys for Defendants*

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

7 IN AND FOR THE COUNTY OF WASHOE

8 NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

9 Plaintiff,

CASE NO: CV13-01468

10 vs.

DEPT. NO: 8

11 GL CONSTRUCTION, INC., a Nevada  
12 corporation; GORDON LEMICH, an  
individual; and DOES 1-10, inclusive,

13 Defendants.  
14 \_\_\_\_\_/

**NOTICE OF ENTRY OF ORDER**

15 GL CONSTRUCTION, INC., a Nevada  
corporation,

16 Counterclaimant,

17 vs.  
18

19 NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

20 Counterdefendant.  
21 \_\_\_\_\_/

22 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

23 YOU WILL PLEASE TAKE NOTICE that in the above-entitled action on September 16,  
24 2016, the above-entitled Court duly entered its Order dismissing the actions brought by  
25 NORTHERN NEVADA HOMES, LLC. A copy of said order is attached hereto.

26 ///

27 ///

28 ///

Affirmation

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 19<sup>th</sup> day of September, 2016.

ERICKSON, THORPE & SWAINSTON, LTD.

BY: 

JOHN C. BOYDEN, ESQ.  
BRETT A. DIEFFENBACH, ESQ.  
Attorneys for Defendants

1 **3985**  
JOHN C. BOYDEN, ESQ. (SBN 3917)  
2 BRETT A. DIEFFENBACH, ESQ. (SBN 11370)  
ERICKSON, THORPE & SWAINSTON, LTD.  
3 P.O. Box 3559  
Reno, NV 89505  
4 (775) 786-3930  
*Attorneys for Defendants*  
5 *GL Construction, Inc. & Gordon Lemich*

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

7 IN AND FOR THE COUNTY OF WASHOE

8 NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

9 Plaintiff,

CASE NO: CV13-01468

10 vs.

DEPT. NO: 8

11 GL CONSTRUCTION, INC., a Nevada  
12 corporation; GORDON LEMICH, an  
individual; and DOES 1-10, inclusive,

13 Defendants.  
14 \_\_\_\_\_/

15 **STIPULATION AND ORDER TO DISMISS**

16 Plaintiff, NORTHERN NEVADA HOMES, LLC, by and through its counsel of record,  
17 RUSBY LAW, PLLC, and CHRISTOPHER RUSBY, ESQ., and Defendants, GL  
18 CONSTRUCTION, INC., and GORDON LEMICH, by and through their counsel of record,  
19 ERICKSON, THORPE & SWAINSTON, LTD., JOHN C. BOYDEN, ESQ., and BRETT A.  
20 DIEFFENBACH, ESQ., hereby stipulate that this matter, as to the causes of action brought by  
21 NORTHERN NEVADA HOMES, LLC, shall be dismissed with prejudice.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Each party is to bear its own attorneys' fees and costs.

2 Affirmation

3 The undersigned does hereby affirm that the preceding document does not contain the social  
4 security number of any person.

5 DATED this 6<sup>th</sup> day of September 2016.

DATED this 8<sup>th</sup> day of September 2016.

6 RUSBY LAW, PLLC.

ERICKSON, THORPE & SWAINSTON, LTD.

7  
8 BY: 

9 CHRISTOPHER RUSBY, ESQ.  
10 *Attorneys for Plaintiff*  
11 *Northern Nevada Homes, LLC.*

BY: 

JOHN C. BOYDEN, ESQ.  
BRETT A. DIEFFENBACH, ESQ.  
*Attorneys for Defendants*  
*GL Construction, Inc. &*  
*Gordon Lemich*

12  
13 ///

14 ///

15 ///

16 ORDER

17 Pursuant to the stipulation of the parties hereto, and good cause appearing, IT IS HEREBY  
18 ORDERED that the Claims of Plaintiff, Northern Nevada Homes, LLC., are hereby dismissed with  
19 prejudice. As to these causes of action only each party shall bear its own attorneys fees and costs.

20 Dated this 16<sup>th</sup> day of September, 2016

21  
22   
23 DISTRICT JUDGE  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of ERICKSON, THORPE & SWAINSTON, LTD., and that on this day I served a true and correct copy of the attached document by:

<input type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	E-Mail
<input type="checkbox"/>	Facsimile Transmission
<input type="checkbox"/>	Personal Service
<input type="checkbox"/>	Messenger Service
<input checked="" type="checkbox"/>	2nd Judicial eFlex

addressed to the following:

NAME & ADDRESS	PHONE/FAX NUMBERS	PARTY
Chris Rusby, Esq. Rusby Law Office 36 Stewart Street Reno, NV 89501	775-409-4037 775-299-5326	Plaintiffs
Thomas E. Drendel, Esq. Bradley, Drendel & Jeanney, Ltd. 6900 S. McCarran Blvd., Suite 2000 P.O. Box 1987 Reno, NV 89505 tdrendel@bdjlaw.com <b>VIA U.S. MAIL/OR EMAIL</b>	775-335-9999	Plaintiffs
James Shields Beasley, Esq. Beasley Law Office 435 Court Street Reno, NV 89505	775-329-6852 775-329-2174	Personal Counsel for GL Construction, Inc.
Paul J. Georgeson, Esq. Adam Hosmer-Henner, Esq. McDonald Carano Wilson LLP 100 W. Liberty Street, 10th Fl. P.O. Box 2670 Reno, NV 89505 pgeorgeson@mcwlaw.com ahosmerhenner@mcwlaw.com	775-788-2000 775-788-2020	Truckee Meadows Water Authority

DATED this 20 day of September, 2016.

  
\_\_\_\_\_

# **Exhibit 13**

# **Exhibit 13**

**Code:**

James Shields Beasley, Nev. Bar No. 1733  
LAW OFFICE OF JAMES SHIELDS BEASLEY  
435 Court Street  
P.O. Box 2936  
Reno, Nevada 89505  
Telephone No.: (775) 329-6852

Attorney for Counterclaimant G.L. Construction, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CERBERUS HOLDINGS, LLC, a Nevada  
limited liability company; NORTHERN  
NEVADA HOMES, LLC, a Nevada  
limited liability company,

Case No. CV13-01468

Dept. No. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC., a Nevada  
corporation; GORDON LEMICH, an  
individual; and DOES 1 through 10  
inclusive,

Defendants.

G.L. CONSTRUCTION, INC., a Nevada  
corporation,

Counterclaimant,

vs.

NEVADA HOMES, LLC, a Nevada  
limited liability company,

Counterdefendant.

**NOTICE OF ENTRY OF ORDER AFTER TRIAL**

To: Counterdefendant Nevada Homes, LLC, and to its attorneys of record, Christopher M.  
Rusby of Rusby Law, 36 Stewart Street, Reno, Nevada 89501, and Thomas E. Drendel  
of Bradley, Drendel & Jeanney, 6900 S. McCarran Blvd., Ste. 2000:

1 PLEASE TAKE NOTICE that on October 17, 2016, the above-entitled Court entered its Order  
2 After Trial in which it awarded counterclaimant G.L. Construction, Inc., damages in the sum of  
3 \$7,811.00. A true and correct copy of said Order After Trial is attached hereto as Exhibit 1.

4 **Affirmation Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document, filed in Case No.  
6 CV13-01468, does not contain the social security number of any person.

7 DATED this 17<sup>th</sup> day of October, 2016.

8 LAW OFFICE OF JAMES SHIELDS BEASLEY  
9 Attorney for Counterclaimant G.L. Construction, Inc.  
435 Court Street  
10 Post Office Box 2936  
Reno, Nevada 89505

11  
12 By   
13 JAMES SHIELDS BEASLEY

14 **CERTIFICATE OF SERVICE**

15 Pursuant to NRCP 5(b), I certify that I am an employee of the Law Office of James  
16 Shields Beasley, and that on this 17<sup>th</sup> day of October, 2016, I transmitted a true and correct  
17 copy of the foregoing document by the methods noted below:

18 \_\_\_\_\_ **Personal delivery to the following: [NONE]**

19 \_\_\_\_\_ **Electronically filed with the Clerk of the Court, using the eFlex system which**  
20 **constitutes effective service for all eFiled documents pursuant to the eFile User**  
**Agreement**

21 \_\_\_\_\_ **Caused a true copy of the foregoing document to be deposited in the United States**  
22 **mail at Reno, Nevada, by first-class mail, addressed to:**

23 Christopher Rusby  
24 RUSBY CLARK, PLLC  
36 Stewart Street  
25 Reno, Nevada 89501

Thomas E. Drendel  
Bradley, Drendel & Jeanney, Ltd.  
6900 S. McCarran Blvd., Ste. 2000  
P.O. Box 1987  
Reno, Nevada 89505

26 DATED this 17<sup>th</sup> day of October, 2016.

27   
28 CHARLES BEASLEY



## EXHIBIT LIST

<u>Ex. No.</u>	<u>Description</u>	<u>No. of Pages</u>
1.	ORDER AFTER TRIAL	4

# Exhibit 1

# Exhibit 1

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

CEREBRUS HOLDINGS, LLC, a  
Nevada limited liability company;  
NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

Case No. CV13-01468

Dept. No. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC, a Nevada  
corporation, GORDON LEMICH, an  
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC, a Nevada  
corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

Counterdefendant.

ORDER AFTER TRIAL

*Background*

Prior to May 9, 2011, Defendant and Counterclaimant Gordon Lemich was  
the owner of real property located at 2605 Comstock Drive, Reno, Nevada ("the

1 property"). Lemich is also the principal of GL Construction, a Nevada corporation,  
2 and licensed contractor. It appears that the property at issue was occupied by a  
3 number of tenants, including GL Construction.

4 At some point in 2012, Lemich discussed the possibility of selling the  
5 property to Plaintiff and Counterdefendant Cerebrus Holdings, LLC. However,  
6 before any formal negotiations were complete, the property was foreclosed on by  
7 Acquired Capital I, LD ("the bank"). After the foreclosure, Lemich continued to  
8 discuss the possibility of Cerebrus buying the property, and of becoming their  
9 tenant. Lemich represented to Cerebrus that any improvements to the property  
10 were properly constructed and permitted. Following this conversation, Cerebrus  
11 successfully purchased the property from the bank.

12 Following its acquisition of the property, Cerebrus asserted that it discovered  
13 multiple instances of defective workmanship, code violations, and was found the  
14 property to be uninhabitable. Cerebrus filed the instant suit on July 3, 2013,  
15 alleging claims of negligence, negligent misrepresentation, intentional  
16 misrepresentation, intentional damage to property, trespass, and injunctive relief.  
17 The complaint also named Northern Nevada Homes, LLC, as a plaintiff, and alleged  
18 that GL Construction and Lemich had dumped large quantities of dirt and debris  
19 onto the lot adjacent to the property at issue, which was owned by Northern Nevada  
20 Homes.<sup>1</sup> Cerebrus filed an amended complaint on February 11, 2014, further  
21 alleging a claim for breach of contract, related to GL Construction's failure to pay  
22 rent between April and August of 2013.

23 In its answer, GL Construction asserted a counterclaim against Northern  
24 Nevada Homes, in the amount of \$7,811.00, related to excavation work that GL  
25 Construction performed for Northern Nevada Homes at property situated on  
26 DeChardin Street of Montreaux Estates during March of 2013. It appears that  
27 given the outstanding rent and other damages allegedly owed by GL Construction  
28

---

<sup>1</sup>Cerebrus and Northern Nevada Homes were both managed by Robert Fitzgerald.

1 to Cerebrus and Northern Nevada Homes, manager Robert Fitzgerald withheld  
2 payment of the invoice.

3 On February 12, 2014, Lemich, individually, served an offer of judgment  
4 upon Cerebrus, in the amount of \$20,000.00. Cerebrus accepted the offer. The offer  
5 of judgment was silent as to GL Construction's counterclaim against Northern  
6 Nevada Homes.

7 Eventually, the parties reached a settlement with respect to all claims except  
8 GL Construction's counterclaim against Northern Nevada Homes. The matter  
9 proceeded to a bench trial before this court on August 12, 2016. This order follows.

10 *Discussion*

11 The only claim currently before this court is GL Construction's breach of  
12 contract counterclaim against Northern Nevada Homes. A contract is formed when  
13 a party can establish offer and acceptance, meeting of the minds, and consideration.  
14 *May v. Anderson*, 121 Nev. 668, 673, 119 P.3d 1254, 1257 (2005). In this case, GL  
15 Construction argues that it entered an oral contract with Northern Nevada Homes  
16 on March 4, 2013, for the performance of excavation work at DeChardin Street in  
17 Montreaux Estates.

18 The court finds that GL Construction performed the work, and delivered  
19 Northern Nevada Homes an invoice in the amount of \$7,811.00. Northern Nevada  
20 Homes does not appear to dispute that GL Construction performed the work at  
21 issue. However, due to GL Construction's alleged breach of other obligations to  
22 Northern Nevada Homes and Cerebrus, manager Robert Fitzgerald did not pay the  
23 invoice.

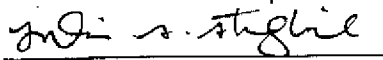
24 Any of these other obligations or payments owed by GL Construction to  
25 Cerebrus and Northern Nevada Homes were raised in Plaintiff's Complaint and  
26 Amended Complaint in this matter. These claims have all been dismissed pursuant  
27 to the stipulation of the parties. The court finds that none of these agreements to  
28 settle, nor the February, 2014, offer of judgment, addressed GL Construction's  
counterclaim. Notably, the 2014 offer of judgment was tendered by Lemich,

1 individually, to Cerebrus, while the counterclaim states only GL Construction and  
2 Northern Nevada Homes as parties.

3 Accordingly, the court finds that counterclaimant GL Construction has  
4 established, by a preponderance of the evidence, a breach of contract by  
5 counterdefendant Northern Nevada Homes. The court AWARDS GL Construction  
6 damages in the amount of \$7,811.00.

7 IT IS SO ORDERED.

8 DATED this 17<sup>th</sup> day of October, 2016.

9   
10 LIDIA S. STIGLICH  
11 District Judge  
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# **Exhibit 14**

# **Exhibit 14**

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

G.L. CONSTRUCTION, INC., a Nevada  
corporation,

Case No. CV13-01468

Counterclaimant,

Dept. No. 8

vs.

NORTHERN NEVADA HOMES, LLC, a Nevada  
limited liability company,

Counterdefendant.

**JUDGMENT ON COUNTERCLAIM**

This action came on regularly for trial on August 12, 2016, at 9:00 a.m., in Department 8 of the above-entitled Court, the Honorable Lidia S. Stiglich presiding. Counterclaimant G.L. Construction, Inc., appeared by its attorney, James Shields Beasley, and counterdefendant Northern Nevada Homes, LLC, appeared by its attorney, Christopher M. Rusby.

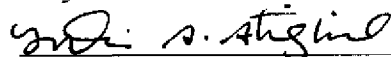
Having heard the testimony and considered the evidence, and this Court having entered its Order After Trial in which it found (1) that counterclaimant G.L. Construction, Inc., and counterdefendant Northern Nevada Homes, LLC, entered into an oral contract on March 4, 2013, pursuant to which counterclaimant G.L. Construction, Inc., was to perform excavation work on a time and materials basis on behalf of counterdefendant Northern Nevada Homes, LLC, at a project on DeChardin Street in the Montreaux Estates; (2) that during the period March 4, 2013 through March 14, 2013, counterclaimant G.L. Construction, Inc., properly performed the excavation work which it was required to perform under that oral contract; (3) that on March 14, 2013, counterclaimant G.L. Construction, Inc., delivered an invoice to counterdefendant Northern Nevada Homes, LLC, for \$8,265.85 which was a reasonable sum



1 for the excavation and grading work which counterclaimant G.L. Construction, Inc.,  
2 performed on behalf of counterdefendant Northern Nevada Homes, LLC's behalf; (4) that  
3 because counterdefendant Northern Nevada Homes, LLC, made direct payment to one of  
4 counterclaimant G.L. Construction, Inc.'s suppliers, counterdefendant Northern Nevada  
5 Homes, LLC, owed the sum of \$7,811.00 to counterclaimant G.L. Construction, Inc., as of  
6 March 14, 2013; and (5) that counterdefendant Northern Nevada Homes, LLC, breached the  
7 oral contract by failing to pay to counterclaimant G.L. Construction, Inc., the sum of  
8 \$7,811.00 which was owed on March 14, 2013, under said oral contract;

9 NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED that  
10 judgment shall be entered in favor of G.L. Construction, Inc., and against Northern Nevada  
11 Homes, LLC, for the sum of \$7,811.00, together with interest thereon at the legal rate from  
12 and after March 14, 2013.

13 DATED this 31<sup>st</sup> day of October, 2016.

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16 DISTRICT JUDGE  
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# **Exhibit 15**

# **Exhibit 15**

**Code:**

James Shields Beasley, Nev. Bar No. 1733  
LAW OFFICE OF JAMES SHIELDS BEASLEY  
435 Court Street  
P.O. Box 2936  
Reno, Nevada 89505  
Telephone No.: (775) 329-6852

Attorney for Counterclaimant G.L. Construction, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

G.L. CONSTRUCTION, INC., a Nevada  
corporation,

Case No. CV13-01468

Counterclaimant,

Dept. No. 8

vs.

NEVADA HOMES, LLC, a Nevada  
limited liability company,

Counterdefendant.

**NOTICE OF ENTRY OF JUDGMENT ON COUNTERCLAIM**

To: Counterdefendant Nevada Homes, LLC, and to its attorneys of record,  
Christopher M. Rusby of Rusby Law, 36 Stewart Street, Reno, Nevada 89501,  
and Thomas E. Drendel of Bradley, Drendel & Jeanney, 6900 S. McCarran Blvd.,  
Ste. 2000, P.O. Box 1987, Reno, Nevada 89505:

PLEASE TAKE NOTICE that on October 31, 2016, the above-entitled Court entered its  
Judgment on Counterclaim in which it awarded counterclaimant G.L. Construction, Inc., judgment  
against counterdefendant Northern Nevada Homes, LLC, for the sum of \$7,811.00, together with  
interest thereon at the legal rate from and after March 14, 2013. A true and correct copy of said  
Judgment on Counterclaim is attached hereto as Exhibit 1.

**Affirmation Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, filed in Case No.  
CV13-01468, does not contain the social security number of any person.

1 DATED this 31<sup>st</sup> day of October, 2016.

2 LAW OFFICE OF JAMES SHIELDS BEASLEY  
3 Attorney for Counterclaimant G.L. Construction, Inc.  
4 435 Court Street  
5 Post Office Box 2936  
6 Reno, Nevada 89505

7 By

8   
9 JAMES SHIELDS BEASLEY

10 **CERTIFICATE OF SERVICE**

11 Pursuant to NRCP 5(b), I certify that I am an employee of the Law Office of James  
12 Shields Beasley, and that on this 31<sup>st</sup> day of October, 2016, I transmitted a true and correct  
13 copy of the foregoing document by the methods noted below:

14 ☐ Personal delivery to the following: [NONE]

15 ☒ Electronically filed with the Clerk of the Court, using the eFlex system which  
16 constitutes effective service for all eFiled documents pursuant to the eFile User  
17 Agreement

18 ☐ Caused a true copy of the foregoing document to be deposited in the United States  
19 mail at Reno, Nevada, by first-class mail, addressed to:

20 Christopher Rusby  
21 RUSBY CLARK, PLLC  
22 36 Stewart Street  
23 Reno, Nevada 89501

24 Thomas E. Drendel  
25 Bradley, Drendel & Jeanney, Ltd.  
26 6900 S. McCarran Blvd., Ste. 2000  
27 P.O. Box 1987  
28 Reno, Nevada 89505

29 DATED this 31<sup>st</sup> day of October, 2016.

30   
31 CHARLES BEASLEY

## EXHIBIT LIST

<u>Ex. No.</u>	<u>Description</u>	<u>No. of Pages</u>
1.	Judgment on Counterclaim	2

# Exhibit 1

# Exhibit 1

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

8 CEREBRUS HOLDINGS, LLC, a  
9 Nevada limited liability company;  
10 NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

Case No. CV13-01468

Dept. No. 8

11 Plaintiffs,

12 vs.

13  
14 GL CONSTRUCTION, INC, a Nevada  
corporation, GORDON LEMICH, an  
15 individual; and DOES 1-10, inclusive,

16 Defendants.  
/

17 GL CONSTRUCTION, INC, a Nevada  
18 corporation,

19 Counterclaimant,

20 vs.

21 NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

22 Counterdefendant.  
/

23  
24 ORDER AFTER TRIAL

25  
26 *Background*

27 Prior to May 9, 2011, Defendant and Counterclaimant Gordon Lemich was  
28 the owner of real property located at 2605 Comstock Drive, Reno, Nevada ("the

1 property"). Lemich is also the principal of GL Construction, a Nevada corporation,  
2 and licensed contractor. It appears that the property at issue was occupied by a  
3 number of tenants, including GL Construction.

4 At some point in 2012, Lemich discussed the possibility of selling the  
5 property to Plaintiff and Counterdefendant Cerebrus Holdings, LLC. However,  
6 before any formal negotiations were complete, the property was foreclosed on by  
7 Acquired Capital I, LD ("the bank"). After the foreclosure, Lemich continued to  
8 discuss the possibility of Cerebrus buying the property, and of becoming their  
9 tenant. Lemich represented to Cerebrus that any improvements to the property  
10 were properly constructed and permitted. Following this conversation, Cerebrus  
11 successfully purchased the property from the bank.

12 Following its acquisition of the property, Cerebrus asserted that it discovered  
13 multiple instances of defective workmanship, code violations, and was found the  
14 property to be uninhabitable. Cerebrus filed the instant suit on July 3, 2013,  
15 alleging claims of negligence, negligent misrepresentation, intentional  
16 misrepresentation, intentional damage to property, trespass, and injunctive relief.  
17 The complaint also named Northern Nevada Homes, LLC, as a plaintiff, and alleged  
18 that GL Construction and Lemich had dumped large quantities of dirt and debris  
19 onto the lot adjacent to the property at issue, which was owned by Northern Nevada  
20 Homes.<sup>1</sup> Cerebrus filed an amended complaint on February 11, 2014, further  
21 alleging a claim for breach of contract, related to GL Construction's failure to pay  
22 rent between April and August of 2013.

23 In its answer, GL Construction asserted a counterclaim against Northern  
24 Nevada Homes, in the amount of \$7,811.00, related to excavation work that GL  
25 Construction performed for Northern Nevada Homes at property situated on  
26 DeChardin Street of Montreaux Estates during March of 2013. It appears that  
27 given the outstanding rent and other damages allegedly owed by GL Construction  
28

---

<sup>1</sup>Cerebrus and Northern Nevada Homes were both managed by Robert Fitzgerald.



1 to Cerebrus and Northern Nevada Homes, manager Robert Fitzgerald withheld  
2 payment of the invoice.

3 On February 12, 2014, Lemich, individually, served an offer of judgment  
4 upon Cerebrus, in the amount of \$20,000.00. Cerebrus accepted the offer. The offer  
5 of judgment was silent as to GL Construction's counterclaim against Northern  
6 Nevada Homes.

7 Eventually, the parties reached a settlement with respect to all claims except  
8 GL Construction's counterclaim against Northern Nevada Homes. The matter  
9 proceeded to a bench trial before this court on August 12, 2016. This order follows.

10 *Discussion*

11 The only claim currently before this court is GL Construction's breach of  
12 contract counterclaim against Northern Nevada Homes. A contract is formed when  
13 a party can establish offer and acceptance, meeting of the minds, and consideration.  
14 *May v. Anderson*, 121 Nev. 668, 673, 119 P.3d 1254, 1257 (2005). In this case, GL  
15 Construction argues that it entered an oral contract with Northern Nevada Homes  
16 on March 4, 2013, for the performance of excavation work at DeChardin Street in  
Montreaux Estates.

17 The court finds that GL Construction performed the work, and delivered  
18 Northern Nevada Homes an invoice in the amount of \$7,811.00. Northern Nevada  
19 Homes does not appear to dispute that GL Construction performed the work at  
20 issue. However, due to GL Construction's alleged breach of other obligations to  
21 Northern Nevada Homes and Cerebrus, manager Robert Fitzgerald did not pay the  
22 invoice.

23 Any of these other obligations or payments owed by GL Construction to  
24 Cerebrus and Northern Nevada Homes were raised in Plaintiff's Complaint and  
25 Amended Complaint in this matter. These claims have all been dismissed pursuant  
26 to the stipulation of the parties. The court finds that none of these agreements to  
27 settle, nor the February, 2014, offer of judgment, addressed GL Construction's  
28 counterclaim. Notably, the 2014 offer of judgment was tendered by Lemich,

1 individually, to Cerebrus, while the counterclaim states only GL Construction and  
2 Northern Nevada Homes as parties.

3 Accordingly, the court finds that counterclaimant GL Construction has  
4 established, by a preponderance of the evidence, a breach of contract by  
5 counterdefendant Northern Nevada Homes. The court AWARDS GL Construction  
6 damages in the amount of \$7,811.00.

7 **IT IS SO ORDERED.**

8 DATED this 17<sup>th</sup> day of October, 2016.

9 *Lidia S. Stiglich*  
10 LIDIA S. STIGLICH  
11 District Judge  
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# **Exhibit 16**

# **Exhibit 16**

**Code:**

James Shields Beasley, Nev. Bar No. 1733  
LAW OFFICE OF JAMES SHIELDS BEASLEY  
435 Court Street  
P.O. Box 2936  
Reno, Nevada 89505  
Telephone No.: (775) 329-6852

Attorney for Counterclaimant G.L. Construction, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CERBERUS HOLDINGS, LLC, a Nevada  
limited liability company; NORTHERN  
NEVADA HOMES, LLC, a Nevada  
limited liability company,

Case No. CV13-01468

Dept. No. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC., a Nevada  
corporation; GORDON LEMICH, an  
individual; and DOES 1 through 10  
inclusive,

Defendants.

G.L. CONSTRUCTION, INC., a Nevada  
corporation,

Counterclaimant,

vs.

NEVADA HOMES, LLC, a Nevada  
limited liability company,

Counterdefendant.

**NOTICE OF ENTRY OF ORDER FOR FEES AND COSTS**

To: Counterdefendant Nevada Homes, LLC, and to its attorneys of record,  
Christopher M. Rusby of Rusby Law, 36 Stewart Street, Reno, Nevada 89501:

PLEASE TAKE NOTICE that on December 1, 2016, the above-entitled Court entered

1 its Order awarding counterclaimant G.L. Construction, Inc., attorney fees in the sum of  
2 \$10,000.00, and costs in the sum of \$390.73. A true and correct copy of said Order is  
3 attached hereto as Exhibit 1.

4 **Affirmation Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document, filed in Case No.  
6 CV13-01468, does not contain the social security number of any person.

7 DATED this 2<sup>nd</sup> day of December, 2016.

8 LAW OFFICE OF JAMES SHIELDS BEASLEY  
9 Attorney for Counterclaimant G.L. Construction, Inc.  
435 Court Street  
10 Post Office Box 2936  
Reno, Nevada 89505

11  
12 By   
13 JAMES SHIELDS BEASLEY

14 **CERTIFICATE OF SERVICE**

15 Pursuant to NRCP 5(b), I certify that I am an employee of the Law Office of James  
16 Shields Beasley, and that on this 2<sup>nd</sup> day of December, 2016, I transmitted a true and correct  
17 copy of the foregoing document by the methods noted below:

18 ☐ **Personal delivery to the following: [NONE]**

19 ☒ **Electronically filed with the Clerk of the Court, using the eFlex system which**  
20 **constitutes effective service for all eFiled documents pursuant to the eFile User**  
**Agreement**

21 ☒ **Caused a true copy of the foregoing document to be deposited in the United**  
22 **States mail at Reno, Nevada, by first-class mail, addressed to:**

23 Christopher Rusby  
RUSBY CLARK, PLLC  
24 36 Stewart Street  
Reno, Nevada 89501

25 DATED this 2<sup>nd</sup> day of December, 2016.

26   
27 CHARLES BEASLEY  
28

## EXHIBIT LIST

<u>Ex. No.</u>	<u>Description</u>	<u>No. of Pages</u>
1.	Order, filed 21/01/2016	8

# Exhibit 1

# Exhibit 1

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

CEREBRUS HOLDINGS, LLC, a  
Nevada limited liability company;  
NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

Case No. CV13-01468

Dept. No. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC, a Nevada  
corporation, GORDON LEMICH, an  
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC, a Nevada  
corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

Counterdefendant.

ORDER

Currently before the court is Defendant and Counterclaimant GL  
Construction's request for attorney's fees. Plaintiff and Counter-Defendant  
Northern Nevada Homes has opposed the request. This order follows.



1 *Background*

2 This case involves a number of disputes, which were ultimately resolved by  
3 way of two separate settlement agreements and a bench trial.

4 Prior to May 9, 2011, Defendant and Counterclaimant Gordon Lemich was  
5 the owner of real property located at 2605 Comstock Drive, Reno, Nevada ("the  
6 property"). Lemich is also the principal of GL Construction, a Nevada corporation,  
7 and licensed contractor. It appears that the property at issue was occupied by a  
8 number of tenants, including GL Construction.

9 At some point in 2012, Lemich discussed the possibility of selling the  
10 property to Plaintiff and Counterdefendant Cerebrus Holdings, LLC. However,  
11 before any formal negotiations were complete, the property was foreclosed on by  
12 Acquired Capital I, LD ("the bank"). After the foreclosure, Lemich continued to  
13 discuss the possibility of Cerebrus buying the property, and of becoming their  
14 tenant. Lemich represented to Cerebrus that any improvements to the property  
15 were properly constructed and permitted. Following this conversation, Cerebrus  
16 successfully purchased the property from the bank.

17 Following its acquisition of the property, Cerebrus asserted that it discovered  
18 multiple instances of defective workmanship, code violations, and was found the  
19 property to be uninhabitable. Cerebrus filed the instant suit on July 3, 2013,  
20 alleging claims of negligence, negligent misrepresentation, intentional  
21 misrepresentation, intentional damage to property, trespass, and injunctive relief.  
22 The complaint also named Northern Nevada Homes, LLC, as a plaintiff, and alleged  
23 that GL Construction and Lemich had dumped large quantities of dirt and debris  
24 onto the lot adjacent to the property at issue, which was owned by Northern Nevada  
25 Homes.<sup>1</sup> Cerebrus filed an amended complaint on February 11, 2014, further  
26 alleging a claim for breach of contract, related to GL Construction's failure to pay  
27 rent between April and August of 2013.

28 <sup>1</sup>Cerebrus and Northern Nevada Homes were both managed by Robert Fitzgerald.

1 In its answer, GL Construction asserted a counterclaim against Northern  
2 Nevada Homes, in the amount of \$7,811.00, related to excavation work that GL  
3 Construction performed for Northern Nevada Homes at property situated on  
4 DeChardin Street of Montreaux Estates during March of 2013. It appears that  
5 given the outstanding rent and other damages allegedly owed by GL Construction  
6 to Cerebrus and Northern Nevada Homes, manager Robert Fitzgerald withheld  
7 payment of the invoice.

8 On October 28, 2013, Lemich and GL Construction served an offer of  
9 judgment upon Northern Nevada Homes. The offer provided that Northern Nevada  
10 Homes pay \$5,000 with respect to the counterclaim, and that "all those claims  
11 asserted by plaintiff Northern Nevada Homes, LLC against defendant GL  
12 Construction, Inc., be dismissed with prejudice." Northern Nevada Homes rejected  
13 the offer.

14 On February 12, 2014, Lemich, individually, served an offer of judgment  
15 upon Cerebrus, in the amount of \$20,000.00. Cerebrus accepted the offer.

16 Eventually, the matter proceeded to a jury trial with respect to Northern  
17 Nevada Homes' claims related to the dumping of dirt and debris by GL  
18 Construction. At the close of evidence, the court indicated that it was inclined to  
19 enter judgment as a matter of law in favor of Northern Nevada Homes with respect  
20 to the issue of liability. Shortly thereafter, the parties agreed to settle Northern  
21 Nevada Home's claims against GL Construction and Lemich for \$362,500.00.

22 The remaining counterclaim by GL Construction against Northern Nevada  
23 Homes proceeded to a bench trial before this court on August 12, 2016. This court  
24 found in favor of GL Construction, and awarded damages in the amount of  
25 \$7,811.00.

26 GL Construction has filed the instant *Motion for Attorneys Fees*.

#### 27 Discussion

28 Generally, the "compensation of an attorney and counselor for his or her  
services is governed by agreement, express or implied, which is not restrained by  
law." NRS 18.010(1). In this case, GL Construction argues that it is entitled to fees

1 and costs pursuant to NRCP 68, which relates to offers of judgment, and NRS  
2 18.010(2), which allows for an award of fees where a prevailing party has recovered  
3 less than \$20,000.00. This court discusses each claim in turn.

4 *Attorney's fees under NRCP 68*

5 In instances where an offer to settle is made prior to trial, NRCP 68 provides:

6 (a) The Offer. At any time more than 10 days before trial, any party  
7 may serve an offer in writing to allow judgment to be taken in  
8 accordance with its terms and conditions.

9 [ . . . ]

10 (f) Penalties for Rejection of Offer. If the offeree rejects an offer and  
11 fails to obtain a more favorable judgment,

12 (1) the offeree cannot recover any costs or attorney's fees and shall not  
13 recover interest for the period after the service of the offer and before  
14 the judgment; and

15 (2) the offeree shall pay the offeror's post-offer costs, applicable interest  
16 on the judgment from the time of the offer to the time of entry of the  
17 judgment and reasonable attorney's fees, if any be allowed, actually  
18 incurred by the offeror from the time of the offer. If the offeror's  
19 attorney is collecting a contingent fee, the amount of any attorney's  
20 fees awarded to the party for whom the offer is made must be deducted  
21 from that contingent fee.

22 The decision to grant attorney's fees pursuant to NRCP 68 lies within the discretion  
23 of this court. *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

24 When considering whether an award of fees is warranted, this court must  
25 consider (1) whether the claims at issue were brought in good faith; (2) whether the  
26 offer was reasonable in timing and amount; (3) whether the decision to reject the  
27 offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether  
28 the fees sought by the offeror are reasonable and justified in amount. *Id.* In  
determining the amount of any fee award pursuant to the fourth factor of this test,  
this court must also examine the quality of the attorney at issue, the character of  
the work performed, the amount of work actually performed, and the result  
achieved. *See Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 192  
P.3d 730 (2008) (citing *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455

1 P.2d 31 (1969)). After analyzing the *Beattie* and *Brunzell* factors, the court may  
2 award all or some of the fees requested. *Beattie*, 99 Nev. at 589, 668 P.2d at 274.

3 In this case, GL Construction argues that Northern Nevada Homes' rejection  
4 of its October 28, 2013 offer of judgment in the amount of \$5,000.00 indicates that it  
5 is entitled to an award of fees. This court disagrees. In this, the court notes that in  
6 addition to the offer of \$5,000.00 to settle GL Construction's counterclaim, the offer  
7 of judgment also stipulated that Northern Nevada Homes would dismiss all of its  
8 claims against GL Construction. Given that this court found GL Construction liable  
9 for negligent trespass as a matter of law, and that Northern Nevada Homes and GL  
10 Construction agreed to settle its claims for \$362,500.00, it was absolutely  
11 reasonable for Northern Nevada Homes to reject the October 28, 2013, offer of  
12 judgment. Therefore, the court declines to award attorney's fees on this basis.

13 *Attorney's fees and costs pursuant to NRS 18.010(2) and NRS 18.020*

14 NRS 18.010(2) allows for an award of attorney's fees "[w]hen the prevailing  
15 party has not recovered more than \$20,000.00." NRS 18.020 similarly mandates an  
16 award of costs to the prevailing party. In this case, the parties dispute whether GL  
17 Construction is a prevailing party. Generally, with respect to fee and cost awards, a  
18 party can "prevail" in litigation "if it succeeds on any significant issue in litigation  
19 which achieves some of the benefits it sought in bringing suit." *Valley Electric*  
20 *Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005).

21 Nonetheless, Northern Nevada Homes notes that Nevada has determined  
22 that in actions involving multiple parties and counterclaims, "prevailing party"  
23 status is determined based on the net judgments obtained by the parties. *See*  
24 *Parodi v. Budetti*, 115 Nev. 236, 241, 984 P.2d 172, 175 (1999). Specifically, in  
25 *Parodi*, the Nevada Supreme Court determined that "in cases where separate and  
26 distinct suits have been consolidated into one action, the trial court must offset all  
27 awards of monetary damages to determine which side is the prevailing party . . ."  
28 *Id.*

Thus, because Cerebrus and Northern Nevada Homes settled their claims  
against GL Construction and Lemich for \$20,000.00 and \$362,500.00 respectively,

1 while GL Construction recovered only \$7,811.00, Northern Nevada Homes argues  
2 that GL Construction is not a prevailing party under the net monetary recovery  
3 rule.

4 In response, GL Construction argues that the Supreme Court decisions  
5 addressing this issue, including *Parodi* relate only to judgments. In this case, GL  
6 Construction argues the \$362,500.00 and \$20,000.00 recoveries were the result of  
7 settlement negotiations, rather than judgments. The only judgment actually  
8 entered by this court was in favor of GL Construction, against Northern Nevada  
Homes.

9 Having reviewed the pleadings, the court determines, that for the purposes of  
10 attorney's fees, GL Construction was a prevailing party with respect to its  
11 counterclaim. In this, the court notes that the facts underlying the counterclaim  
12 were largely unrelated to the claims asserted by Cerebrus and Northern Nevada  
13 Homes. Thus, under NRCP 13, GL Construction would have been free to bring this  
14 claim in an unrelated action. Further, had GL Construction chosen to litigate its  
15 claim separately, it would have clearly been a prevailing party entitled to fees under  
16 NRS 18.010(2). Therefore, the court finds an award of fees and costs to be  
17 warranted.

18 However, the court notes that any fees awarded must be reasonable.  
19 Specifically, as discussed above, the court must examine the quality of the attorney  
20 at issue, the character of the work performed, the amount of work actually  
21 performed, and the result achieved. *See Barney v. Mt. Rose Heating & Air*  
22 *Conditioning*, 124 Nev. 821, 192 P.3d 730 (2008) (citing *Brunzell v. Golden Gate*  
23 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969)).

24 GL Construction has requested fees in the amount of \$67,595.00. The court  
25 notes that GL Construction's counterclaim was a straightforward claim for breach  
26 of an oral contract. Essentially, Northern Nevada Homes did not dispute that it  
27 had failed to pay several invoices issued by GL Construction. Reviewing the record,  
28

1 very little, if any, substantive motion practice occurred with respect to the  
2 counterclaim.<sup>2</sup> The counterclaim itself was resolved in a half day bench trial.

3 Accordingly, while acknowledging the skill of GL Construction's counsel, and  
4 the fact that GL Construction recovered the full amount sought, this court cannot  
5 conclude that the fees sought by GL Construction are reasonable. Rather,  
6 considering the character of the counterclaim, and the work actually performed in  
7 relation to the counterclaim, the court finds attorney's fees in the amount of  
8 \$10,000.00 to be reasonable.

9 With respect to costs, GL Construction has requested \$2,497.33. This  
10 includes a \$200.00 filing fee for a motion for summary judgment, \$1,906.60 in  
11 deposition fees for Mr. Fitzgerald and Mr. Wolf, and \$390.73 in copy costs related to  
12 the bench trial. Having reviewed the requested costs, the court finds that the  
13 motion for summary judgment was unrelated to GL Construction's counterclaim.  
14 Similarly, it appears that the depositions of Mr. Fitzgerald and Mr. Wolf related  
15 almost completely to the claims by Northern Nevada Homes, rather than the  
16 counterclaim. Therefore, the court declines to award these requested costs.

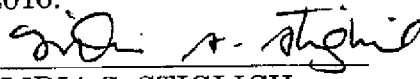
17 Beyond its argument that GL Construction is not a prevailing party,  
18 Northern Nevada Homes does not dispute the remaining copying costs. Therefore,  
19 the court awards GL Construction costs in the amount of \$390.73.

20 *Conclusion*

21 Based on the foregoing, the court ORDERS GL Construction's *Motion for*  
22 *Attorney's Fees* GRANTED. The court AWARDS GL Construction attorney's fees in  
23 the amount of \$10,000.00 and costs in the amount of \$390.73.

24 IT IS SO ORDERED.

25 DATED this 1<sup>st</sup> day of December, 2016.

26   
LIDIA S. STIGLICH  
District Judge

27  
28 <sup>2</sup>The court acknowledges that a jurisdictional dispute regarding the counterclaim arose shortly  
before the bench trial.

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 18 day of December, 2016, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

James Shields Beasley, Esq.

John Boyden, Esq.

Christopher Rusby, Esq.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

  
CHRISTINE KUHLE  
Judicial Assistant

# **Exhibit 17**

# **Exhibit 17**



1 **2535**

2 Christopher Rusby, Esq. NSB #11452  
3 RUSBY CLARK, PLLC  
4 36 Stewart Street  
5 Reno, Nevada 89501  
6 T: (775) 409-4037

7  
8 Attorney for Plaintiffs

9  
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11  
12 IN AND FOR THE COUNTY OF WASHOE

13 CERBERUS HOLDINGS, LLC, a Nevada  
14 limited liability company; NORTHERN  
15 NEVADA HOMES, LLC, a Nevada limited  
16 liability company,

17 Plaintiffs,

18 vs.

19 GL CONSTRUCTION, INC., a Nevada  
20 corporation; GORDON LEMICH, an  
21 individual; and DOES 1-10, inclusive,

22 Defendant.

23 AND RELATED CLAIMS  
24

Case No. CV13-01468

Dept. No. 8

25  
26 **NOTICE OF ENTRY OF ORDER**

27 PLEASE TAKE NOTICE that on October 4, 2018, an Order Denying  
28 Counterclaimant's Motion for Attorney's Fees Incurred Post-Order was entered by the

1 Court. A copy of said Order is attached hereto as **Exhibit 1**.

2       **The undersigned does hereby affirm that the preceding document does not**  
3 **contain the social security number of any person.**

4       DATED: October 5, 2018.

RUSBY CLARK, PLLC  
36 Stewart Street  
Reno, Nevada 89501

7 By: /s/ Christopher Rusby  
CHRISTOPHER M. RUSBY

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**CERTIFICATE OF SERVICE**

Pursuant to NRCp 5(b), I certify that I am an employee of Rusby Clark and that on this date, I electronically filed through the Court’s eflex filing system, a true and correct copy of the within document, of which notice will be electronically served upon the following:

James Shields Beasley, Esq.  
Law Offices of James Shields Beasley  
435 Court St.  
Reno, NV 89501

DATED: October 5, 2018.

/s/ Christopher Rusby

**EXHIBIT LIST**

EXHIBIT #	DESCRIPTION	# OF PAGES
1	July 18, 2016 Order	4

FILED  
Electronically  
CV13-01468  
2018-10-05 10:24:28 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6113501

**EXHIBIT 1**

**EXHIBIT 1**

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

CEREBUS HOLDINGS, LLC, a  
Nevada Limited Liability Company;  
NORTHERN NEVADA HOMES, LLC,  
a Nevada limited liability company,

Plaintiffs,

Case No. CV13-01468

vs.

Dept. No. 8

G.L. CONSTRUCTION, INC., a Nevada  
Corporation, GORDON LEMICH, an  
individual; and DOES 1-10, inclusive,

Defendants.

G.L. CONSTRUCTION, INC., a Nevada  
Corporation,

Counterclaimant,

vs.

NEVADA HOMES, LLC, a Nevada  
Limited Liability Company,

Counterdefendant.

**ORDER DENYING COUNTERCLAIMANT'S MOTION FOR  
ATTORNEY FEES INCURRED POST-ORDER**

Currently before the Court is Counterclaimant's *Motion for Attorney Fees Incurred Post Order for Fees*, filed August 28, 2018 by G.L. CONSTRUCTION, INC. ("Counterclaimant"). Counterdefendant, NEVADA HOMES, LLC, filed its *Opposition to G.L. Construction's Motion for Attorney's Fees on Appeal* on September 12, 2018, to which Counterclaimant responded

1 through a *Reply Points and Authorities in Support of G.L. Construction, Inc.'s Motion for*  
2 *Attorney Fees Incurred Post Order for Fees*, filed September 17, 2018<sup>1</sup>.

3 Having reviewed the briefing and being fully informed, the Court DENIES  
4 Counterclaimant's motion for attorney fees incurred post-order. Counterclaimant is entitled to  
5 recover only the \$10,000.00 in attorney fees originally awarded by the Honorable Lidia Stiglich  
6 in the above-captioned matter.

### 7 BACKGROUND

8 On October 31, 2016, litigation between Counterclaimant and Counterdefendant resulted  
9 in a judgment in the amount of \$7,811.00 in favor of Counterclaimant<sup>2</sup>. In accordance with NRS  
10 18.010(2)(a), which allows a prevailing party recovering less than \$20,000.00 to additionally  
11 recover attorney fees, Counterclaimant sought attorney fees from Counterdefendant. The  
12 Honorable Lidia Stiglich, then presiding judge of this Department, awarded reasonable fees in  
13 the amount of \$10,000.00.

14 On December 9, 2016, Counterdefendant filed a notice of appeal to the Nevada Supreme  
15 Court from the order awarding attorney fees and costs to Counterclaimant. Evaluating Judge  
16 Stiglich's award under an abuse of discretion analysis, the Supreme Court issued an order of  
17 affirmance on August 2, 2018 upholding the award and finding that Judge Stiglich had not  
18 abused her discretion.

19 Counterclaimant now prays for an order from this Court to recover attorney fees for the  
20 costs related to successfully litigating Counterdefendant's appeal. Counterclaimant thus seeks:

- 21 1. \$7,811.00 principal, together with pre-judgment interest on this principal sum at the  
22 legal rate from and after March 14, 2013;

23 //

24 //

25  
26  
27 <sup>1</sup> The Court is also in receipt of a *Motion for Leave to File Surreply*, filed by Counterdefendant on September 18,  
2018. The Court finds that the issue of attorney fees is fully briefed without a surreply and that the Court can render  
a fully-informed decision at this time. The Counterdefendant's motion for leave is therefore DENIED.

28 <sup>2</sup> The award also included pre-judgment interest accrued on the principal sum at the legal rate from March 14, 2013  
to the date of judgment.



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First, attorney fees cannot be properly awarded under NRS 18.010 as Counterclaimant suggests. In *Bobby Berosini, Ltd. v. People for the Ethical Treatments of Animal* (PETA), the Nevada Supreme Court specifically addressed this issue. Like Counterclaimant now does in this case, PETA sought attorney fees on appeal pursuant to NRS 18.010. The Court held that the desired attorney fees could not be recovered under NRS 18.010 because the language of the statute is silent with respect to attorney fees on appeal. *Id.* In line with that reasoning, this Court also refuses to create a right of recovery where one does not clearly exist.

This Court recognizes the efforts and resources expended by Counterclaimant's counsel, but ultimately, there is no applicable statute or rule of law creating a right to recovery for attorney fees on appeal, and absent such, attorney fees cannot be properly awarded. *Id.* Defending the original award on appeal was, in some regard, simply the cost of doing business.

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**CONCLUSION**

Counterclaimant's *Motion for Attorney Fees Incurred Post Order for Fees* is therefore  
**DENIED.**

**IT IS SO ORDERED**


**DATED** this 3<sup>rd</sup> day of October, 2018.



BARRY L. BRESLOW  
District Judge

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James Beasley, Esq.  
John Boyden, Esq.  
Brett Dieffenbach, Esq.  
Thomas Drendel, Esq.  
Paul Georgeson, Esq.  
Adam Hosmer Henner, Esq.  
Andrea Pressler, Esq.  
Christopher Rusby, Esq.

  
Judicial Assistant