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

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5,

Defendants.
_____/

Sup. Ct. Case No. 69410
Case No. CV15-00826
Dept. 10

RECORD ON APPEAL

VOLUME 2 OF 4

DOCUMENTS

APPELLANT
David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

RESPONDENT
Gayle A Kern Esq #1620
Attorney for Kern & Associates, Ltd and Gayle Kern
5421 Kietzke Lane Suite 200
Reno, Nevada 89511

APPEAL INDEX
Case No. CV15-00826
SCN 69410
DAVID DEZZANI AND ROCHELLE DEZZANI
VS
KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS
Date: JULY 18, 2016

PLEADING	DATE FILED	VOL.	PAGE NO.
COMPLAINT	05-04-15	2	1-38
SUMMONS	09-02-15	2	39-42
SUMMONS	09-02-15	2	43-46
DEFENDANTS, KERN & ASSOCIATES LTD AND GAYLE KERN'S MOTION TO DISMISS COMPLAINT	09-17-15	2	47-113
RETURN OF NEF	09-17-15	2	114-115
MEMORANDUM IN DEFENDANTS, KERN AND GAYLE KERN'S MOTION	10-06-15	2	116-119
DEFENDANTS, KERN & ASSOCIATES, LTD AND GAYLE KERN'S REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT	10-12-15	2	120-128
RETURN OF NEF	10-13-15	2	129-130
REQUEST FOR SUBMISSION	10-13-15	2	131-132
RETURN OF NEF	10-13-15	2	133-134
MOTION TO POSTPONE AND/TEMPORARILY STAY; AFFIDAVIT OF DAVID; CERTIFICATE OF SERVICE; AFFIRMATION	10-20-15	2	135-139
DEFENDANTS, KERN & ASSOCIATES, LTD AND GAYLE KERN'S OPPOSITION TO MOTION TO POSTPONE AND TEMPORARILY STAY PROCEEDINGS	10-22-15	2	140-144
RETURN OF NEF	10-22-15	2	145-146
NOTICE OF CORRECTION, AFFIDAVIT, CERTIFICATE OF SERVICE; AFFIRMATION	11-03-15	2	147-151
NOTICE OF CORRECTION, AFFIDAVIT, CERTIFICATE OF SERVICE; AFFIRMATION	11-05-15	2	152-156
REPLY IN SUPPORT OF MOTION TO POSTPONE AND/OR TEMPORARILY STAY PROCEEDINGS; CERTIFICATE OF SERVICE; AFFIRMATION	11-05-15	2	157-159
REQUEST FOR SUBMISSION; NOTICE OF ERRATA AND CORRECTION; CERTIFICATE OF SERVICE; AFFIRMATION	11-10-15	2	160-162
ORDER	11-19-15	2	163-167
RETURN OF NEF	11-19-15	2	168-169

APPEAL INDEX
Case No. CV15-00826
SCN 69410
DAVID DEZZANI AND ROCHELLE DEZZANI
VS
KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS
Date: JULY 18, 2016

PLEADING	DATE FILED	VOL.	PAGE NO.
NOTICE OF ENTRY OF ORDER	11-19-15	2	170-176
RETURN OF NEF	11-19-15	2	177-178
MEMORANDUM OF COSTS	11-20-15	2	179-181
RETURN OF NEF	11-20-15	2	182-183
MOTION FOR ATTORNEY'S FEES & COSTS	12-02-15	3	184-312
RETURN OF NEF	12-02-15	3	313-315
MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS; COUNTER-AFFIDAVIT AND AFFIRMATION	12-14-15	3	316-322
NOTICE OF APPEAL	12-14-15	3	323
PLAINTIFF ROCHELLE DEZZANI'S JOINDER IN MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS; COUNTER-AFFIDAVIT AND AFFIRMATION	12-14-15	3	324
CASE APPEAL STATEMENT	12-15-15	3	325-326
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	12-15-15	3	327
RETURN OF NEF	12-15-15	3	328-329
REQUEST FOR CORRECTION TO CASE APPEAL STATEMENT	12-21-15	3	330-331
REPLY TO MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES & COSTS; COUNTER-AFFIDAVIT (SIC) AND PLAINTIFF ROCHELLE DEZZANI'S JOINDER THERETO	12-21-15	3	332-419
RETURN OF NEF	12-21-15	4	420-421
RETURN OF NEF	12-22-15	4	422-423

APPEAL INDEX
Case No. CV15-00826
SCN 69410
DAVID DEZZANI AND ROCHELLE DEZZANI
VS
KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS
Date: JULY 18, 2016

PLEADING	DATE FILED	VOL.	PAGE NO.
SUPPLEMENTAL AFFIDAVIT OF GAYLE A KERN ESQ IN SUPPORT OF REPLY TO MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES & COSTS; COUNTER-AFFIDAVIT (SIC) AND PLAINTIFF ROCHELLE DEZZANI'S JOINDER THERETO	12-22-15	4	424-428
REQUEST FOR SUBMISSION	12-22-15	4	429-431
RETURN OF NEF	12-22-15	4	432-433
SUPREME COURT RECEIPT FOR DOCUMENTS	12-22-15	4	434
RETURN OF NEF	12-22-15	4	435-436
ORDER	02-08-16	4	437-441
RETURN OF NEF	02-08-16	4	442-443
NOTICE OF ENTRY OF ORDER	02-09-16	4	444-450
RETURN OF NEF	02-09-16	4	451-452
AMENDED NOTICE OF APPEAL	02-29-16	4	453-454
CERTIFICIATE OF TRANSMITTAL – AMENDED NOTICE OF APPEAL	03-02-16	4	455
RETURN OF NEF	03-02-16	4	456-457
SUPREME COURT RECEIPT FOR DOCUMENTS	03-14-16	4	458
RETURN OF NEF	03-14-16	4	459-460
SUPREME COURT NOTICE TO FILE CASE APPEAL STATEMENT – CIVIL	03-14-16	4	461
RETURN OF NEF	03-14-16	4	462-463
SUPREME COURT RECEIPT FOR DOCUMENTS	03-22-16	4	464
RETURN OF NEF	03-22-16	4	465-466
SUPREME COURT ORDER DIRECTING TRANSMISSION OF RECORD	03-30-16	4	467
RETURN OF NEF	03-30-16	4	468-469

APPEAL INDEX
Case No. CV15-00826
SCN 69410
DAVID DEZZANI AND ROCHELLE DEZZANI
VS
KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS
Date: JULY 18, 2016

PLEADING	DATE FILED	VOL.	PAGE NO.
CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON APPEAL	04-01-16	4	470
RETURN OF NEF	04-01-16	4	471-472
CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON APPEAL	04-01-16	4	473
RETURN OF NEF	04-01-16	4	474-475
CASE APPEAL STATEMENT	04-04-16	4	476-477
CERTIFICATE OF CLERK AND TRANSMITTAL	04-04-16	4	478
RETURN OF NEF	04-04-16	4	479-480
SUPREME COURT ORDER DIRECTING TRANSMISSION OF RECORD	06-30-16	4	481
RETURN OF NEF	06-30-16	4	482-483

V2. 1

ORIGINAL

FILED

2015 MAY -4 PM 4:51

JACQUELINE BRYANT
CLERK OF THE COURT
BY _____ DEPUTY

CODE #1425
YOUR NAME David and Rochelle Dezzani
ADDRESS 17 Camino Lienzo
CITY, STATE ZIP San Clemente, CA 92673
TELEPHONE NUMBER (808) 291-2302

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and

ROCHELLE DEZZANI

Plaintiffs,

Case No.: CV15 00826

Dept. No. 10

KERN & ASSOCIATES, LTD.,

GAYLE KERN,

KAREN HIGGINS

'JOHN DOES 1-10,

JANE DOES 1-10,

DOE BUSINESSES 1-5

Defendants

/

COMPLAINT

V2. 1

ORIGINAL

DAVID DEZZANI and
ROCHELLE DEZZANI

vs.

KERN & ASSOCIATES, LTD.,

GAYLE KERN,
KAREN HIGGENS,
JOHN DOES 1-5,

JANE DOES 1-5 AND
DOE BUSINESS ENTITIES 1-5

COMPLAINT

Come now David Dezzani and Rochelle Dezzani, Plaintiffs, and for complaint against Defendants allege as follows:

Jurisdiction

1. Plaintiffs are residents of the State of California who own unit #211, in the McCloud Condominiums, a condominium development located in Incline Village, Nevada (hereinafter referred to simply as "McCloud").

2. Defendant Gayle Kern & Associates Ltd., is a business entity with offices located at 5421 Kietzke Lane in Reno, Nevada.

3. Defendant Gayle Kern is an attorney who dispenses legal advice in the State of Nevada.

4. Defendant Karen Higgins is a resident of the State of California who owns unit #20 in McCloud and who has been a member of the McCloud Condominium Homeowners Association Board of Directors since before 2013.

5. Defendants John Does 1-10, Jane Does1-10 and Doe Business entities 1-5

((hereinafter referred to individually and/or collectively as "Defendants Doe") are persons and/or business entities who are jointly, severally and/or contributorily liable to Plaintiffs for tortious acts and/or omissions in the State of Nevada, whose identities and/ or activities are presently unknown but will become known through discovery.

Facts

6. On July 1, 2004, Plaintiffs purchased McCloud unit #211 and thereby became members of the McCloud Condominium Homeowners Association (hereinafter "McCloud HOA").

7. The McCloud HOA was established, exists and operates under the laws of the State of Nevada, including but not limited to the Nevada Uniform Common-Interest Ownership Act, NRS 116, and exercises power and authority through a Board of Directors (hereinafter the "Board").

8. Prior to Plaintiffs' purchase of unit #211, a previous owner had modified its rear deck, thereby making it larger than its original size.

9. The larger size of the rear deck of unit #211 was an important factor in Plaintiffs' decision to pay a higher price for that unit than they had been considering for similar units in McCloud.

10. Before finalizing their purchase of unit #211 in 2004, Plaintiffs sought, obtained and relied upon assurances that the previous owner's rear deck modification had been approved by the Board.

11. In 2013, more than eight years after they purchased unit #211, Plaintiffs received a NOTICE OF VIOLATION from the Board accusing them and/or their unit of violating two provisions of the McCloud CC&Rs (see Exhibit 1, attached, hereinafter "NOV").

12. The NOV alleged the purported violation to be "Unallowed(sic)/Unapproved Deck Extension" and cited "the following violation of the McCloud CC&Rs" quoting CC&Rs "12.5" and "13.8.2" (see Exhibit 1, page 1).

13. The NOV was drafted, edited, approved and/or authored, in whole or in part, by Defendants Gayle Kern & Associates, Ltd. and/or Gayle Kern (hereinafter referred to collectively as "Defendants Kern") and/or Defendant Higgins and/or Defendants Doe.

14. After receiving the NOV, Plaintiffs communicated with the Board on many occasions; challenging and criticizing not only the NOV's drafting, editing, authorship, reasoning, logic and legality, but also questioning the competency of the legal services provided to the Board by Defendants Kern (see e.g. Exhibit 2, attached).

15. Notwithstanding Plaintiffs' communications, the Board scheduled a hearing on the NOV, to take place in Incline Village on August 23, 2013.

16. More than one month prior to the scheduled hearing, Plaintiffs provided the Board with a letter and documents establishing, beyond doubt, that Unit #211's rear deck modification had been approved by an authorized representative of the McCloud HOA, in 2002 and Plaintiffs requested in writing that their letter be placed on the next Board meeting agenda. (see Exhibit 3, attached).

17. Notwithstanding the foregoing, Defendants Kern, Higgins and Does advised and/or urged the Board to decline Plaintiffs' request to place their letter on the Board's next meeting agenda, in violation of NRS 116.31087 and other provisions of Nevada law, and, further, advised and/or urged the Board to refuse Plaintiffs' request that the charges be withdrawn and , instead, to continue prosecuting the Plaintiffs and proceed with hearing the NOV, which advice and urging the Board accepted (see Exhibit 4, attached).

18. The Board proceeded with hearing the NOV on August 23, 2013, but did not state any findings until more then a year later, when it issued a titled 'RESULT OF HEARING", dated September 5, 2014, purportedly ruling on the NOV (see Exhibit 5, attached, hereinafter "RESULT").

19. The RESULT was drafted, edited, approved and/or authored, in whole or in part, by Defendants Kern and/or Defendant Higgins and/or Defendants Doe.

20. On December 29, 2014, Plaintiffs sent a letter to the Board contesting the RESULT and requesting that the letter be placed on the agenda for the next regularly scheduled Board meeting (see Exhibit 6, attached).

21. On February 2, 2015, the Board replied to Plaintiffs, endorsing the RESULT and, in violation of NRS116.31087 and/o other provisions of Nevada law, refusing, declining and/or failing to address Plaintiffs' request to place the subject of their written complaint on the agenda for its next regularly scheduled meeting (see Exhibit 7, attached).

22. The February 2, 2015 reply described in Paragraph 21 was drafted, edited, approved and/or authored, in whole or in part, by Defendants Kern and/or Defendant Higgins and/or Defendants Doe.

Claims for Relief

I.

23. Plaintiffs reassert and incorporate by reference the allegations of paragraphs 1 through 22, above.

24. On or about May 3, 2013, Plaintiffs sent a lengthy email to the Board describing Defendants Kern as possessing *"**faulty knowledge** of the facts and the law, **a propensity to presume matters without evidence** and **a willingness** to espouse*

legal opinions which ***ignore, overlook, misconstrue and/or fail to consider applicable Nevada laws."*** (see Exhibit 2, page 2, emphasis added)

25. In the above-quoted email and in other communications during the time and events described above, Plaintiffs requested to review books, records and other papers and complained about, questioned and criticized Defendants Kerns' legal abilities, competency, services, opinions, violations of the NRS and McCloud HOA governing documents, in good faith, both orally and in writing, while recommending replacement of Defendants Kern and/or selection of different legal counsel and/or recommending a second opinion from and/or by independent legal counsel.

26. As a result, Defendants Kern and/or Defendant Higgins and/or Defendants Doe undertook, directed and/or encouraged others to take retaliatory action against Plaintiffs, in violation of NRS116.31183 and other provisions of Nevada law, thereby causing damages to Plaintiffs and their property.

II.

27. Plaintiffs reassert and incorporate by reference the allegations of paragraphs 1 through 26, above.

28. Prior to and/or during the time referred to above, Defendant Higgins and/or a previous owner of McCloud unit #20 modified the rear deck thereof.

29. Modification of unit #20's rear deck enhanced Defendant Higgin's enjoyment of her unit and the potential market value thereof.

30. Modification of the rear deck of unit #20 did not comply with the McCloud CC&Rs in force at the time thereof.

31. Some or all of unit #20's rear deck modification encroaches into and/or utilizes common area.

32. Prior to and/or during the time referred to above, Defendant Higgins and/or a previous owner of unit #20 modified the common area around and/or in the vicinity of the unit's rear deck.

33. Modification of the common area around and/or in the vicinity of unit #20's rear deck was not in compliance with the McCloud CC&Rs in force at the time thereof.

34. As of March 18, 2013, Defendants Kern, Defendant Higgins and/or Defendants Does were and/or should have been aware of the modifications described in paragraphs 28, 29, 30, 31, 32 and 33 above.

35. Notwithstanding such awareness, Defendants Kern, Defendant Higgins and/or Defendants Does participated in meetings, discussions and hearings regarding issues

related to modification of McCloud unit rear decks and/or common area encroachment.

36. The actions of Defendants Kerns, Defendant Higgins and Defendants Does described above were in violation of NRS 116.31084 and other provisions of Nevada law and caused damages to Plaintiffs and their property.

III.

37. Plaintiffs reassert and incorporate by reference the allegations of paragraphs 1 through 36, above.

38. Defendants Kern, Defendant Higgins and/or Defendants Does acted and/or directed and/or encouraged others to act, negligently, wrongfully, wantonly, willfully and/or intentionally, in violation of NRS116.3108, .31083, .31084, .31085, .31087 and . 31175 and other laws of the State of Nevada, to deprive Plaintiffs of their right to due process and other legal protections and to punish Plaintiffs, thereby causing harm and damages to them and their property.

IV.

39. Plaintiffs reassert and incorporate by reference the allegations of paragraphs 1 through 38, above.

40. By and through other wrongful acts and omissions, currently unknown to Plaintiffs but which will become known through discovery, Defendants Kern, Defendant Higgins and/or Defendants Doe, jointly, severally and/or contributorily, caused and continue to cause, harm and damages to Plaintiffs and their property.

WHEREFORE, Plaintiffs request judgement against Defendants Kern, Defendant Higgins and Defendants Doe as follows:

A. On Claim I, for damages in excess of $10,000.00, the amount of which will be proven at trial, plus costs, attorneys fees and/or such other relief as the court and jury deem just.

B. On Claim II, for damages in excess of $10,000.00, the amount of which will be proven at trial, plus costs, attorneys fees and/or such other relief as the court and jury deem just.

C. On Claim III, for damages in excess of $10,000.00, the amount of which will be

proven at trial, plus costs, attorneys fees and/or such other relief as the court and jury deem just.

D. On Claim IV, for damages in excess of $10,000.00, the amount of which will be proven at trial, plus costs, attorneys fees and/or such other relief as the court and jury deem just.

Signed, in San Clemente, California, this 3rd day of May, 2015.

David Dezzani. Plaintiff

17 Camino Lienzo

San Clemente, CA 92673

cell: (808)291-2302

Rochelle Dezzani, Plaintiff

17 Camino Lienzo

San Clemente, CA 92673

cell: (760) 525-5143

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Complaint

_____

(Title of Document)

filed in case number: _____

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

-OR-

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

☐ A specific state or federal law, to wit:

_____

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: May 4, 2015

_____
(Signature)

David Dezzani
(Print Name)

_____
(Attorney for)

INDEX OF EXHIBITS

Exhibit Number 1 Number of Pages 2
Exhibit Description March 18, 2013 NOTICE OF VIOLATION

Exhibit Number 2 Number of Pages 9
Exhibit Description May 3, 2013 email to McCloud Bd. of Dirs

Exhibit Number 3 Number of Pages 4
Exhibit Description July 18, 2013 Letter to McCloud Bd. of Dirs

Exhibit Number 4 Number of Pages 1
Exhibit Description July 31, 2013 Letter to Plaintiffs from Defendant Kerns

Exhibit Number 5 Number of Pages 2
Exhibit Description September 5, 2014 RESULT OF HEARING

Exhibit Number 6 Number of Pages 3
Exhibit Description December 29, 2014 Letter to McCloud BD of Dirs

Exhibit Number 7 Number of Pages 1
Exhibit Description February 2, 2015 Letter from McCloud BD of Dirs

Exhibit Number _____ Number of Pages _____
Exhibit Description _____

EXHIBIT 1

EXHIBIT 1

McCloud Condominium Associationn
P.O. Box 3960
Incline Village, NV 89450

NOTICE OF VIOLATION

Sent Certified Mail with
Return Receipt

March 18, 2013

David & Rochelle Dezzani (211)
#13 Calle Altea
San Clemente, CA 92673

RE: Unit #211 Unallowed Deck Extension

Dear Mr. and Mrs. Dezzani;

This letter is to notify you that on March 14, 2013 an exterior inspection was conducted at your unit. At the time of inspection the following violation of the McCloud CC&Rs has been noted.

-Unallowed/Unapproved Deck Extension

> 12.5 Association Maintenance and Decoration Authority. The Board of Directors, or its duly appointed agent, including the manager, if any, shall have the exclusive right to paint, decorate, repair, maintain and alter or modify the exterior walls, balconies, railings, exterior door surfaces, roof, and all installations and improvements in the common area, and no owner of a condominium shall be permitted to do, or have done, any such work. The approval of the Board of Directors shall be required in writing for the installation of any awnings, sunshades, or screen doors, or any antennae or structures on the roof of any condominium building.
>
> 13.8.2 [An Owner] May not change the appearance of the Common Areas, the exterior appearance of a unit, any component that may be seen from the exterior of the building, or any other portion of the Project, or make any change or modification to that Owner's Unit, such as replacing carpeting with hardwood floors, without permission from the Board or the Architectural Control Committee, as applicable.

It is the desire of the Board to be fair and equitable when rendering decisions regarding Association matters, recognizing as an owner within the community you have a mutual interest in the development.

After deliberation the Board offers 2 options to resolve the violation:

1) Please submit an application to the Association providing for the restoration of the deck to its original condition in order to cure the violation, A blank application for the restoration is enclosed.

2) Please sign and submit the enclosed Covenant that states that the deck extension will be permitted to remain during your ownership and one subsequent conveyance of ownership. Upon conveyance of any kind whether consensual or not and at any time to a third party hereafter, the deck extension will be removed at the owner's expense.

If no action is taken to cure the violation, a hearing may be scheduled with the Board of Directors pursuant to NRS 116.31031. We hope this will not be necessary and would like to resolve the violation as soon as possible.

Thank you in advance for your attention in this matter. If you have any questions, please do not hesitate to

Exhibit 1

contact Integrity Property Management at 775-831-3331

Sincerely,

McCloud Condominium Association, Board of Directors

Enclosure

V2. 13

EXHIBIT 2

EXHIBIT 2

V2. 13

From: David Dezzani [mailto:djdezzani@yahoo.com]
Sent: Friday, May 03, 2013 11:44 AM
To: dconway@integrityattahoe.com
Subject: Message to the Board of Directors regarding Unit #211 "Notice of Violation"

Dear Darcy,
Please forward the following message to the Board of Directors.
Thank you,
David and Shelly Dezzani

To: The Board of Directors, McCloud Condominium Association.
From: David and Rochelle Dezzani, Unit #211

We purchased our McCloud townhouse in 2004.

Its deck is the same size today as it was at the time of our purchase, in June 2004.

Before we actually saw our unit for the first time, we had been informed that it had an approved deck which was larger than other decks we had seen during our search for a McCloud townhouse.

When we first saw our unit's deck, in 2004, its appearance indicated it already had been in place for several years.

The fact that Unit #211 had an approved larger deck was an important factor in our decision to pay a higher price than we had been considering paying for other available townhouses.

Recently, at our home in San Clemente, California, ***nearly nine years after*** we purchased our townhouse, ***and many more years*** following the deck's construction, we received a NOTICE OF VIOLATION referencing: "Unit #211 Unallowed (sic) Deck Extension" (hereinafter the "NOV").

Although there is no signature on the NOV, its letterhead and content indicate it came from the McCloud Condominium Association's present Board of Directors.

The NOV states that, during an inspection of the exterior of our unit on March 14, 2013, a "violation of the McCloud CC&Rs has been noted".

The NOV cites and quotes sections 12.5 and 13.8.2 of the CC&Rs as authority for the alleged violation, then goes on to express the "desire of the Board to be fair and equitable", and to offer "2 options to resolve the violation".

Although the wording of the two options is vague*, each proposes the same outcome: our unit's deck must removed and reconstructed, to reduce its size from what it has been for many more than nine years.

The main differences between the two options relate to the timing and financial burden of removal and reconstruction.

After receiving the NOV via certified mail, we telephoned Integrity Property Management at the number suggested in the final paragraph and requested to see minutes of the board meetings when the issue of deck extensions had been discussed.

Integrity responded promptly, by providing minutes of board meetings on September 14, 2012, December 1, 2012 and February 27, 2013.

After receiving and reviewing those minutes, we telephoned and emailed additional requests and questions to Integrity, seeking further information regarding some of the entries recorded in those meeting minutes.

Instead of a response from Integrity, two letters arrived from an attorney in Reno, stating that she "represent[s]" the Association, had been "requested" by the Board to respond and we "will not receive any separate responses from the community manager".

The two letters from the attorney decline to provide any of the additional information or minutes we had requested.

Instead, as justification for not providing any further information or minutes, the two letters refer to Chapter 116 of the Nevada Revised Statutes ("NRS") and then go on to cite sections of that chapter as support for statements by the attorney regarding the reasons why the Board decided to issue NOVs to us and other homeowners.

After reading the minutes provided by Integrity and the statements in the attorney's two letters, it is clear that the Board's decision to issue NOVs to us and other McCloud owners, was based upon legal advice from an attorney who has faulty knowledge of the facts and the law, a propensity to presume matters without evidence and a willingness to espouse legal opinions which ignore, overlook, misconstrue and/or fail to consider applicable Nevada laws.

A. THE ATTORNEY'S LETTERS SHOW FAULTY KNOWLEDGE OF THE FACTS UNDERLYING THE DELIBERATIVE PROCESS WHICH PRECEDED ISSUANCE OF THE NOVs AND THE GRANTING OF PRIOR DECK EXTENSION REQUESTS.

1. The legal advice received by the Board was premised upon the attorney's erroneous understanding of "frequent homeowner involvement" in the deliberative process.

The attorney's first letter to us, dated April 4, 2013, clearly indicates that the legal

advice she provided to the Board was premised upon a faulty understanding of the deliberative process which led the Board to issue NOVs to multiple homeowners.

In the last paragraph of her first letter, directly above the her signature, the attorney describes the deliberative process erroneously, as having been "done at meetings with ***frequent homeowner involvement***" (emphasis added).

Contrary to the attorney's assertions, the minutes report ***only one instance*** of homeowner involvement, ***at only one meeting*** during the deliberative process, and that "homeowner involvement" was not only very brief but, apparently, ignored.

The instance of homeowner involvement reported in the minutes occurred during the September 2012 meeting, when Janice Bertozzi, of Unit 234 spoke up to say "the board will run into a lot of problems" and "the covenant that was written for her unit had been onerous and she didn't think many people would sign it".

We do not know if the attorney's erroneous understanding of "frequent homeowner involvement" was due simply to her not having attended two of the three meetings when deck extensions were discussed and, thereafter, failing to read the minutes of meetings she did not attend, or whether other factors caused her erroneous understanding.

However, since presumably our homeowner fees are being used to pay this attorney, it is important to note that, in addition to revealing the attorney's ignorance of the factual basis underlying her legal advice, the fact that she cited "frequent homeowner involvement" as an important factor to justify the Board's decision underscores the importance of *the true facts, i.e.* ***there was almost no homeowner involvement*** in the decision to issue the NOVs.

Therefore, the decision to issue the NOVs was based upon flawed legal advice and inadequate homeowner input.

Because the attorney's letters makes clear that her legal advice was premised upon erroneous understanding of the true facts and because adequate homeowner input was neither sought or received, the NOVs which were issued should be cancelled and/ or suspended, until such time as adequate and appropriate homeowner input and proper legal advice has been received and considered.

2. The attorney erroneously assumed the truth of crucial and contested facts, without supporting evidence, and rendered legal advice to the Board based upon probably untrue assumptions regarding those facts.

In the third paragraph of her first letter to us, the attorney states: "**While it is unfortunate the issue** (sic) **of deck extensions and the wrongful taking of common area was not addressed earlier,** the Association has properly taken action to protect

the integrity of the common area".(emphasis added)

The attorney's letter cites no source or support for the portion of her sentence emphasized above.

It appears she simply assumed that these issues were never addressed previously, in order to justify her legal recommendations regarding the propriety of of the present-day Board's issuance of the NOVs.

Because the factual assertions implicit in the emphasized words are probably incorrect, any action regarding the NOVs should be suspended and held in abeyance, until the true facts are known and proper legal advice can be obtained.

Even though our request to see past minutes was declined, the probable untruth of the attorney's statement that "deck extensions and wrongful taking" were "not addressed earlier" is clearly apparent from the first two sentences of the minutes that have been provided to us.

Page 11 of the minutes of the September 2012 meeting, under paragraph B, reports that discussion of the subject of deck extensions was first begun by the present-day Board with Mr. Price's commenting that "[t]wo of the [20] extensions were actually approved".

The remaining minutes of that meeting, and those for the December, 2012 and February, 2013 meetings, report much discussion concerning many extended decks at McCloud.

However, it appears no effort was made to ascertain what processes or procedures, if any, led to the two approvals described by Mr. Price or, for that matter, any of the 18 other extensions mentioned in the minutes.

Apparently, the Reno attorney simply chose to assume, blindly and without evidence, that past directors on past boards in past times, completely and utterly failed to take any steps, on behalf of the Association, "to protect the integrity of the common area" or "address" any of the issues regarding "deck extensions and wrongful taking of common area", either when the two extensions were "actually approved" and/or when the 18 additional decks were enlarged.

If, indeed, those past deck extensions were approved without process, procedure or legal advice, such lack of due diligence on the part of those former Directors and/or Boards who granted the approvals would not have been simply "unfortunate", as described by the attorney, but actually would have been extraordinary failures to act with reasonable care.

Frankly, what strikes us as "unfortunate", to the point of arrogance, is for an attorney who represents the Association and its present-day Board, to suggest without a shred of evidentiary support that former Board members were so careless, delinquent and

negligent, while carrying out their duties in years past, that they failed to "address" what the attorney calls "basic issues" when considering and approving deck extensions.

Our request to see the minutes of Board meetings when the two extensions were "actually approved" has been declined and, because the attorney's bald statement "the issue(sic) of deck extensions and wrongful taking of common area was not addressed" is completely unsupported, we have no way of knowing what processes, procedures and/or considerations, if any, were involved in those approvals.

However, because logic, common sense and reasonable respect for the work of past Directors and Boards mandate that the attorney's statement is probably untrue, actions by the present-day Board premised upon those untrue assumptions and faulty legal advice should be cancelled or, at least, suspended and held in abeyance, pending further consideration.

B. THE LEGAL ADVICE RECEIVED BY THE PRESENT-DAY BOARD IGNORED, MISCONSTRUED AND/ OR FAILED TO CONSIDER AND DISCUSS THE CC&RS AND APPLICABLE NEVADA LAW.

In addition to the attorney's erroneous understanding of the deliberative process and unsupported, probably false, assumptions regarding earlier extension approvals, the CC&Rs and Nevada laws referred to by the attorney in her letters indicate that her legal analysis was deficient, her discussion of applicable law inadequate and her advice not only incorrect but, if followed, likely to create substantial additional problems and generate increased costs for the Association and its members.

1. The NOV cites, quotes and relies upon CC&Rs 12.5, and 13.8.2, yet the Association's attorney does not even mention those sections when attempting to explain their legal basis to homeowners.

CC&R 12.5 states that "the Board of Directors ... shall have the exclusive right to ... alter or modify ... all installations and improvements in the common area ... ." and, stated obversely, 13.8.2, permits unit owners to make changes and modifications " ... with permission from the Board of Directors or the Architectural Control Committee, as applicable."

It is uncontested that at least two decks were altered and/or modified with approval by Directors having the "exclusive right" to do so at the time, and there is evidence that our unit's deck extension was approved more than nine years ago.

Therefore, any attorney's legal opinion advising the present-day Board to cite us and other owners for violating CC&R sections which specifically authorize such alterations and modifications is absurd.

And for the Association's attorney to subsequently write two letters to us, purportedly

explaining the legal basis for the NOVs without even mentioning the CC&Rs on which they are premised, is itself an implied admission that the CC&Rs do not support what is alleged in the NOVs.

2, The Nevada Revised Statutes referred to in the Reno attorney's letters were not cited as authority in the NOVs, nor mentioned by the attorney during the deliberative process and contradict the legal advice the attorney provided to the present-day Board.

As discussed above, although the NOV issued by the Board alleges violation of the CC&Rs and not only cited but even quoted sections 12.2 and 13.8.2, the attorney's letters contained no mention of the CC&Rs.

Rather than discussing the CC&R sections cited and quoted in the NOV, the attorney's letters refer to and rely upon Chapter 116 of the Nevada Revised Statutes" ("NRS"), initially to justify declining our requests for information and then as authoritative Nevada law purportedly supporting the NOV.

It is astonishing that an attorney representing the Association, providing her supposedly learned view of the legal basis for an NOV alleging violation of CC&Rs12.2 and 13.8.2, would ***not even mention the CC&Rs*** in her letters but would instead focus her response upon the NRS, *especially* ***when the NRS is not even referenced in the NOV, was not even discussed during the deliberative process nor even mentioned by the attorney when she approved the final draft of the NOV.***

It does not take a lawyer to recognize that the NRS sections referenced in the attorney's letters are mostly irrelevant to the issues involved in the NOVs nor to see that the Association's attorney improperly presupposed, without evidence, the existence of important facts and/or legal status when she chose which sections of the NRS to cite.

For example, in her April 4, 2013 letter, just before making her erroneous assertion of "frequent homeowner involvement", the attorney summarized her view of the basis for her recommendations in three declarative sentences, referencing a specific NRS section after the last sentence.

Those three declarative sentences are simply argumentative statements, devoid of facts but replete with legal terminology, totally unsupported except for a single reference, to NRS 166.3112:

"There is no question common area is not permitted to be given to any one owner for his/her exclusive use and enjoyment, thereby reducing the common area for the other homeowners. It is the wrongful conversion of common area that is the problem. Simply put, there is no lawful transfer of common area to individual owners absent a vote of the membership. *See* NRS 116.3112" (emphasis in original).

Sounds good, but when one actually reads NRS 116.3112, it becomes apparent that the cited section provides no support for the attorney's three argumentative statements, quoted above.

NRS 116.3112, which is entitled "**Conveyance or encumbrance of common elements**", is not a restrictive statute, as suggested by the attorney when attempting to support her argumentative statements.

Rather, NRS 116.3112 is a permissive statute, dealing with the power of condominium associations to convey and encumber common elements, not prohibiting such action as implied by the attorney's citation at the end of her three argumentative statements.

In fact, none of the eight subparts of NRS 116.3112 deals with situations like that presented by the current NOVs.

For an attorney to cite an irrelevant statute, as purported support for her legal opinions, while at the same time ignoring the very CC&Rs upon which the NOVs are based and to simultaneously fail to discuss other, actually relevant, sections of the NRS, which deal specifically with common property used exclusively by fewer than all homeowners, calls into question the attorney's competence.

We can think of no valid reason why the Association's attorney would direct us to an irrelevant section of the NRS like 116.3112, discussed above, without at least also referencing NRS 116.059 which, in conjunction with NRS116.059, specifically permit structures like decks, which are "designed to serve a single unit, but located outside the unit's boundaries, are ***limited common elements allocated exclusively to that unit.***" (emphasis added)

That the Association's attorney would not, at a bare minimum, have mentioned, discussed or even referenced the concept of "limited common elements", while advising the Board on deck extensions is incomprehensible.

In fact, because exclusive use of portions of common property is such a fundamental principle of property law, specifically defined and dealt with in both the CC&R and the NRS, it is mind-boggling that the attorney neither mentioned nor discussed that concept while advising the Board regarding such a potentially controversial and explosive issue as requiring homeowners to remove and rebuild deck structures that have been in place for many years, some with specific approval by the Board of Directors.

Similarly mind-boggling is that the Association's attorney would write letters to concerned homeowners like us, who simply requested further information, not only declining to provide that information but also purporting to justify the legal basis for the Board's action without mentioning, considering or discussing the CC&Rs or the "limited common elements", sections of the NRS.

We recognize that the above comments set forth harsh criticisms of the Association's attorney.

When we began drafting this email to the Board of Directors, after receiving the attorney's second letter, we thought most of our comments would be directed to responding to valid points asserted by the attorney.

However, once we looked closely at the letters and compared what is stated with what appears in the NOV, the minutes and the Nevada Revised Statutes, the attorney's misstatements and errors became so apparent that we decided to send the above.

We look forward to learning the attorney's response to what we have expressed.

We also look forward to learning what the attorney has told other Association Owner/ Members who may have inquired, protested and/or requested information regarding the deck extension issue.

We are hopeful that the Board will consider the above expression of our views in the spirit they are intended, as coming from concerned homeowners who love, and have loved, the deck that was in place when they purchased thier townhouse nearly nine years ago.

We also hope the Board will undertake action to cancel, suspend and hold in abeyance action on the NOVs, pending further consideration of homeowner input and consultation with competent legal counsel.

If the Board decides to proceed as threatened in the NOVs, it would be helpful to homeowners like us, who have received NOVs, to be informed thereof as soon as possible, so that we can take appropriate steps to defend ourselves and attempt to mitigate our damages.

In that regard, we hope that the Board has considered the probable adverse effect enforcement of the NOVs would likely have upon ***all*** McCloud condominium values, regardless which of the two offered options is accepted.

Under either option, all units would eventually have small decks.

Units with small decks can be expected to sell for lower prices than units with larger decks, as evidenced by our willingness to pay more for our unit *because it had an approved larger deck.*

Ordinarily, the monetary value of condominium units is related to, if not determined by, the sales price of other units in the same complex.

Therefore, if more units are sold with small decks, the value of ***all*** units in McCloud can be expected to be diminished over time, as the units with smaller decks sell for lower prices than would have been received with larger decks.

And, unless and until the threat posed by the NOVs has been resolved, the myriad enforcement difficulties, unknown risks, inherent costs and uncertain burdens of the poorly drafted covenant, potentially will cloud titles and inhibit sales throughout the complex.

Naturally, we hope the Board will act favorably upon our above-stated requests for cancellation, suspension and/or holding in abeyance further action on the NOVs, so that all concerned can avoid involving the Nevada Real Estate Division and Ombudsman and, further, to avert the potential of a legal dispute, with multiple attorneys making the situation even more costly for homeowners via lower property values and higher homeowner dues.

We look forward to hearing from you after you have had opportunity to consider the views expressed above.

Thank you for your attention to this matter.

Very truly yours,

David and Rochelle (Shelly) Dezzani
Unit #211n

---

* Although the "2 options" are ambiguously worded and their phraseology makes it difficult to understand how they would be interpreted or implemented, both seem to have the same goal vis-a-vis the property (i.e. removal of currently large decks and replacement with decks of smaller size),

EXHIBIT 3

EXHIBIT 3

July 18, 2013

Dear Members of the Board of Directors,

In July, 2004, we purchased McCloud Unit #211 with an enlarged deck, which had been approved by the Board of Directors, according to representations made to us at that time.

In March, 2013, the Board of Directors sent us a "NOTICE OF VIOLATION, via certified mail, alleging that Unit #211's deck extension is "Unallowed (sic)/Unapproved".

Since receiving that certified mail, we have spent many hours communicating with the Board, its management company and its attorney, contesting the violation, requesting further information and explaining why we believe the allegation lacks merit.

Nevertheless, a hearing on the alleged violation is scheduled to take place in Incline Village on August 23, 2013.

Recently, while reviewing documents from the files of the HOA, we found two pages which prove conclusively that the claimed violation has no merit.

We are enclosing copies of these two pages from the HOA documents.

These enclosures confirm that, in May of 2002, the previous owner of our unit submitted an HOA "UNIT CHANGE/MODIFICATION FORM", with drawings, asking "to increase size of [the] deck and add steps".

These documents show that the request and drawings were **"approved"** on May 8,2002.

While visiting McCloud recently, we inspected and measured our unit's deck and steps and they conform exactly to what is designated "**Approved**" on the second page of the enclosed documents.

Therefore, there is absolutely no basis for the Board to continue with any aspect of what is alleged in the March 18, 2013 "NOTICE OF VIOLATION".

Unless we are informed, very soon, that those charges have been withdrawn and the August 23rd hearing cancelled, we will have no choice but to hire an attorney to represent us and travel to Nevada, to prepare for and participate in the proceedings.

We see absolutely no reason why we or the Association should be required to spend any further time, energy, effort or expense regarding this matter.

Indeed, the enclosed HOA records make clear that any continued effort to proceed with

Exhibit 3

these allegations would be completely unwarranted, to the point that any and all additional costs, time expenditures and emotional distress should be borne by those responsible for continuing to pursue the matter.

We have been informed that the next meeting of the Board of Directors is scheduled for August 1, 2013.

We request that this letter and its enclosures be placed on the agenda for that meeting, for *consideration and appropriate action during that meeting.*

If, *by close of business on the day following that meeting*, we have not been informed that we no longer need be concerned about this matter, we will have no choice but to take appropriate action to defend ourselves and seek reimbursement, for all costs and damages, from those responsible.

Thank you for your attention to this matter.

Very truly yours,

David and Rochelle Dezzani
Unit #211

5/8/02

McCloud Condominium HOA

FILE COPY

UNIT CHANGE/MODIFICATION FORM

Owner Name: DAVID OLSON Unit #: mcloud 211 Date: 3/8/02

Mailing Address: PO Box 3745 I.V. NV 89450

Telephone: Day # 775-831-1586 Evening # 775-831-1586

Tentative date of change/modification: ASAP

1) Location of change/modification (please describe in detail):
See Attached Drawing to increase size of Deck + add 5 steps. Rear Deck

2) *Description of change/modification to be made, in detail:
See attached Drawing

* 5 copies of detailed plans must accompany this form in order for any approvals to be made.

FOR OFFICE USE ONLY

Date: 3/8

MCL\mcl-mod.frm Deck extension approved not to include back of bench. mcl 211

V2. 26

DAVID OLSEN
UNIT #211 ALCOYS
775-831-1886

FILE COPY

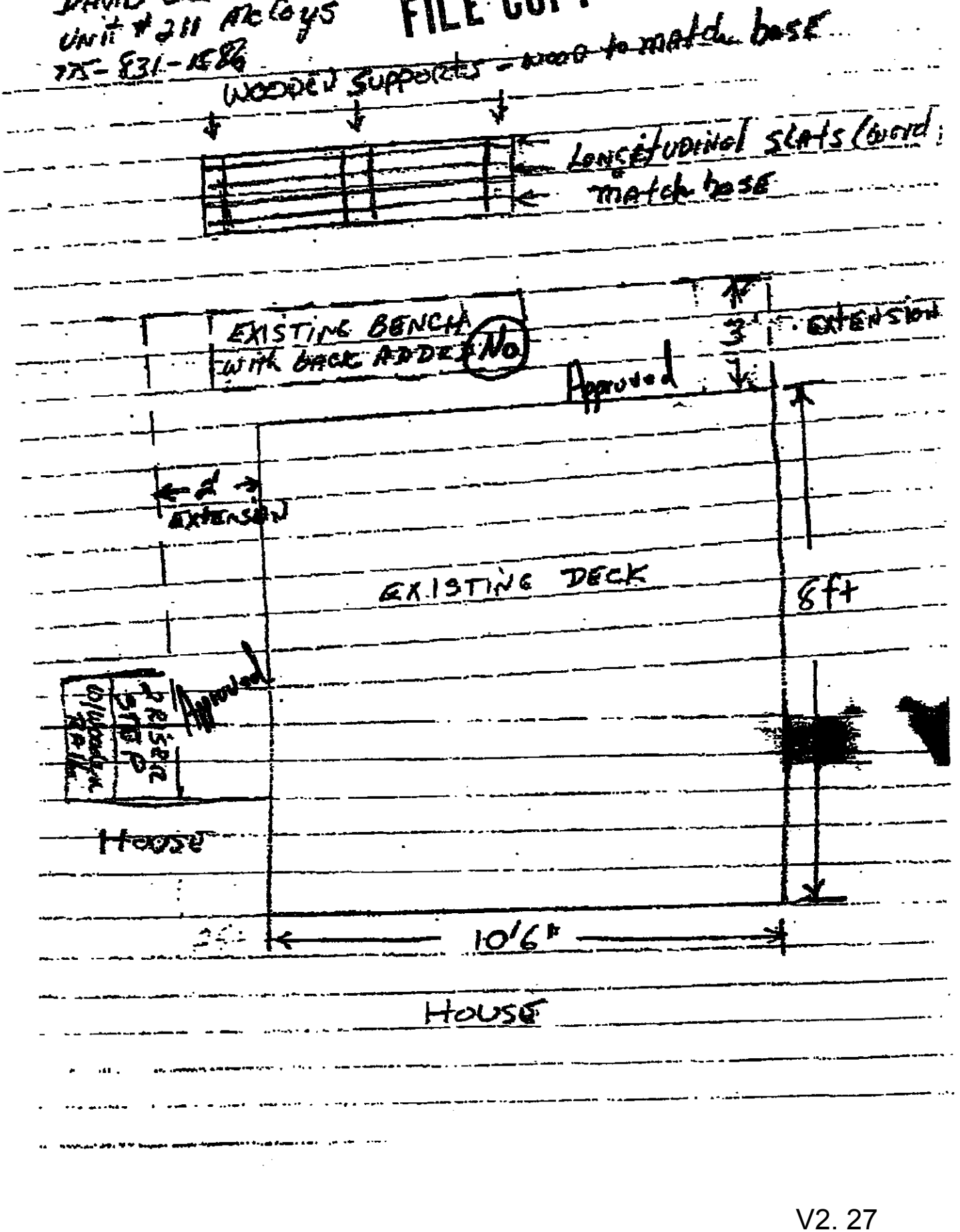


EXHIBIT 4

EXHIBIT 4

KERN & ASSOCIATES, LTD.
ATTORNEYS AT LAW

GAYLE A. KERN, ESQ.
gaylekern@kernltd.com

KAREN M. AYARBE, ESQ.
karenayarbe@kernltd.com

5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511

TELEPHONE: (775) 324-5930
FACSIMILE: (775) 324-6173

July 31, 2013

David and Rochelle Dezzani
13 Calle Altea
San Clemente, CA 92673

Re: *McCloud Condominium Association*
Unit #211

Dear Mr. and Mrs. Dezzani:

This letter shall serve as the Association's response to your letter of July 18, 2013 with additional note dated July 19, 2013. As previously advised, the Board of Directors declines your request to place your alleged violation on the agenda for August 1, 2013. Pursuant to Nevada law, a hearing has been scheduled for quite some time and it was continued to August 23, 2013 at your request. It will be held on that day. It is inappropriate for the Board to make any decision outside of the scheduled hearing date. At the hearing, the Board will consider all information provided, including that contained in your recent letter, and make a decision after deliberation.

As previously advised, if it is difficult for you to attend this hearing, you are welcome to participate by phone. The number for you to call is as follows:

Conference Dial-In Number: 866-576-7975
Participant Access Code: 540006#

Your attorney may participate by phone as well.

If you have any further questions or wish any additional information to be considered by the Board, please do not hesitate to provide it to me.

Very truly yours,

KERN & ASSOCIATES, LTD.

Gayle A. Kern

c: Client

Exhibit 4

EXHIBIT 5

EXHIBIT 5

McCloud Condominium Association
P.O. Box 3960
Incline Village, NV 89450

RESULT OF HEARING

Sent Certified Mail with Return Receipt

September 5, 2014

David & Rochelle Dezzani
#13 Calle Altea
San Clemente, CA 92673

RE: McCloud Condominium Homeowners Association - Unit 211

Dear Mr. and Mrs. Dezzani:

The Board appreciates your participation in this process. We are very understanding of your distress over this matter and are sorry that it created such anxiety for you. It was not our intent to create any burden or disruption in your enjoyment of your property or your tenant's enjoyment of your property.

It is difficult for all involved and we carefully considered your evidence, written communications, comments made at the hearings by both of you, together with the comments and communications from your attorney. This letter is not an exhaustive discussion of all of the issues that have been the subject of numerous letters, emails and other forms of communication by and between you, your attorney, our attorney, and the Association. All of the documents and communications were specifically considered and provide the basis of our findings. We also carefully considered your assertion that we should obtain a second opinion regarding this matter. In fact, we had the benefit of that second opinion by reading and considering the legal arguments made by your counsel, Mr. Rogers. We respectfully considered his opinion. We believe that the reliance on our counsel's analysis in response to Mr. Rogers' letters better reflects Nevada law and application of our CC&Rs. We also are aware that there is no definitive Nevada case, but the cases identified by our counsel support the analysis that she provided to us. In comparing the two opinions, we find that it is appropriate to rely upon the opinion of our counsel who practices nearly exclusively in this area. While we understand you do not agree, we believe the evidence, information and record does support our determination that the expanded deck is a violation.

In addition, as previously advised, IVGID had identified McCloud as over-covered with regards to impervious coverage per TRPA. Subsequently the Board of Directors mandated that all deck extensions that were structural be removed. The Board then determined that use of a covenant which identified a timeframe for removal would be appropriate. The covenant was a sincere effort to reach a compromise between those affected homeowners and the Association.

We want to clarify the concern you have regarding the issue of the violation considered. The Board is required to address the encroachment in the common area and understand that the deck was installed by the prior owner upon receiving "approval" to do so. Unfortunately, as has been explained, such approval was not appropriate as it resulted in an allocation of common area for the exclusive use of your unit. Therefore, the Board considered its authority to resolve matters as allowed by the CC&Rs and Nevada law, including NRS 116.3102(3) and (4). It is with this consideration of the enforcement action to take that it has made the following conclusion.

The deck is an encroachment in the common area. There was no vote of the members to allow such use of the common area and the allocation of exclusive use of the greater area was not in the recorded map. Therefore, the additional portion of the deck is not in compliance with the governing documents. This result of hearing will be placed in the file for this unit.

We also want to take this opportunity to assure you that your refusal to execute the proposed covenant is not a violation. Rather, the execution of the covenant would have been in accordance with NRS 116.3102(3) and (4) and would have allowed a resolution that would have provided for compliance at a later time so that there would have been no impact on your enjoyment or your tenant's enjoyment of the property at McCloud. The Board is empathetic and sorry for the inconvenience this has caused. However, the Board must protect the common area for all members.

In addition, we appreciate the information you provided to us regarding possible other violations in the common area. Rest assured that the Board is addressing all additional violations as soon as possible. While the specifics of any enforcement action remain confidential unless the owner requests the hearing be in public as you did, the Board will proceed with appropriate action.

Sincerely,
McCloud Condominium Association Board of Directors

EXHIBIT 6

EXHIBIT 6

TO: The McCloud Condominium Association Board of Directors

FROM: David and Rochelle Dezzani, MCCloud Unit #211

This letter is being sent to you pursuant to the provisions of the Uniform Common-Interest Ownership Act of the State of Nevada ("NRS 116"), regarding several violations thereof by the McCloud Condominium Association Board of Directors, individually and as a group ("the Board"), which violations have caused and continue to cause serious damages to my wife, our property and me.

In September, we received a letter from the Board, dated September 5, 2014 entitled "RESULT OF HEARING" (the "RESULT"), alluding to a process (the "process) which began when the Board served us with a NOTICE OF VIOLATION, dated March 18, 2013 ("NOV"), regarding the rear deck of our unit.

The RESULT acknowledges the distress and anxiety the process caused my wife and me, and refers to the many written and oral submissions we made to the Board while defending ourselves against the charge originally levied against us and the Board's subsequent efforts to ignore and/or modify that original charge.

The RESULT also acknowledges that my wife and I have already set forth our objections and expressed our reasons for disagreeing with the Board's actions and the reasoning allegedly supporting its previous statements, findings and conclusions.

Therefore, for the sake of brevity, rather than repeating and rehashing what we previously have presented, my wife and I hereby reassert and incorporate by reference our submissions to the Board during the process, specifically including each and every document and/or tangible thing kept, maintained, filed and/or relied upon by the Association and/or by any representative thereof, regarding Unit #211 and/or any other McCloud unit with a deck which in any fashion and/or to any degree encroaches upon and/or into any portion of the common area.

Also, we specifically assert that the Board has treated us and our unit in a discriminatory fashion and we hereby request that all materials, files, documents and/or writings regarding and/or pertaining to the "process" be made available to us and to the Nevada Ombudsman, for review and consideration.

Additionally, because the RESULT makes several gratuitous statements, *raising new matters* ***for the first time*** while *purportedly deciding them adversely to us*, it thereby additionally violates our due process rights and other aspects of Nevada law and we therefore address those additional matters briefly below.

For clarity, we shall address each of the RESULT's seven paragraphs sequentially.

Paragraph 1 is mostly responded to by our above-stated reassertion and incorporation

Exhibit 6

by reference, except for that paragraph's final sentence, which gratuitously disavows any "intention" by the Board "to create any burden or disruption" of my wife's and my enjoyment of our property, whereas, in truth and in fact, for nearly two years the Board's efforts against us have been devoted to attempting to deprive us of our unit's rear deck, as approved in 2002, for which we paid a premium in 2004.

Paragraph 2 of the RESULT is so filled with misstatements and misguided legal conclusions as to render it nearly impossible to respond to, other than by our above-stated reassertion and incorporation by reference and pointing out the fallacy of the Board's claim that it received "the benefit of ...[a] second opinion", by considering and rejecting the arguments presented by the attorney we retained to defend us.

Almost every open-minded person would easily recognize the huge difference between seeking and obtaining an independent "second opinion", for guidance regarding disputed legal issues, and simply proceeding upon the advice of the same attorney who originally provided the disputed legal advice and disregarding the opinion of an attorney retained to advocate an opposing point of view.

To claim that the Board actually obtained the benefit of a second opinion, by considering and rejecting the opinion our attorney, makes a mockery of our multiple requests to the Board to obtain independent legal advice via a "second opinion".

Paragraph 3 of the RESULT states "as previously advised, IVGID had identified McCloud as over-covered with regards to impervious coverage per TRPA", whereas in truth and in fact the Board did not advise us of this issue during the process nor were TRPA coverage considerations a part of the proceedings against us.

For the Board to raise such a matter, for the first time, in the RESULT, as purported support for ruling adversely to us, is an additional violation of our due process rights and other provisions of NRS 116.

Paragraph 4 of the RESULT concedes that our unit's rear deck "was installed by the prior owner upon receiving 'approval'", but continues on to state that "such approval was not appropriate" and "the Board considered its authority to resolve matters", completely ignoring that the Board's own recently-approved covenants granting exclusive use of common area to at least thirteen previously unapproved deck extensions, presupposes the appropriateness of authority to grant such approval.

Paragraph 5 of the RESULT mostly rehashes earlier assertions by the Board, all amply addressed by the above-stated reassertion and incorporation by reference, except for the final sentence, which states: "This result will be placed in the file for this unit".

Assuming that the words "This result", as used in that sentence, are intended to refer to "the RESULT", as used herein, that final sentence of Paragraph 5 is both alarming and extremely upsetting to my wife and me because of the legal effect and practical implications of placing such a letter in our file.

It seems to us, and we hereby assert, that placing a copy of the RESULT in any file maintained by the Association would be an illegal attempt by the Board to place a damaging cloud on our title to our property, without due process of law and in violation of the protections afforded to homeowners by Nevada law.

Paragraph 6 of the RESULT is nearly incomprehensible but, at least, acknowledges clearly that "refusal to execute the proposed covenant is not a violation", contrary to previous statements and assertions by the Board's attorney during the proceedings.

That acknowledgement, when considered together with the fact that the Board's own records establish unequivocally that my wife and I were not guilty of violating the McCloud CC&Rs alleged, and specifically identified as 12.5 and 13.8, in the March 18, 2013 NOV establishes that the Board has absolutely no legal basis for any adverse action against us or our unit, including placing a letter such as the RESULT in our file.

Simply put, because neither my wife nor I, nor our unit, ever violated the CC&Rs, there never was any basis for any finding adverse to us or our unit.

Finally, although paragraph 7 of the RESULT urges us to "[r]est assured that the Board is addressing all additional violations as soon as possible", neither that paragraph nor any of the previous paragraphs nor any other communication from the board addresses the fundamental issue we have raised repeatedly i.e. *the conflict of interest, in violation of NRS 116.31084 and related provisions of Nevada law, on the part of at least one Board member.*

That Board member participated in the proceedings and the process which led to the current dispute, while having an ownership interest in a unit with a rear deck and patio which extend into and upon the common area.

Adding to the wrongness of participation in the proceedings and the process by the conflicted Board member is the fact that, as far as we can determine, the conflict was neither disclosed to nor considered by the Board.

Such a conflict of interest, whether disclosed or undisclosed, renders the process and the RESULT invalid and void.

Therefore we respectfully request the Board to issue a new finding, stating that neither my wife nor I violated the CC&Rs and, as stated in paragraph 4 of the RESULT, the rear deck of our unit was installed by the prior owner upon receiving approval to do so.

In closing, we request that this letter be considered a written complaint against the Board and placed on the agenda of the next regularly scheduled meeting.

Thank your for your attention to this matter.

Very truly yours,

December 29, 2014 December 29 2014

EXHIBIT 7

EXHIBIT 7

McCloud Condominium Association
P.O. Box 3960
Incline Village, NV 89450

Sent Certified Mail with Return Receipt

February 2, 2015

David & Rochelle Dezzani
#13 Calle Altea
San Clemente, CA 92673

RE: McCloud Condominium Homeowners Association - Unit 211

Dear Mr. and Mrs. Dezzani:

Please note that the McCloud Board of Directors is in receipt of your letter dated 12-30-14. At this time, the board continues to have the same opinion that was stated in the Result of Hearing Notice dated September 05, 2014.

McCloud has scheduled a board meeting for February 20, 2015, which we invite you to attend if you feel that there is additional information to share with the board. If you decide to attend and want the deck encroachment addressed under owner's comments, you will be allowed three minutes to share your information. However, if you prefer to have your deck addressed in a closed executive session meeting, please advise Integrity Property Management at 775-831-3331 by February 09, 2015 to allow time for placing this item on the agenda.

As addressed in a previous meetings and letters, we the board understand your desire to address your deck encroachment with the Board of Directors and understand your concerns. Please let us know if you plan on attending the upcoming meeting, and we look forward to addressing any new items related to your deck concerns.

Sincerely,
McCloud Condominium Association Board of Directors

Exhibit 7

V2: 39

ORIGINAL

FILED

2015 SEP -2 PM 12:38

JACQUELINE BRYANT
CLERK OF THE COURT
BY _____ DEPUTY

Code: 4085

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and
ROCHELLE DEZZANI,
Plaintiff / Petitioner / Joint Petitioner,

vs.

KERN & ASSOCIATES, LTD., ET AL,
Defendant / Respondent / Joint Petitioner.
/

Case. No. CV15 00826

Dept. No. 10

SUMMONS

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 CALENDAR DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).
The object of this action is: _____.

1. If you intend to defend this lawsuit, you must do the following within 20 calendar days after service of this summons, exclusive of the day of service:
   a. File with the Clerk of the Court, whose address is shown below, **a formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
   b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 4 day of May, 20 15

Issued on behalf of Plaintiff(s):

Name: DAVID & ROCHELLE DEZZANI
Address: 17 CAMINO LIENZO
SAN CLEMENTE, CA 92673
Phone Number: (808) 291-2302

JACQUELINE BRYANT
CLERK OF THE COURT
By: R. Brohurn
Deputy Clerk
Second Judicial District Court
75 Court Street
Reno, Nevada 89501

DECLARATION OF PERSONAL SERVICE

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF _____)
)
COUNTY OF _____)

I, _____, declare:
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.

2. That I personally served a copy of the Summons and the following documents:

_____

_____

_____

upon _____, at the following
(Name of Respondent/Defendant who was served)

address: _____

_____

on the _____ day of _____, 20_____.
(Month) (Year)

This document does not contain the Social Security Number of any Person.

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

_____
(Signature of person who completed service)

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

DAVID DEZZANI AND ROCHELLE DEZZANI

Plaintiff,

Case No:CV15-00826

vs.

KERN & ASSOCIATES, LTD., ET AL

Defendant

DECLARATION OF SERVICE

STATE OF NEVADA
COUNTY OF WASHOE ss.:

KOREY HOERRES, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affidant received copy(ies) of the **SUMMONS; COMPLAINT**, on **08/28/2015** and served the same on **08/28/2015** at **2:49 PM** by delivering and leaving a copy with:

TERESA GEARHART, LEGAL ASSISTANT who stated he/she is authorized to accept service on behalf of **GAYLE KERN**.

Service address:KERN & ASSOCIATES, LTD. 5421 KEITZKE LANE #200 Reno, NV 89511

A description of **TERESA GEARHART** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	**Caucasian**	**Brown/Grey**	**45**	**5ft 6in**	**131-140lbs**
Other Features:					

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

Sworn to and subscribed before me on 08/28/2015
by KOREY HOERRES

Notary Public

67650

STEPHANIE MARTELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 05-97425-2 - Expires June 9, 2017

X
KOREY HOERRES
Registration#: R-083219
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: KERN

SECOND JUDICIAL DISTRICT COURT

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, filed in the case number:

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

(Signature)

JOHNNO LAZETICH
(Print Name)

(Attorney for)

Code: 4085

ORIGINAL

FILED

2015 SEP -2 PM 12:38

JACQUELINE BRYANT
CLERK OF THE COURT
BY: _____ DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and
ROCHELLE DEZZANI,
Plaintiff / Petitioner / Joint Petitioner,

vs.

KERN & ASSOCIATES, LTD., ET AL,
Defendant / Respondent / Joint Petitioner.

Case. No. CV15 00826

Dept. No. 10

SUMMONS

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 CALENDAR DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).
The object of this action is: _____.

1. If you intend to defend this lawsuit, you must do the following within 20 calendar days after service of this summons, exclusive of the day of service:
   a. File with the Clerk of the Court, whose address is shown below, **a formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
   b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 4 day of May, 20 15.

Issued on behalf of Plaintiff(s):

Name: DAVID & ROCHELLE DEZZANI
Address: 17 CAMINO LIENZO
SAN CLEMENTE, CA 92673
Phone Number: (808) 291-2302

JACQUELINE BRYANT
CLERK OF THE COURT
By: R. Branum
Deputy Clerk
Second Judicial District Court
75 Court Street
Reno, Nevada 89501

REVISED 11/2014 ER

SUMMONS

DECLARATION OF PERSONAL SERVICE

(To be filled out and signed by the person who served the Defendant or Respondent)

STATE OF _____)
)
COUNTY OF _____)

I, _____, declare:
(Name of person who completed service)

1. That I am not a party to this action and I am over 18 years of age.

2. That I personally served a copy of the Summons and the following documents:

_____

_____

_____

upon _____, at the following
(Name of Respondent/Defendant who was served)

address: _____

_____

on the _____ day of _____, 20_____.
(Month) (Year)

This document does not contain the Social Security Number of any Person.

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

_____
(Signature of person who completed service)

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

DAVID DEZZANI AND ROCHELLE DEZZANI

Plaintiff,

Case No:CV15-00826

vs.

KERN & ASSOCIATES, LTD., ET AL

Defendant

DECLARATION OF SERVICE

STATE OF NEVADA
COUNTY OF WASHOE ss.:

KOREY HOERRES, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affidant received copy(ies) of the **SUMMONS; COMPLAINT**, on **08/28/2015** and served the same on **08/28/2015** at **2:51 PM** by delivering and leaving a copy with:

TERESA GEARHART, LEGAL ASSISTANT who stated he/she is authorized to accept service on behalf of **KERN & ASSOCIATES, LTD.**.

Service address:5421 KIETZKE LANE #200 Reno, NV 89511

A description of **TERESA GEARHART** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	**Caucasian**	**Brown/Grey**	**45**	**5ft 6in**	**131-140lbs**
Other Features:					

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

Sworn to and subscribed before me on 08/28/2015
by KOREY HOERRES

Notary Public

67649

STEPHANIE MARTELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 05-97425-2 - Expires June 9, 2017

X Korey Hoerres
KOREY HOERRES
Registration# R-083219
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: KERN

SECOND JUDICIAL DISTRICT COURT

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, filed in the case number:

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

(Signature)

JOHNNO LAZETICH
(Print Name)

(Attorney for)

FILED
Electronically
2015-09-17 12:46:35 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5146157 : csulezic

2315
GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane Suite 200
Reno, Nevada 89511
Telephone: (775) 324-5930
Telefax: (775) 324-6173
E-mail: gaylekern@kernltd.com

Attorneys for Kern & Associates, Ltd. and Gayle Kern

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5,

Defendants.
_____/

CASE NO.: CV15-00826

DEPT. NO.: 10

DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S MOTION TO DISMISS COMPLAINT

Defendant GAYLE A. KERN, dba KERN & ASSOCIATES, LTD., ("Kern"), in *pro per*, moves this Court for an order dismissing the Complaint with Prejudice as to Kern pursuant to NRCP 12(b)(1), NRCP 12(b)(5), NRCP 12(h)(3), and NRS 38.310, for the reasons outlined in the following Memorandum of Points and Authorities, including but not limited to the following: (i) at all times material to the allegations of the Complaint, Kern was acting solely as an attorney for the governing body of the McCloud Condominium Association and as a matter of law, a third party cannot maintain a cause of action against another party's attorney; (ii) Plaintiffs failed to state a claim against Kern for which relief may be granted; and (iii) the court lacks subject matter jurisdiction over any legitimate claims against Kern becuase any legally cognizable claims against Kern must first be arbitrated or mediated in accord with the provisions of NRS 38.310-360.

///

This Motion to Dismiss is based upon the following Memorandum of Points and Authorities, all exhibits attached hereto, all pleadings and papers on file herein, and any oral argument the court deems necessary. All exhibits that are attached to this motion are referenced to and discussed in the Complaint on file. Therefore, they are not exhibits outside of the allegations of the Complaint and all matters discussed are within the Complaint and can be considered by the Court without converting the motion to dismiss into a motion for summary judgment.

DATED this 9th day of September, 2015.

KERN & ASSOCIATES, LTD.

GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STANDARD FOR DISMISSAL

The Nevada Rules of Civil Procedure provide that the defense of lack of jurisdiction over the subject matter and the defense of failure to state a claim upon which relief may be granted may, at the option of the defendant, be made by motion. NRCP 12(b)(1); NRCP 12(b)(5). "If, on a motion . . . to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in NRCP 56...." NRCP 12(b). "Documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) (analyzing similar federal rule). Recording of a document imparts constructive notice of its contents. NRS 111.315. The Court may take judicial notice of "facts in issue or facts from which they may be inferred. A judicially noticed fact must be . . . [c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned so that the fact is not subject to reasonable dispute." NRS 47.130.

///

NRCP 12(h)(3) provides that "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." The burden of proving the jurisdictional requirement is properly placed on the plaintiff. *See Morrison v. Beach City LLC*, 116 Nev. 34, 991 P.2d 982 (2000) *citing Nelson v. Keever*, 451 F.2d 289 (3d Cir. 1971).

Under NRCP 8(a), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." A complaint which fails to satisfy this standard is subject to dismissal for failure to state a claim upon which relief can be granted. NRCP 12(b)(5).

In determining whether this standard is met, the district court "considers all factual assertions in the complaint to be true and draws all reasonable inferences in favor of the plaintiff" *See Kahn v. Dodds (In re AMERCO Derivative Lit.)* 252 P.3d 681, 692 (Nev. 2011) citing *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 635, 137 P.3d 1171, 1180 (2006). The Nevada Supreme Court has reiterated, however, that "[t]o survive dismissal, a complaint must contain some 'set of facts, which, if true, would entitle [the plaintiff] to relief.'" *Kahn*, 252 P.3d at 692, citing *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224,228, 181 P.3d 670, 672 (2008). In fact, the allegations must give fair notice of a *legally sufficient claim. See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (emphasis added), citing *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407,408 (1984).

When ruling on a motion to dismiss, "the court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-755 (9th Cir. Cal. 1994) (analyzing similar federal rule). In the instant matter, not only have Plaintiffs attempted to assert claims against an adverse party's attorney, which they cannot do as a matter of law, the factual allegations of the Complaint are unsupported by the evidence provided by the Exhibits attached hereto which relate directly to Plaintiffs' allegations.

For the reasons set forth herein, the Court should dismiss each of Plaintiffs' causes of action against Kern, with prejudice, as Plaintiffs failed to assert any facts that give rise to any plausible claim against Kern for which relief can be granted pursuant to NRCP 12(b)(5). If the Court determines Plaintiffs asserted any legally sufficient claims against Kern, the Court should still dismiss all claims against Kern because the Court lacks subject matter jurisdiction over those claims. Any legally cognizable claims against Kern arise from the "interpretation, application and or enforcement" of the CC&Rs and, therefore,

those claims must be submitted to mediation or arbitration in accord with the mandatory requirements of NRS 38.310. If not otherwise dismissed pursuant to NRCP 12(b)(5), all claims against Kern should be dismissed in accordance with NRCP 12(b)(1), NRCP 12(h)(3), and NRS 38.310(1).

II. STATEMENT UNDISPUTED FACTS

Kern is a professional corporation providing legal services to a variety of clients in Northern Nevada including, but not limited to, over 250 common-interest community homeowner associations, including the McCloud Condominium Homeowners Association ("Association"). Complaint ¶ 2, 3. At all times material to the allegations of the Complaint, Kern was acting solely as attorney for the Association. Complaint ¶¶ 13, 14, 17, 19, 22, 35.

Plaintiffs David Dezzani and Rochelle Dezzani ("Plaintiffs" or "Dezzanis") are members of the Association and owners of Unit #211 in the Association (the "Unit" or "Property"). Complaint ¶¶ 1. The Association is governed by the Revised Declaration of Limitations, Covenants, Conditions and Restrictions of McCloud Condominium Homeowners' Association ("CC&Rs"), recorded January 28, 2008, as Document No. 3614779 with the Office of the Washoe County Recorder. Complaint ¶ 11, 12, 25, 30, 33; *See* Kern Exhibit "1". Plaintiffs purchased the Unit on July 1, 2004. Complaint ¶ 6. At the time Plaintiffs purchased the Property, the rear deck had been extended from its original dimensions by a previous owner. Complaint ¶ 8. The deck extension had been approved by the Association's Board of Directors in 2002. *See* Plaintiffs' Exhibit 3. Upon exterior inspection of the rear deck, the Association's Board of Directors issued the Dezzanis a "Notice of Violation" indicating that the deck extension was unapproved and unallowed pursuant to the CC&Rs. Complaint ¶ 11, 12, 13; Plaintiffs' Exhibit 1. The Notice of Violation proposed two options for the Plaintiffs to correct the violation - they could either submit an application for the restoration of the deck to its original condition OR could sign a Covenant stating that the deck extension in its current condition could remain on the Plaintiffs' Property during the entire course of their ownership but would be required to be removed at the owner's expense after three sucessive transfers of ownership. Plaintiffs' Exhibit 1. The pertinent provisions of the CC&Rs, as noticed in the Notice of Violation, provide as follows:

> 12.5 Association Maintenance and Decoration Authority. The Board of Directors, or its duly appointed agent, including the manager, if any, shall have the exclusive right to paint, decorate, repair, maintain and alter or modify the exterior walls, balconies, railings, exterior door surfaces, roof and all installations and improvements in the

> common area, and no owner of a condominium shall be permitted to do, or have done, any such work. The approval of the Board of Directors shall be required in writing for the installation of any awnings, sunshades, or screen doors, or any antennae or structures on the roof of any condominium building.
>
> 13.8.2 [An Owner] May not change the appearance of the Common Areas, the exterior appearance of a unit, any component that may be seen from the exterior of the building, or any other portion of the Project, or make any change or modification to that Owner's Unit, such as replacing carpeting with hardwood floors, without permission from the Board or the Architectural Committee, as applicable.

Kern Exhibit "1".

During the course of her representation of the Association, Kern advised the Association regarding the extension of multiple rear decks within the Community. Complaint ¶ 35; *See* Kern Exhibit "2". Kern assisted the Board of Directors in issuing the Notice of Violation to Plaintiffs. Complaint ¶ 13. Upon receiving correspondence from the Plaintiffs regarding the Notice of Violation, the Board of Directors requested Kern to reply to those communications. Complaint ¶ 14; Kern Exhibit "2". Kern communicated with the Dezzanis on behalf of the Association by letter dated April 4, 2013. *Id.* The letter clearly informed the Dezzzanis that Kern was acting as attorney for the Association. The letter states in pertinent part:

> "Dear Mr. And Mrs. Dezzani:
>
> I represent the McCloud Condominium Homeowners Association. The Board requested I respond to your email request to review communications and/or information related to another unit and Board minutes.

Kern Exhibit "2", pg. 1.

The letter outlined the Association's position regarding the deck extension, stating, "The Board understands your frustration and appreciates you are addressing the matter of the unapproved deck extension that wrongfully encroaches in the common area. There is no question the extension exists in the common area, as do the other extensions. The common area is owned in common by *all* owners of the community. While it is unfortunate the issue of deck extensions and the wrongful taking of common area was not addressed earlier, the Association has properly taken action to protect the integrity of the common area. There is no question common area is not permitted to be given to any one owner for his/her exclusive use and enjoyment, thereby reducing the common area for the other homeowners. It is the wrongful conversion of common area that is the problem. Simply put, there is no lawful transfer of common area to individual owners absent a vote of the membership. *See* NRS 116.3112; Kern Exhibit "2". On May 3, 2013, Plaintiffs emailed the Association's Board of Directors with a lengthy tirade of

accusations against the Association's Board of Directors, management company and Kern directly. *See* Plaintiffs' Exhibit 2. The email purported to justify the Dezzani's position regarding the deck and asserted that the impropriety of the Association's position. *Id.* In various places, the email refers to Kern's representation of the Association and the communications Kern had with the Plaintiffs on behalf of the Association. The email explicitly acknowledges that Kern communicated directly with the Dezzanis for the purpose of convening the association's legal position with regard to the deck extensions.

Kern responded by letter dated May 10, 2013, in which she clearly indicated that she represents the Association and that the Dezzanis should direct all further communication regarding the deck extension to Kern rather than directly to the Board of Directors. Specifically, the letter stated:

> The Board of Directors requested I respond to your various communications.... If you have any further communications, the Board request that you communicate with me. We appreciate your anticipated cooperation. If I have failed to address any of your communications, please advise me.

Kern Exhibit "3".

After a hearing on the matter, *attended by Kern on behalf of the Association*, the Board issued the Result of Hearing, dated September 5, 2014. Complaint ¶ 18; *See* Plaintiffs' Exhibit 5. Kern continued to receive and reply to communications regarding the deck extension from the Dezzanis. Complaint ¶ 20, 21, 22. At all times, Kern responded on behalf of her client, the Association, and asserted the legal positions she was retained to express by her client.

On May 4, 2014, Plaintiffs filed the Complaint in district court asserting claims against the Kern and Karen Higgens, an individual member of the Board. which have no basis in law or fact. The claims asserted against Kern were never submitted to the NRED as required by NRS 38.310(1). All claims against Kern must be dismissed in accord with NRCP 12(b)(5), and or NRCP 12(b)(1), NRCP 12(h)(3) and NRS 38.310(1).

III. AUTHORITIES AND LEGAL ARGUMENTS

A. Plaintiff Has Failed to Assert any Claims Against Kern For Which Relief May be Granted.

Even if the Complaint is not dismissed in its entirety based on the lack of any cognizable claim against the attorney for the Association, there are independent grounds for dismissal of each and every

claim for relief. The Complaint seeks four inarticulate claims for relief. Apparently, the Plaintiffs assert that Kern engaged in retaliatory action against them, threatened, harassed or otherwise caused emotional distress to them in violation of NRS 116.31183 and NRS 116.31184, and further acted and/or directed others to act negligently, wrongfully, wantonly, willfully and/or intentionally in violation of various provisions of Chapter 116 of the Nevada Revised Statutes governing the conducting of meetings and voting in a common-interest community. Complaint ¶¶ 26, 36, 38, 40. The Complaint acknowledges that Kern provided legal services and advice to the Board and drafted, edited and approved Board correspondence, yet seeks to hold Kern independently responsible for the acts of the Association. Complaint ¶¶ 13, 14, 17, 19, 22, 24, 25, 35. At all times, Kern was acting as agent for the Association, which Plaintiff does not contest. It is fundamental axiom of agency law that a principal is liable for the acts of its agent committed within the scope of the agency. Even if the fact that Kern was at all times acting as attorney for the Association were not determinative of all claims against Kern, there is no theory of liability by which Kern could be independently liable to the Dezzanis.

1. As A Matter of Law, No Cause of Action Can Be Asserted Against Kern Who Acted as Attorney For the Association.

As a matter of law, the Plaintiffs cannot assert any cause of action against Kern who was at all times material to the allegations of the Complaint, acting as attorney for the association and owed no duty to the Plaintiffs. The Dezzanis are suing Kern in her direct capacity as counsel for the Association, who took actions authorized by law, to correct a wrongful transfer of common area property to an individual unit owner without a vote of the majority of homeowners. Rather than asserting claims challenging the legality of the Association's position, the Plaintiffs are attacking Kern because of the legal advice she provided to her client. However the purported wrongful actions are characterized , it does not change the fact that Kern owed a duty to her client, the Association, and owed no duty to the Dezzanis in their individual capacity.

Regardless of Plaintiffs' opinions or interpretation of the CC&Rs or the provisions of NRS Chapter 116, only a client may maintain an action against an attorney for breach of contract, or negligence, or breach of fiduciary duty, or failure to adhere to a recognized standard of care. The Nevada Supreme Court has repeated held that no civil cause of action exists against an attorney based upon any violation of the Rules of Professional Conduct. *See Ricks v. Dabney (In re Jane Tiffiany Living Trust)*, 124 Nev.

74; 177 P.3d 1060 (2008); *see also, Mainor v. Nault,* 120 Nev. 750, 768-769; 101 P.3d 308, 320-321 (2004). Other jurisdictions are in accord. *See Ex. Parte Toler*, 710 So.2d 415, 416 (Ala. 1998); *Orsini v. Larry Moyer Trucking Inc.*, 310 Ark. 179, 184, 833 S.W.2d 366,369 (Ark 1992).

Furthermore, Plaintiffs cannot maintain an action sounding in tort against Kern, because as the attorney for the Association, Kern owed no duty to them. Any liability sounding in tort must be based upon an underlying duty owed to the aggrieved party. No such duty is present in here. In *B.L.M. v. Sabo & Deitsch*, 55 Cal. App. 4th 823, 64 Cal. Rptr. 2d 335 (1997), the California appellate court affirmed the granting of a motion for summary judgment against B.L.M because respondent law firm represented only its client, the City, and the law firm owed no duty to respondent as a third party beneficiary of that employment contract. The Dezzanis are clearly not a third party beneficiary to the employment contract between Kern and the Association, and as a matter of law, Kern did not owe a duty to them. The Dezzanis are individual members of the Association; however, Kern's duty is to the Association itself. She does not represent each and every owner as members of the Association. As such, the Plaintiffs may not bring a cause of action against her directly.

In *Bily v. Arthur Young & Co.*, 3 Cal 4th 370, 834 P.2d 745 (1992), the court addressed an auditor's liability and found no liability to third parties unless the employment contract specifically identifies the party as a third party beneficiary. As noted by the court in the *B.L.M. v Sabo* decision, to find that by entering into a contract to provide legal services, the attorney also owed a duty to the party against whom action was to be taken, is unworkable and undermines the very nature of the attorney-client relationship.

Numerous decisions have confirmed that an attorney for an adverse party cannot be liable to a third party because no duty is owed by the attorney to that third party. *See Norton v. Hines,* 49 Cal. App. 3d 917, 123 Cal. Rptr. 237 (1975); *Weaver v. Superior Court,* 95 Cal. App. 3d 166,180, 156 Cal. Rptr. 745 (1979); *Parnell v. Smart,* 66 Cal. App. 3d 833, 837-838, 136 Cal. Rptr. 246 (1977); *Omega Video Inc. V. Superior Court,* 146 Cal. App. 3d 470, 480, 194 Cal. Rptr. 574 (1983); *St. Paul Title Co. v. Meier,* 181 Cal. App. 3d 948, 952, 226 Cal. Rptr. 538 (1986).

To the extent Plaintiffs' claims sound in breach of contract, Plaintiffs simply may not assert them against Kern as the attorney for the Association. In Nevada, "[a] breach of contract may be said to be a material failure of performance of a duty arising under or imposed by agreement." *Bernard v. Rockhill*

Dev. Co., 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987). "A plaintiff in a breach of contract action must show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach." *Brown v. Kinross Gold U.S.A., Inc.*, 531 F.Supp. 2d 1234, 1240 (D.Nev. 2008)(internal quotations omitted), citing *Saini v. Int'l Game Tech.*, 434 F.Supp. 2d 913, 920-21 (D.Nev. 2006).

The essential element of a claim for breach of contract, i.e., a contract, is missing as to Kern. Kern is not personally bound by the CC&Rs. There is not now, and never was any contract between Kern and Plaintiff. Plaintiff was clearly not a third party beneficiary to any contract between Kern and the Association. Plaintiff does not even allege the existence of a contract between Kern and Plaintiff. As a matter of law, there can be no claim sustained against Kern for a breach of a non-existent contract.

Plaintiffs cite the "lengthy email" which they sent to the Board of Directors accusing Kern of possessing "faulty knowledge of the facts of the law, a propensity to presume matters without evidence and a willingness to espouse legal opinions which ignore, overlook, misconstrue and/or fail to consider applicable Nevada laws." Complaint ¶ 24. Besides being entirely unsubstantiated, these assertions provide no basis for a cause of action against Kern. Kern had no duty to provide legal opinions to Plaintiffs. Rather, any legal opinions Kern communicated to the Plaintiffs were on behalf of the Association. Plaintiffs apparently use this assertion to support a claim against Kern under NRS 116.31183, which prohibits retaliatory action by agents of the Association against owners. Again, Plaintiffs plead no set of facts which serve to prove that Kern in any way engaged in retaliatory actions towards the Plaintiffs. Plaintiffs were the party who went through great lengths to attack Kern's representation of the Association and her professional capabilities. Kern merely responded to the allegations contained in Plaintiffs' numerous emails and letters expressing the position of the Board.

Similarly, Plaintiffs point to NRS 116.31184 as an apparent source for their claim against Kern. Complaint ¶ 36. There are simply no facts in the Complaint that support Plaintiffs' reliance on this statute. NRS 116.31184 prohibits an agent of the Association from threatening, harassing or otherwise causing harm or serious emotional distress to an owner or creating a hostile environment for an owner. Nowhere in the Complaint do Plaintiffs assert any facts which, if true, would illustrate that Kern threatened or harassed Plaintiffs. Actually, it was the Plaintiffs who, by their own admission, "communicated with the Board on many occasions; challenging and criticizing not only the [Notice of Violation's] drafting, editing,

authorship, reasoning, logic and legality" and "questioning the competency of the legal services provided to the Board by Defendants Kern." Complaint ¶ 14. To survive dismissal, Plaintiff must assert some set of facts which, if true, would justify recovery. *Kahn*, 252 P.3d at 692. As Plaintiffs offer no facts which demonstrate that Kern threatened or harassed them in any way, their claim must fail.

Finally, Plaintiffs cite various other provisions of Chapter 116 of the Nevada Revised Statutes in support of their claims, including NRS 116.3108, 116.31083, 116.31084, 116.31085, and 116.31087. ¶ 38. These provisions deal with the meetings of unit owners, meetings of the executive board, voting by members of the executive board, the right of unit owners to speak at certain meetings, the right of unit owners to have certain complaints placed on the agenda of meetings and the maintenance and availability of Association books and records. These statutes provide no cause of action against Kern, as the attorney of the Association. Kern owed a duty to the Association by virtue of her representation. She fulfilled that duty by advising the Association regarding the multiple issues that arouse because of the deck modifications. However, that duty did not extend to the Plaintiffs as individual owners.

For all of the foregoing reasons, Plaintiff has failed to state a claim against Kern upon which relief may be granted and the Complaint must be dismissed in its entirety against Kern, with prejudice, in accord with NRCP 12(b)(5).

B. <u>Dismissal is Mandatory Where Plaintiff has Failed to Comply with NRS 38.310 and the Court Lacks Subject Matter Jurisdiction.</u>

NRCP 12(h)(3) provides that "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Even if the authorities and arguments set forth in Section A above did not otherwise require the dismissal of all claims against Kern, Plaintiffs' claims against Kern are not exempt from the requirements of NRS 38.310.

Nevada law requires that all claims involving the interpretation, application or enforcement of the governing documents applicable to residential property be mediated pursuant to the provisions of NRS 38.300 to 38.360, inclusive, before any action may be filed in this Court. Nevada law could not be clearer. NRS 38.310(1) provides in pertinent part:

> **No civil action** based upon a claim relating to:
>
> (a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted

> by an association; ... **may be commenced in any court in this State unless the action has been submitted to mediation...**

NRS 38.310(1)(emphasis added).

NRS 38.320 states, in pertinent part: "Any civil action described in NRS 38.310 must be submitted to mediation or referred to a program by filing a written claim with the [NRED]." (Emphasis added.) Upon completion of the mediation or arbitration, NRED will issue a certificate. NAC 38.350(7).

NRS 38.300(3) defines a "civil action" as follows:

> "Civil action" includes an action for money damages or equitable relief. The term does not include an action in equity for injunctive relief in which there is an immediate threat of irreparable harm, or an action relating to the title to residential property.

NRS 38.300(3).

The allegations of the Complaint and Plaintiffs' spurious claims against Kern rest entirely upon an interpretation of the provisions of the CC&Rs and whether the Association was entitled to issue the take enforcement action against the Plaintiffs for the deck extension as an unlawful allocation of common area property. Plaintiffs allege that the deck extension was lawful pursuant to the CC&Rs and that the Association and Kern's enforcement actions were unjustified. Complaint ¶¶ 25,

Articles 12.5 and 13.8.2 of the CC&Rs clearly provide that the Association has the exclusive authority to modify the common areas. Additionally, Section 4.1 provides that "The undivided, fractional interest a unit owner has in the Property's common areas... are established and are to be conveyed with the unit, and cannot be changed." *See* Kern Exhibit "1". Plaintiffs assert that the conveyance of common area property for their exclusive use, in the form of the rear deck extension, did not constitute a violation of the CC&Rs. The validity of Plaintiffs' claims, assuming that any could even be asserted against Kern as attorney for the Association, depend entirely upon an interpretation of the CC&Rs.

The assertion of a various violations of Chapter 116 of the Nevada Revised Statutes does not exempt Plaintiffs from mediating or arbitrating a *legally cognizable* claim asserted against Kern. However, for all of the reasons set forth in Section A above, Plaintiffs have no legally cognizable claim against Kern. Even if there were a legally cognizable claim asserted, the Nevada Supreme Court has previously ruled that all disputes involving the "interpretation, application or enforcement" of the CC&Rs must be submitted to mediation or arbitration under NRS 38.310 before a civil action may be filed. *See*

e.g. McKnight Family, L.L.P. v. Adept Mgmt., 129 Nev. Adv. Op. 64, 310 P.3d 555, 559 (2013) (a claim for wrongful foreclosure involved the interpretation of covenants, conditions, or restriction and the court had no jurisdiction to consider the dispute until a Chapter 38 action had been prosecuted).

This case similarly requires an interpretation of the Association's CC&Rs and must be submitted to mediation. The Plaintiffs' assertions are dependant on the interpretations of the CC&Rs. Kern was retained by the Board of Directors to enforce various provisions of the CC&Rs. The Plaintiffs are challenging that representation and the authority by which the Association took enforcement action against them and Kern aided with the execution of that enforcement action. The Court simply cannot address the merits of the Plaintiffs' claim without an analysis of the Association's CC&Rs.

If not otherwise dismissed pursuant to NRCP 12(b)(5), all claims against Kern must be dismissed pursuant to NRCP 12(b)(1), NRCP 12(h)(3) and NRS 38.310. The court lacks subject matter jurisdiction over those claims which must be mediated or arbitrated as required by NRS 38.310.

IV. CONCLUSION AND RELIEF REQUESTED

As a matter of law, Plaintiffs failed to assert any legally cognizable claim against Kern. Kern was not in privity of contract with Plaintiffs and Kern owed no duty to Plaintiffs. Kern acted solely as counsel for the Association and was under no statutory or contractual duty to Plaintiff. Kern's obligations were to the Association to assist in the enforcement of the CC&Rs and ensure that no individual owner was permitted to retain portions of the common area at the expense of other members' undivided interest in the common area.. Kern fulfilled her duties to the Association and Plaintiffs have no claim against Kern under any legal theory. Even after considering all allegations of the Complaint as true, Plaintiff has failed to state a cause of action against Kern for which relief may be granted and the Court must dismiss the complaint pursuant to NRCP 12 (b)(5).

For all of the foregoing reasons, all of Plaintiffs' claims, must be dismissed against Kern. Plaintiffs failed to state a cause of action against Kern for which relief may be granted, and the Complaint should be dismissed, with prejudice, as to Kern.

To the extent the court does not dismiss all claims against Kern under NRCP 12(b)(5), this Court lacks jurisdiction over any and all legally cognizable claims asserted by Plaintiffs against Kern. Those claims concern the application, enforcement, or interpretation of the CC&Rs. The Court must dismiss all

claims against Kern because any legally cognizable claim against Kern must first be mediated or arbitrated as required by NRS 38.310. This Court lacks subject matter jurisdiction over those claims.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this 9th day of September, 2015.

KERN & ASSOCIATES, LTD.

By _____
GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S MOTION TO DISMISS COMPLAINT

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

____ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 17th day of September, 2015.

Teresa A. Gearhart
TERESA A. GEARHART

INDEX OF EXHIBITS

Exhibit No.	Exhibit Description	No. of Pages in Exhibit
1	CC&Rs	46
2	Kern letter to Dezzanis dated April 4, 2013	2
3	Kern letter to Dezzanis dated May 10, 2013	1

F I L E D
Electronically
2015-09-17 12:46:35 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5146157 : csulezic

EXHIBIT "1"

EXHIBIT "1"

DOC # 3614779
01/28/2008 12:25:46 PM
Requested By
ROBERT C MADDOX & ASSOCIATES
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: $59.00 RPTT: $0.00
Page 1 of 46

APN: .

When Recorded, Mail to:

Name: ROBT C. MADDOX & ASSOCIATES
Addr: 10587 Double R Blvd, Ste 100
Reno NV 89521
775 322-3666

Space for Recorder's Use Only

Name of Document:

REVISED DECLARATION OF LIMITATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS OF McCLOUD CONDOMINIUM HOMEOWNERS' ASSOCIATION

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the personal information of any person or persons. (Per NRS 239B.030)

Dated January 24, 2008

(Signature)

ROBERT C. MADDOX, GENERAL COUNSEL

REVISED DECLARATION OF LIMITATIONS, COVENANTS, CONDITIONS, AND RESTRICTIONS OF McCLOUD CONDOMINIUM HOMEOWNERS' ASSOCIATION

This Revised Declaration of Limitations, Covenants, Conditions and Restrictions is made this 17th day of November, 2008, by McCloud Condominium Homeowners' Association, a Nevada Non-Profit Organization ("Declarant").

RECITALS:

1. McCloud Condominiums ("the Property") was created and developed by Embassy Estates, Ltd., a Canadian corporation, as a common interest condominium community pursuant to the then-applicable provisions of the Nevada Revised Statutes.

2. Embassy Estates, Ltd. sold and conveyed interests in the Property subject to a Declaration of Limitations, Covenants, Conditions, and Restrictions of McCloud Condominiums, dated April 29, 1982 ("the 1982 Declaration").

3. Ownership of the Property in its entirety is now vested in the members of the Association, and no longer under Declarant control or ownership.

4. In 2003, the Nevada Legislature enacted substantive and material changes to Nevada Law governing common interest communities.

5. Pursuant to Articles VI and XV of the 1982 Declaration, the McCloud Condominium homeowners approved a resolution to amend the 1982 Declaration to conform with the changes to Nevada Law governing common interest communities, as well as the current status of the McCloud Condominium community.

WHEREFORE, the McCloud Condominium Homeowners' Association adopts this Declaration in place and instead of the 1982 Declaration as the document that governs ownership in the McCloud Condominium complex.

DECLARATION:

The Property, which is more particularly described in Exhibit "A" to the 1982 Declaration and incorporated here by reference, shall be held, conveyed, sold, encumbered, leased, rented, used, occupied, improved, or otherwise affected in any

manner subject to the declarations, limitations, easements, covenants, conditions, and restrictions stated in this Revised Declaration of Limitations, Covenants, Conditions and Restrictions, which have been declared and agreed upon for the purpose of:

1. Enhancing, maintaining, and protecting the value, desirability and attractiveness of the Property, and to mutually benefit each of the condominiums located on the Property;

2. Creating mutual equitable servitudes upon each condominium in favor of each and all other condominiums on the Property;

3. Creating reciprocal rights and privity of contract and estate between all persons acquiring or owning an interest in the McCloud condominiums and their grantees, heirs, devisees, successors, and assigns, which shall be deemed to run with the land or any portion thereof or interest therein, and shall be of burden and benefit to all such persons, their grantees, heirs, devisees, successors, and assigns.

All provisions in this Revised Declaration shall be deemed to run with the land as covenants running with the land or as equitable servitudes, or as liens, as the case may be, and shall inure to the benefit of and be binding upon the heirs, personal representatives, grantees, lessees, successors and assigns of the owners, and to all who acquire or own any interest in the Property in whatever manner such interest may be obtained.

ARTICLE I

DEFINITIONS

Except where the context clearly indicates differently, certain terms used in this Declaration and in the Articles of Incorporation of McCloud Condominiums are defined and shall have meaning, as follows:

1.1 1982 Declaration. The "1982 Declaration" means the Declaration of Limitations, Covenants, Conditions and Restrictions dated April 29, 1982, and recorded against the Property.

1.2 Act. "Act" means Chapter 116 of the Nevada Revised Statutes, as the same may be amended from time to time.

1.3 Allocated Interests. "Allocated Interests" means the undivided interests in the common area and limited common areas, the liability for common expenses, and the votes in the Association, which are allocated to units on the Property pursuant to this Declaration.

1.4 Architectural Committee. "Architectural Committee" means the Board and those other persons acting as the architectural committee under this Declaration pursuant to Article XIII.

1.5 Architectural Committee Rules. "Architectural Committee Rules" means the rules, if any, adopted by the Architectural Committee.

1.6 Articles. "Articles" means the Articles of McCloud Condominium Homeowner's Association, as filed with the Secretary of State of the State of Nevada.

1.7 Association. "Association" means the McCloud Condominium Homeowners' Association, a non-profit corporation, incorporated pursuant to the laws of the State of Nevada, which manages and controls all of the common areas, including the limited common area, as more particularly defined and illustrated in Exhibit "A" to the 1982 Declaration.

1.8 Association Property. "Association Property" means all real and personal property now or hereafter owned by or leased to the Association or in which the Association has a recognizable legal or equitable present or future interest.

1.9 Beneficiary. "Beneficiary" means a beneficiary under a deed of trust or mortgagee under a mortgage, and/or the assignee of such beneficiary or mortgage.

1.10 Board. "Board" means the Board of Directors of the Association as duly elected or appointed pursuant to the Bylaws of the Association, and is synonymous with "Executive Board" as defined by the Act.

1.11 Bylaws. "Bylaws" means the Bylaws of the Association as they same may be amended, changed, or modified from time to time.

1.12 Common Area. "Common Area" means that portion of the project that is not located within any unit, including:

a. Sidewalks, shrubbery, and other plantings, parking area, garages,

and all other land included in the description of the project in Exhibit "A" to the 1982 Declaration, except the land under the buildings in which units are located;

b. The water supply system and the sewage disposal system located in the project including pipes, sewage lines, and other facilities;

c. Foundations, columns, girders, beams, and supports of the condominium buildings, the perimeter walls around each unit to the interior surfaces of each unit, and other walls that are not within a Unit;

d. Roofs, stairs, stairways, stairway landings, and corridors that are not within the unit;

e. Pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets of the units;

f. All installations of power, lights, gas, water, and heating existing for common use; and

g. All other parts of the project, including personal property, necessary or convenient to its existence, maintenance, and safety, or normally in common use.

1.13 Common Expenses. "Common expenses" means all sums lawfully assessed against the owners by the Association, including both regular periodic assessments and special assessments as provided for in this Declaration.

1.14 Condominium. "Condominium" means a condominium as defined in NRS 117.010 and NRS 116.027, and shall be an estate and real property consisting of:

a. A separate fee simple interest in the space within a unit;

b. An undivided, fractional interest as a tenant in common in the building in which the unit is enclosed and that portion of the real property on which the building containing the unit is located, together with all applicable easements, rights, and appurtenances, which is equal to a fraction whose numerator is one (1) and whose denominator is the total number of units located in the building in which the

owner's unit is enclosed at any given time and from time to time; and

c. An undivided, fractional interest as a tenant in common in the Property's Common Area, together with all applicable easements, rights, and appurtenances, which is equal to a fraction whose numerator is one (1), and the whose denominator is the total number of units on the Property at any given time and from time to time).

1.15 Declarant. "Declarant" means the McCloud Condominium Homeowners' Association or its successors, assigns, or representatives in the event Declarant assigns or otherwise transfers its rights and obligations.

1.16 Declaration. "Declaration," or "this Declaration," means this instrument entitled Revised Declaration of Limitations, Covenants, Conditions and Restrictions of McCloud Condominiums, and any and all amendments thereto.

1.17 Deed of Trust. "Deed of Trust" means a deed of trust or a mortgage encumbering any portion or all of the Property.

1.18 Foreclosure. "Foreclosure" means a foreclosure under a Deed of Trust by judicial action or exercise of power of sale.

1.19 Improvements. "Improvements" means all structures and works of improvement of every type and kind, including, but not limited to, buildings, outbuildings, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, patios, landscaping, sprinklers, hedges, windbreaks, planting, planted trees, shrubs, poles, signs, free-standing lighting fixtures, exterior air conditioning, and water softener fixtures or equipment, which have been or will be constructed on the Community.

1.20 Limited Common Area. "Limited Common Area" means that portion of the common area, such as garages, that is designated as reserved or designated by operation of NRS 116.2102(2) and/or (4) for the exclusive use of one or more, but fewer than all, of the units.

1.21 Manager. "Manager" means every person or entity designated or retained by the Board to manage the affairs of the Association and to perform various other duties assigned by the Board and by the provisions of this Declaration.

1.22 Member. "Member" means and refers to every person or entity who holds

membership in the Association by virtue of being an owner of one or more of the Property's units. If a unit has more than one owner, "Member" refers collectively to all of the owners of a unit.

1.23 Owner. "Owner" means any person or entity who owns a unit within the Property.

1.24 Plan. "Plan" means: (a) the Final Map; (b) those items set forth in NRS 116.2109(5), including drawings of improvements that are filed with agencies that issue permits for the Property, and all number and letter designations that identify the units; and (c) such other diagrammatic plans and information regarding the Property as may be required by the Act or other applicable law, or as may be included in the discretion of the Declarant, as each may be amended and supplemented from time to time, and all as recorded in the Office of the County Recorder, Washoe County, Nevada, all of which are incorporated here by reference.

1.25 Project. "Project" means the Property, as described in Exhibit "A" to the 1982 Declaration, including land, all buildings and other improvements and structures now or hereafter on the Property, all easements, rights and appurtenances belonging to the Property, and all personal property now or hereafter used in connection with the Property.

1.26 Rules and Regulations. "Rules and Regulations" means such rules and regulations as the Board from time to time may adopt pursuant to the terms of this Declaration concerning the use of the Property, or any part thereof.

1.27 The Property. "The Property" means McCloud Condominiums, as more particularly described in Exhibit "A" to the 1982 Declaration, together with all improvements now or hereafter located on the Property, and together with all easements, rights, and appurtenances belonging to the Property.

1.28 Unit. "Unit" means a physical portion of the Property designated for separate ownership or occupancy, as described in Article II. In interpreting deeds and plans, the existing physical boundaries of the unit reconstructed in substantial accordance with the original plans shall be conclusively presumed to be its boundaries, rather than metes and bounds, or other description, expressed in the deed or plan, regardless of settling or lateral movement of buildings and regardless of minor variance between boundaries shown on the plan or in the deed and those of the building.

ARTICLE II

DESCRIPTION OF LAND AND IMPROVEMENTS

2.1 **Ownership of a Unit.** Ownership of each individual unit on the Property shall consist of: (a) a fee simple interest in and to that particular unit; (b) an undivided fractional interest as a tenant in common in the building in which the unit is enclosed and the land under such building; (c) an undivided fractional interest as a tenant in common in the Common Area, as defined in this Declaration; (d) exclusive use of the limited common area designated for use by that unit; (e) the right to one garage; and (f) a membership in the Association.

2.2 **Unit Boundaries.** The boundaries of each unit are the interior surfaces of its perimeter walls, bearing walls, floors, ceilings, windows, and the portions of the building within those boundaries, except common areas or limited common areas. Each unit includes the spaces and improvements within those boundaries. Each unit has access to at least one entranceway, hallway, front porch, or stairway, which are common areas or limited common areas, and which connect with common grounds that constitute common areas.

2.3 **Limited Common Area.** Adjacent and appurtenant to any unit there may be limited common areas such as garages, balconies, porches, benches, storage lockers, entrance ways, and fireplace pods that are outside the perimeter walls of the unit but designated for the exclusive use of that unit.

2.4 **Relocation and Amendment.** Subject to the provisions of NRS 116.2112, the boundaries between adjoining units may not be relocated without the approval of the Board or the Architectural Control Committee. In addition to the plans and specifications required for approval under NRS 116.2112 and Article XIII of this Declaration, a request for a boundary adjustment must be accompanied by the written consent of all owners of the units affected by the relocation. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application shall state the proposed reallocation. In the event that the Board or the Architectural Control Committee approves the request for a boundary adjustment, the Association shall prepare an amendment that identifies the units involved, states the reallocations, and indicates the Association's consent (the consent of a majority of the members of the Association shall not be required). The amendment must be signed by those unit owners affected and contain words of conveyance between them. The approval of all holders of Deeds of Trust in the affected units shall be

endorsed on the conveyance. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

2.5 Recording Amendments. In accordance with NRS 116.2112, the Association shall prepare and record an amendment to the Plat and Plans as necessary to show the altered boundaries between adjoining units, along with the units' dimensions and identifying numbers. The applicants shall pay for the costs of preparation of the amendment and its recording, as well as any reasonable fees incurred by the Association related to the altered units boundaries so identified and recorded.

ARTICLE III

MEMBERSHIP

3.1 Members. The members of the Association shall be the owners of the units. Ownership of a unit entitles the record owner(s) of that unit to one (1) membership in the Association irrespective of the number of persons or entities that comprise the ownership of the unit (*i.e.*, one membership per unit), and is the sole qualification for membership. The number of memberships in the Association shall be equal to the number of units on the Property at any given time. Persons or entities holding a security interest in a unit for the performance of an obligation are not entitled to membership in the Association. Membership is appurtenant to and may not be separated from the ownership of any unit that is subject to assessment by the Association.

3.2 Transfer. An owner's membership shall not be transferred, assigned, pledged, hypothecated, conveyed, or alienated in any way, except upon the transfer of title of the unit, and then only to the transferee. Any attempt to make a prohibited transfer shall be void, and will not be reflected in the books and records of the Association. Any transfer of title to a unit shall operate automatically to transfer the appurtenant membership rights in the Association to the new owner. In the event the owner of any unit fails or refuses to transfer the appurtenant membership to the unit's transferee, the Association shall have the right to record the transfer upon the books of the Association and shall issue a new certificate to the purchaser, upon which the old certificate outstanding in the name of the seller shall be null and void as though the same had been surrendered. Prior to any transfer of title to a Unit (including the sale of a Unit under a recorded contract of sale), either the transferring owner or the

acquiring owner shall give notice to the Board of such transfer, including the name and address of the acquiring owner and the anticipated date of transfer. The Association shall have the right to charge a reasonable transfer fee payable to the Association on the date of transfer of title to the Unit.

ARTICLE IV

RIGHTS IN THE COMMON AND OPEN-SPACED AREAS

4.1 Undivided Interests. The undivided, fractional interests a unit owner has in the Property's common areas, in the building in which the unit is enclosed, and that portion of the real property on which the building containing the unit is located, as described and defined in Article I, Sections 1.11 and 1.13 of this Declaration, are established and are to be conveyed with the unit, and cannot be changed. A unit owner's undivided interests and the fee title to a unit shall not be separated or separately conveyed, and those interests shall be deemed to be conveyed or encumbered with the unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the unit.

4.2 Member's Easements of Use and Enjoyment. Each member shall, and the Association grants, a right and non-exclusive use of and enjoyment in and to the common areas, and an exclusive easement for the use and enjoyment of any Limited Common Areas appurtenant to the member's unit. Each member's easements of use and enjoyment shall be appurtenant to and shall pass with the title to every assessed condominium, subject to:

4.2.1 The right of the Association to establish, adopt, amend, and enforce uniform rules and regulations pertaining to the use of the common areas and limited common areas, including an assignment by the Association of a garage to each unit.

4.2.2 The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common areas and their facilities.

4.3 Delegation of Use. In accordance with the Bylaws and subject to the provisions of this Declaration and any applicable Rules and Regulations, any unit owner may extend and delegate his/her rights of use and enjoyment in the Common

Areas and their facilities to that owner's guests and invitees. If an owner has rented the entirety of that owner's unit to a tenant or tenants, then the owner and the owner's family members, guests, and invitees shall not be entitled to use and enjoy the recreational facilities of the Common Areas while the owner's Unit is occupied by such tenant(s). Instead, the tenant(s), while occupying such unit and during the period of occupancy, shall be entitled to use and enjoy the Common Areas and facilities and is permitted to extend to other persons the rights of use and enjoyment in the same manner as if such tenant(s) were an owner. Each owner shall at all times be responsible for any and all activities of that owner's tenants, guests, and invitees using the Common Areas.

4.4 Waiver of Use. No member may exempt himself from personal liability for assessments duly levied by the Association, or release his unit from the liens and charges against it, by waiver of his use and enjoyment of the common areas and their facilities or by abandonment of his unit.

4.5 Additional Provisions Relating to Common Areas. The Association and all unit owners, by acceptance of their respective deeds, covenant and agree as follows:

4.5.1 In order to preserve the rights of the owners with respect to the operation and management of the project, the common areas shall remain undivided; no owner shall bring any action for partition, except as provided in Article XI of this Declaration.

4.5.2 In the event any improvement on the Property and within the project is partially or totally destroyed and then rebuilt, the units' owners agree that minor encroachments of parts of the common areas due to construction shall be permitted and that valid easements for those encroachments and the maintenance thereof shall exist.

4.5.3 A non-exclusive easement for ingress, egress, and support through the common areas is appurtenant to each unit, and the common areas are subject to such easements.

4.5.4 The Association shall have the responsibility to manage, control, and maintain all of the common areas and limited common areas including but not limited to the common stairways, the common walkways, the parking area, the private driveways, and the exterior of the building, and such maintenance shall be of a high quality so as to keep the entire project in first-class condition and a good state of

repair. The Association shall have a perpetual non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

ARTICLE V

ASSOCIATION BOARD OF DIRECTORS; VOTING AND ELECTIONS

5.1 Board of Directors. The members of the Association shall elect a seven (7) member Board of Directors for two-year terms. Board of Directors members' terms shall be staggered such that no more than four expire in any year. At each annual meeting, the members shall elect, for a term of two (2) years, the number of Directors whose terms shall ordinarily expire at said annual meeting. All members of the Board of Directors shall be members of the Association.

5.2 Voting. Subject to the suspension of any voting rights of any units' owners as provided in this Declaration, each member of the Association shall be entitled to one (1) vote for each unit owned by that member. In the event a unit is owned by two (2) or more persons or entities, the voting power shall be exercised by only one of them.

5.3 Elections.

5.3.1 Eligibility. Not less than 30 days before the preparation of a ballot for the election of members of the Board of Directors, the secretary or other officer specified in the bylaws of the Association shall cause notice to be given to each unit's owner of his eligibility to serve as a member of the Board of Directors. Each unit's owner who is qualified, subject to the limitations stated in NRS 116.31034(6), to serve as a member of the Board of Directors may have his name placed on the ballot along with the names of the nominees selected by the members of the Board of Directors or a nominating committee established by the Association. Each person whose name is placed on the ballot as a candidate for a member of the Board of Directors must make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the Board. The candidate must make the disclosure, in writing, to each member of the association in the manner established in the bylaws.

5.3.2 Secret Ballot. Pursuant to NRS 116.31034, the election of any member of the Board of Directors must be conducted by secret written ballot, as follows:

5.3.2.1 The secretary or other officer specified in the bylaws of the Association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the McCloud community, or to any other mailing address designated in writing by the unit's owner.

5.3.2.2 Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the Association.

5.3.2.3 A quorum is not required for the election of any member of the Board.

5.3.2.4 Only the secret written ballots that are returned to the association may be counted to determine the outcome of the election.

5.3.2.5 The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

5.3.2.6 The incumbent members of the Board and each person whose name is placed on the ballot as a candidate for a member of the Board may not possess, be given access to, or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

5.4 Certification of Board Members. Each member of the Board shall, within 90 days after his appointment or election, certify in writing to the Association, on a form prescribed by the Nevada Real Estate Administrator, that he has read and understands the governing documents of the Association and the provisions of the Act to the best of his ability.

5.5 Election of Association Officers. The Board of Directors shall also elect from among them a president, two vice–presidents, a secretary, and a treasurer of the Association. The general powers and duties of the Board shall be as set forth in this Declaration, but may be more particularly defined by the Bylaws; provided, however, that this Declaration may not be amended directly or indirectly in any particular

manner by the enactment of any Bylaw or regulation, but only in the manner provided in this Declaration.

5.6 Vacancies. Vacancies on the Board of Directors caused by any reason other than removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

ARTICLE VI

DUTIES AND POWERS OF THE ASSOCIATION AND ITS MEMBERS

6.1 Powers of the Association. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Nevada and the powers conferred upon it pursuant to NRS 116.3102 and NRS Chapter 82, subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws, and this Declaration. The Association, acting by and through the Board as authorized by NRS 116.3103, shall have the power to do take any lawful action that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles, and the Bylaws, to conduct all business affairs of common interest to all owners, and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, the following:

6.1.1 Assessments. The Association shall have the power to establish, fix, and levy assessments as provided in this Declaration, and to enforce payment of assessments in accordance with the provisions of this Declaration.

6.1.2 Rules and Regulations. The Association shall have the power to adopt, amend, and repeal the rules and regulations governing the Common Area and its use, and for such other purposes as are expressly allowed by this Declaration or allowed pursuant to the Act. The Association shall also have the power to adopt, enact, and enforce the Rules and Regulations relative to the prohibitive and mandatory use restrictions set forth in Article XII in order to protect and enhance the value of the Property and the orderly functioning of the Community, and to adopt and respond to changing circumstances and times. A copy of any Rules and Regulations as adopted,

amended, or repealed shall be mailed or otherwise delivered to each member of the Association. In the case of any conflict between any provision of the Rules and Regulations and any provision(s) of this Declaration, the Articles, or Bylaws, the conflicting provision of the Rules and Regulations shall be superseded by the provisions of this Declaration, the Articles, or the Bylaws.

6.1.3 Enforcement. The Association, in its own name and on its own behalf or on behalf of the owners of two (2) or more units who consent, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, resolutions of the Board, or any amendments thereto, and to intervene in litigation or administrative proceedings on matters affecting the community; provided, however, that the Association shall have the exclusive right to enforce assessment liens. The Court in any such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorneys' fees. Any failure by the Association or by any owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so at any time thereafter.

6.1.4 Imposition of Penalties for Violation or Failure to Pay Assessments. If a unit's owner or a tenant or guest of a unit's owner violates any provision of the governing documents of the Association, including the obligation to pay assessments, the Association, acting by and through its Board, in accordance with the notice and hearing requirements of this Declaration, and in the manner provided in the Act, may:

6.1.4.1 Suspend the voting rights of that unit's owner for a reasonable time not to exceed thirty (30) days for any single violation, or for any period during which any assessment against the unit's owner remains unpaid and delinquent, after notice and hearing is given and held in accordance with the Bylaws of the Association and NRS 116.31031.

6.1.4.2 Impose a fine against the unit's owner or the tenant or guest of the unit's owner for each violation. The fine must be commensurate with the severity of the violation as determined by the Board, but must not exceed the maximum permitted by NRS Chapter 116. The limitations on the amount of the fine do not apply to any interest, charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

If a fine is imposed pursuant to this section and the violation is not cured

within 14 days, the violation shall be deemed a continuing violation. Thereafter, the Association, acting by and through its Board, may impose an additional fine for the violation for each 7-day period, or portion thereof, that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard. All past due fines: (1) bear interest at the legal rate per annum; (2) will include any costs of collecting the past due fine, subject to the limitations stated in NRS 116.31031(8); and (3) will include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

6.1.5 Delegation of Powers and Duties. The Association can delegate its powers, duties, and responsibilities to any committees, officers, employees, agents, and independent contractors of the Association, including a professional managing agent.

6.1.6 Services. The Association may obtain and pay for legal, accounting, and other services necessary and desirable in connection with the operation of the McCloud community and the enforcement of this Declaration.

6.1.7 Personal Property. The Association may purchase, acquire, and hold for the benefit of all the Owners and for the common areas necessary supplies and tangible and intangible personal property, and may dispose of the same by sale or otherwise.

6.1.8 Contracts. The Association may enter into a contract for a period not to exceed one (1) year.

6.2 Right of Action by Members of the Association. In addition to the rights of enforcement granted to the Association pursuant to section 6.1.3 of this Declaration, and subject to the provisions of NRS 116.745 – 116.795, any member of the Association shall have the right (but not the duty) to enforce any and all of the covenants, conditions, and restrictions now or hereafter imposed by this Declaration or the Act upon the Owners or upon any of the Property.

6.3 Duties of the Association. In addition to any other duties delegated to it by this Declaration, the Articles, or the Bylaws, the Association, acting by and through the Board, or other persons or entitles described in Section 6.1.5, has the obligation to conduct all business affairs of common interest to all members and to perform each of the following duties:

6.3.1 Management. The Association shall engage the services of a

professional manager to manage the Community, as provided in NRS 116.700.

6.3.2 Notice and Hearing for Imposition of Penalty. Pursuant to NRS 116.31031, the Association may not impose any penalty provided in section 6.1.4 of this Declaration unless:

6.3.2.1 Not less than thirty (30) days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and

6.3.2.2 Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with written notice specifying the details of the violation and the penalty to be imposed, the amount of the fine, if any, the date, time and location for a hearing before the Board on the violation, and a reasonable opportunity to contest the violation at the hearing. The hearing shall be conducted before three (3) members of the Board of Directors, a majority of whom must concur in the determination of whether a violation has been committed and whether a penalty should be imposed. A penalty may be imposed without a hearing only when the person against whom the penalty is proposed: (1) pays any proposed fine prior to the hearing; (2) executes a written waiver of the right to the hearing; or (3) fails to appear at the hearing after being provided with proper notice of the hearing.

6.3.3 Taxes and Special Assessments. The Association shall pay taxes and special assessments that are, or would become, a lien on the Property or common areas if, for any reason, the units and common areas are not separately assessed.

6.3.4 Insurance. The Association shall obtain and maintain, from reputable insurance companies, the insurance described in Article X.

6.3.5 Enforcement of Restrictions and Rules. The Association shall perform such other acts, whether or not expressly authorized by this Declaration, that may be reasonably necessary to enforce any of the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, or Board resolutions. By this provision and Declaration, the Association shall have reserved to it such easements as are necessary to perform its duties and obligations or to exercise its rights as set forth in this Declaration, the Bylaws, Articles, or the Architectural Control Committee Rules.

6.3.6 Association Property. The Association shall accept and exercise

jurisdiction over all property, real and personal, conveyed to the Association for which the Association has duties and obligations imposed upon it pursuant to this Declaration, including all common areas, easements for operation and maintenance purposes over any of the Property within the community, and easements for the benefit of Association members within the common areas.

6.3.7 Utilities. The Association shall acquire, provide, and pay for water, sewer, garbage disposal, refuse and other necessary utility services for the common areas.

6.3.8 Collection. The Association shall collect the monthly maintenance charge from all unit owners.

6.3.9 Fidelity Bonds. The Association shall purchase and pay for fidelity bonds for its officers and employees, the required sum of which shall not be less than $10,000 per covered officer or employee.

6.3.10 Reserve. The Association shall establish a reserve for replacements for the various components and elements of the common areas.

6.3.11 Garages. The Association shall assign one (1) garage to each unit, including the power and authority to reassign and transfer such garages among the various owners as their particular needs and circumstances reasonably warrant.

6.3.12 Title to Property Upon Dissolution. Upon dissolution of the Association, the Association shall convey the assets of the Association to an appropriate public agency or agencies or to a nonprofit corporation, association, trust or other organization organized and operating for purposes similar to those for which the Association was created, or in such other manner as may be proper for the Association so to do under applicable State of Nevada and Federal law.

6.4 Prohibited Actions. The Association and the Board shall have no authority to do the following:

6.4.1 Except by vote or written consent of a majority of the members of the Association, the Board shall be prohibited from entering into a contract with any third person by which the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year, with the following exceptions: (1) a community management contract; (2) a contract with a public utility company if the rates charged for the materials or services are regulated by a Public

Utilities Commission, provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; and (3) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

6.4.2 Except by vote or written consent of a majority of the members of the association, the Board shall have no authority to acquire and pay anything out of common expenses, capital additions, or structural alterations (other than for purposes of replacing portions of common area or Association property, subject to the provisions of this Declaration) that has a cost, which, in the aggregate, exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

6.4.3 Except as otherwise provided in this Declaration, the Board shall have no authority to act on matters that are reserved exclusively for action by the members of the Association, as follows:

6.4.3.1 Amend or repeal this Declaration, the Bylaws, or any Rules and Regulations of the Association;

6.4.3.2 Recall any officer or member of the Board;

6.4.3.3 Determine not to rebuild improvements after partial or total destruction.

6.4.4 Except as otherwise permitted under the Act or by this Declaration, the Board may not commence a civil suit or arbitration on behalf of the Association. In the event the Act permits commencement of a civil suit or arbitration without the assent of a majority of the members of the Association, the Association may not maintain such an action and shall be required to dismiss the action within one hundred twenty (120) days after its commencement if the action is not ratified by a majority of the members of the Association within ninety (90) days after the commencement of the action (unless the action is to enforce the payment of an assessment, to enforce this Declaration, or to proceed with a counterclaim).

6.4.5 The Board shall not pay compensation of any kind to members of the Board or to officers of the Association for providing goods or services to the Association. However, the Board may cause a member of the Board or an officer to be reimbursed for actual and paid expenses incurred in carrying on the business of the Association; provided such expenses are pre-authorized by the Board.

6.4.6 No member of the Board, or of any committee of the Association or any officer of the Association, or any Manager, shall be personally liable to any Member, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

6.5 Maintenance of the Property. The Property shall be maintained as follows:

6.5.1 Condominium Exteriors. The Association shall maintain and manage the exterior of each condominium, as follows: paint, maintain, and repair and replace (if required because of normal wear and tear or deterioration) roofs, down spouts, balcony railings, exterior door surfaces, and exterior building surfaces. Condominium exteriors for which the Association is responsible for management and maintenance shall not include glass surfaces; landscaping within a private balcony, deck, or entry areas of the condominiums; patio covers or other additions built or maintained within an entry, deck or balcony areas by an owner; repairs or replacements arising out of or caused by the willful or negligent act of the owner, his family, guests, or invitees, or caused by earthquake or other acts of God to the extent they are not covered by insurance. Such excluded items shall be the responsibility of each condominium owner; provided, however, that if an owner shall fail to maintain or make repairs or replacements which are the responsibility of such owner, as provided above, then, upon a vote of a majority of the Board of Directors, and after not less than thirty (30) days notice to the owner, the Association shall have the right (but not the obligation) to enter the condominium and provide such maintenance or make such repairs or replacements, and the cost thereof shall be added to the assessments chargeable to such condominium and shall be payable to the Association by the owner of such condominium.

6.5.2 Common Areas. The Association shall operate, manage and control, or provide for the operation, management, and control of all common areas, common area facilities, limited common areas, and personal property belonging to the Association. The common areas include, but are not limited to:

6.5.2.1 Landscaping (including the trees, shrubs, grass and sidewalks on common area), garages, parking areas, driveways, private streets, and all other land included in the description of the project in Exhibit "A" attached to the 1982 Declaration or otherwise acquired by the Association, except the land under the

buildings containing the units;

6.5.2.2 The water supply system and the sewage disposal system located in the project, including pipes, sewage lines, and other facilities;

6.5.2.3 The foundations, columns, girders, beams, and supports of the buildings on the Property, the perimeter walls around each unit to its interior surfaces and other walls not within a unit;

6.5.2.4 The roofs, stairs, stairways, stairway landings, walkways, and corridors that are not within the unit, including the deck or porch leading to the main entrance of the unit but excluding balconies and other decks appurtenant to the unit;

6.5.2.5 The pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets;

6.5.2.6 All installations of power, lights, gas, water, and heating existing for common use; and

6.5.2.7 All other parts of the project, including personal property, necessary or convenient to its existence, maintenance, and safety, or normally in common use.

The Association property shall be maintained in a good state of repair. The Association shall have the authority to obtain and pay for water service for the entire Project. The Association shall have the authority to obtain and pay for electric service, lighting facilities, fire extinguishers, and gardening and janitorial service for the common areas, and may grant easements where necessary for utilities and sewer facilities over the common areas to serve the common and open areas of the condominiums. The Association shall maintain any and all settling basins, percolation trenches and skimmer chambers as may be required by government regulatory agencies having jurisdiction over the property. The Association shall further provide for regular sweeping of drives and parking areas.

6.5.3 Owner Maintenance. If required, it shall be the obligation of each unit owner:

6.5.3.1 To maintain, repair, and replace, at his own expense, all internal installations and components of his unit, including but not limited to:

showers, baths, tiling, plumbing, sinks, toilets, electrical sockets, switches and wiring, heating units, outlets, apparatus, fans, windows (interior and exterior), sliding glass doors (interior and exterior) balcony decks, ceiling plaster, interior wall surfaces, interior floor surfaces, lighting installations, electrical appliances, and telephone equipment;

6.5.3.2 To remove snow, leaves and debris from all patios and balconies that are limited common areas appurtenant to the owner's unit. If any such limited common areas are appurtenant to two or more units, the owners of those unites shall be jointly responsible for such removal;

6.5.3.3 To pay for his own electricity, gas, cable television, and telephone service; and

6.5.3.4 To reimburse the Association for any expenditures incurred in repairing or replacing any part of or property on the common area belonging to the Association that the Association determines has been damaged through the fault of that owner.

A unit owner shall not be responsible for repairs to his unit that originate from a malfunction within the common area.

6.5.4 Right of Entry. Each owner shall grant the right of entry to the management agent or to any other person authorized by the Board in case of any emergency originating in or threatening his unit or garage, whether the owner is present at the time or not. Each owner shall permit the Association or its representatives, when so required, to enter his unit or garage for the purpose of performing installations, alterations, or repairs to the mechanical, plumbing, or electrical services, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner. In case of an emergency, such right to entry shall be immediate.

6.6 Audit. Financial statements for the Association shall be regularly prepared and distributed by the Association to all members as follows:

6.6.1 A pro forma operating statement (budget) for each fiscal year shall be distributed not less than sixty (60) days before the beginning of the fiscal year.

6.6.2 An annual report shall be distributed within one hundred twenty (120) days after the close of the fiscal year. The annual report shall consist of:

6.6.2.1 A balance sheet as of the end of the fiscal year;

6.6.2.2 An operating (income statement) for the fiscal year;

6.6.2.3 A statement of changes in financial position for the fiscal year; and

6.6.2.4 Any information relating to any transaction or indemnification between the Association and any of its officers, directors or members which in the aggregate exceed forty thousand dollars ($40,000).

The annual report shall be prepared by an independent accountant for any fiscal year in which the gross income to the Association exceeds Seventy Five Thousand Dollars ($75,000). If the annual report is not prepared by an independent accountant, it shall be accompanied by a certificate of the treasurer of the Association that the statement was prepared without audit from the books and records of the Association.

6.7 Accounting and Collections. The Association, acting by and through its Board of Directors, may delegate to a bank or other qualified financial or accounting firm the collection and disbursement of maintenance charges and the preparation of annual financial statements. In such event, the Board of Directors shall be responsible to the owners for the accurate handling and accounting of such funds. Vouchers authorizing the payment of expenses from maintenance funds in excess of $2000 shall be approved in advance by a member of the Board of Directors. The $2000 limitation shall not apply to routine expenses, such as utilities and trash pickup, which are contained in the budget and paid using a bank auto-pay system.

6.8 Right of Inspection of Association Books and Records. The Association shall make available for inspection to any member of the Association or his duly appointment representative, or any mortgagee, the following:

6.8.1 All membership registers, accounting records, and minutes of meetings of the members of the Association, the Board, and committees of the Board, and all other books, documents and records of the Association, and the physical properties of the Association.

6.8.2 The financial statements and budgets of the Association.

6.8.3 The study of the reserves of the Association required to be

conducted pursuant to NRS 116.31152.

The right of inspection shall include the right to make copies of documents, and shall occur during regular working hours of the Association at the office of the Association or such other place as prescribed by the Board. The Board shall establish by resolution reasonable rules with respect to (a) notice to be given to the custodian of the records of the Association by the Member representative, or mortgagee desiring to make an inspection, and (b) payment of the actual cost (not to exceed .25 cents per page or such higher amount as allowed pursuant to the Act) of reproducing copies of documents requested by a Member or by a representative or mortgagee. The provisions of this paragraph do not apply to the personnel records of the Association or the records of the Association relating to another owner. The Board shall cause a copy of any of the records required to be maintained pursuant to subsections 6.7.2 and 6.7.3 to be provided to an Owner within, fourteen (14) days after receiving a written request for those records.

6.9 Notices. For the purpose of this Article, services of all notices and decisions shall be made by depositing in the United States mail, by certified mail, return receipt requested, the notices and/or decisions addressed to the owner at his address as shown on the official records of the McCloud Condominium Association.

6.10 Documentation. Any action to be taken by the Board of Directors as required or permitted by this Declaration that must be evidenced by a written document shall be executed by the President and one (1) other member of the Board of Directors.

6.11 Acquisition of Personal Property. The Board may acquire and hold, for the benefit of the owners, tangible and intangible personal property, and may dispose of the same by sale or otherwise. Title to such personal property shall be taken in the name of the Association, to wit: "McCloud Condominium Homeowners." The beneficial interest in such personal property shall not be transferable by an owner except in connection with the sale of his condominium, or where such property is being disposed of for the benefit of the condominium owners. The sale of a condominium, as provided in this Declaration, shall transfer to the purchaser ownership of the transferor's beneficial interest in such personal property.

6.12 Release of Liability and Indemnity. Except as otherwise provided below, and except in instances of willful misconduct or bad faith by any Board member(s), the members of the Board shall not be liable to the owners for any mistake of judgment, negligence, or otherwise. Unless any contracts made by the Board shall have been

made in bad faith or contrary to the provisions of this Declaration, the Articles, Bylaws, or the Act, the unit owners shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board on behalf of the Association. The liability of any owner arising out of any contract made by the Board or of the indemnity in favor of the members of the Board shall be limited to such proportion of the total liability as the unit owner's interest in the Association bears to the interest of all the owners of the membership in the Association. The provisions of this paragraph do not apply to and shall not preclude claims for property damage and bodily injury by owners against the Board or any other insured of the liability insurance required by this Declaration.

ARTICLE VII

MEETINGS

7.1 **Quorum.** At all meetings of the members entitled to vote, a majority of such members, or their proxies, shall be necessary to constitute a quorum. If any meeting cannot be held because a quorum is not present, the owners present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours and not more than thirty (30) days from the time the original meeting was called, at which time the quorum requirement shall be reduced to forty percent (40%) of the members entitled to vote. Except as provided below, if there is a quorum, a majority vote of the members present either in person or by proxy and entitled to vote shall be sufficient for the passage of any motion or the adoption of any resolution.

The following matters shall require a vote of at least a majority of members of the association entitled to vote, unless it is specifically indicated that a three-quarters (3/4) vote of the members is required:

7.1.1 The recall of any officer or member of the Board.

7.1.2 The levy of special assessments to defray the costs of any action or undertaking on behalf of the Association, which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

7.1.3 To amend or repeal this Declaration, the Articles, or the Bylaws.

7.2 **Annual Meetings.** Annual meetings of the condominium owners shall be held at such time as shall be determined by action of the Association's Board of

Directors. Meetings of members shall be held within the project or at a meeting place as close to the Property as possible. Unless unusual conditions exist, members' meetings shall not be held outside Washoe County. Written notice of annual meetings shall be mailed to members of the Association by the Board not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice shall: (1) specify the place, day and hour of the meeting; (2) include a copy of the agenda for the meeting, containing all information required by NRS 116.3108; and (3) provide notification of the right of a unit's owner to have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and payment of any associated costs, and to speak to the Association or the Board, unless the Board is meeting in executive session.

7.3 Special Meetings. Special meetings may be called by the vote of a majority of a quorum of the Board or by any five percent (5%) of the total voting power of the Association that desire to meet, by written notice signed by those desiring to meet and sent by them to the Association members at least ten (10) days and not more than sixty (60) days before the meeting. Notice of any special meetings shall contain the same information required for annual meetings, as prescribed by NRS 116.3108, including the place, date and hour of the meeting, the general nature of the business to be transacted, and the notification to the members of their rights to a copy or summary of the minutes of the meeting and to speak to the Association.

7.4 Board Meetings. Meetings of the Board of Directors shall be held at least once every ninety (90) days, as required by NRS 116.31083. The Board shall mail written notice of any Board meetings to the Association members not less than ten (10) days prior to the date of the meeting of the Board of Directors. Notice of any meetings of the Board of Directors shall comply with NRS 116.31083, and include the place, date, and hour of the meeting, include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be obtained by the members of the Association, and the rights of an Association member to a copy or summary of the minutes of the meeting and to speak to the Association. The meetings of the Board of Directors shall review: (1) a current reconciliation of the operating account of the Association; (2) a current reconciliation of the reserve account of the Association; (3) the actual revenues and expenses for the reserve account, compared to the budget for that account for the current year; (4) the latest account statements prepared by the financial institutions in which the accounts of the association are maintained; (5) an income and expense statement, prepared on at least a quarterly basis, for the operating and reserve accounts of the association; and (6) the current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

ARTICLE VIII

COMMON EXPENSES AND ASSESSMENTS

8.1 Fiscal Year. The fiscal year of the Association shall be a twelve (12) month period running from October 1 to September 30 of each year.

8.2 Purpose of Assessments. Assessments levied by the Association shall be the amount estimated to be required, and shall be used exclusively to maintain, protect and enhance the welfare of members of the Association, for the performance of the duties of the Association as set forth in this Declaration, and for the repair, maintenance and upkeep of the common areas and any other Association Property.

8.3 Annual Assessments/Projected Common Expenses. On or prior to August 1 of each year, the Board shall meet for the purpose of estimating the common expenses to be required during and preparing the proposed budget for the subsequent twelve (12) month period, commencing with the following October 1. The projected common expenses, which are the Association's annual assessments, shall include:

8.3.1 The estimated annual revenue and expenditures of the Association;

8.3.2 A reasonable provision for contribution to a reserve for contingencies and replacements, plus any surplus in the common expense fund from the fiscal year just ended;

8.3.3 Any amounts necessary to make up any deficit from the fiscal year just ended;

8.3.4 Any amounts required by an excess of repair and restoration costs over insurance proceeds; and

8.3.5 Any other amounts required by the terms of this Declaration, or the Act.

The Association's common expenses are the expenditures made by the Association in the performance of its obligations under the Act and this Declaration, and the financial liabilities of the Association during the fiscal year, including the costs and expenses of the daily operation of the Association and an allocation for

reserves. The common expenses include, but are not limited to, expenditures (1) to operate, manage, maintain and repair the common areas and other Association property, and to administer the operation of the Association; (2) to provide for reasonable reserves consistent with sound business practice for the repair and replacement and restoration of improvements to the common areas and any Association property, and for such other purposes as are consistent with good business practice, and otherwise as required by NRS 116.3115 and this Declaration; (3) to provide for the possibility that some Assessments may not be paid on a current basis; and (4) to provide for the payment of the fee of a professional community manager.

Not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association, the Board shall prepare and distribute to each member of the Association its projected common expenses, which shall be subject to change and approval at any meeting at which the projected common expenses is considered. Except for the common expense of insurance, paint reserve, and roof reserve, which shall be assessed to each owner of a unit in a fraction equal to the square footage floor area of an owner's unit divided by the total square footage floor area of all units, common expenses shall be assessed equally to the owners of all units as of the following October. If the estimated common expenses are inadequate for any reason, including nonpayment of any other owner's assessment, the Board may, at any time, levy further assessment.

8.4 Reserve Requirements. That portion of the projected common expenses specific to the reserve required by NRS 116.3115 must include, without limitation:

8.4.1 The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common areas;

8.4.2 As of the end of the fiscal year for which the projected common expenses is prepared, the current estimate of the amount of cash reserves that are necessary and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common areas;

8.4.3 A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any major component of the common areas or to provide adequate reserves for that purpose; and

8.4.4 A general statement describing the procedures used for the

estimation and accumulation of cash reserves, including, without limitation, the qualifications of the person responsible for the preparation of the study required below in this paragraph.

8.5 Reserve Study. In accordance with the requirements of NRS 116.31152, the Board shall:

8.5.1 Cause to be conducted at least once every five (5) years, a study of the reserves required to repair, replace and restore the major components of the common areas;

8.5.2 Review the results of that study at least annually to determine if those reserves are sufficient; and

8.5.3 Make any adjustments it deems necessary to maintain the required reserves.

The reserve study must be conducted by a person qualified by training and experience to conduct such a study, and may be a member of the Board, an owner, or the Association manager who is so qualified. The study must include: (1) a summary of an inspection of the major components of the common areas the Association is obligated to repair, replace or restore; (2) an identification of the major components of the common areas that the Association is obligated to repair, replace or restore which have a remaining useful life of less than thirty (30) years; (3) an estimate of the remaining useful life of each major component; (4) An estimate of the cost of repair, replacement or restoration of each major component during and at the end of its useful life; and (5) an estimate of the total annual assessments that may be required to cover the cost of repairing, replacement or restoration the major components after subtracting the reserves of the Association as of the date of the study.

Money in the reserve account required by provision may not be withdrawn without the signatures of at least two (2) members of the Board. The reserve account may be used *only* for Common Expenses that involve repairs, replacement or restoration of the major components of the common areas, including, without limitation, repairing and replacing roofs, roads and sidewalks, and must not be used for daily maintenance.

8.6 Assessments. Assessments are obligations of the Association members, as follows:

8.6.1 Each unit's owner covenants and agrees to pay to the Association any Assessments made pursuant to this Declaration. Payments for assessments shall be due in equal monthly installments on or before the first day of each month during the twelve (12) month period commencing with October 1, or in such other reasonable manner as the Board shall designate. Each assessment or installment thereof, together with any late charges, interest, collection costs, and reasonable attorneys' fees, shall be the personal obligation of the person or entity who owns the unit against which the assessments were made at the time the assessment (or installment) became due and payable. If more than one person or entity owns that unit, the personal obligation to pay the assessment (or installment) for that unit shall be joint and several. Unless otherwise provided in this Declaration, the purchaser of a unit shall be jointly and severally liable with the seller for all unpaid assessments against the unit, up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for any such assessments. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiver of the lien securing the same. No Owner may avoid or diminish such personal obligation by non-use or abandonment of his Unit. In the event a condominium is rendered uninhabitable by fire or other casualty, the Board, in its discretion, may abate all or a portion of the common expenses assessed against the owner of that condominium while it remains uninhabitable.

8.6.2 The failure of the Board to fix the assessments for a twelve (12) month period prior to the commencement of that period shall not be deemed a waiver or modification in any respect of its right to do so or of the provisions of this Declaration, or a release of the owners from the obligation to pay the assessments, or any installment thereof for such that period. The assessment fixed for the preceding twelve (12) month period shall continue until a new assessment is fixed. No owner may exempt himself from liability for his assessment of any of the common area by waiver of his use and enjoyment of the common areas and their facilities or by abandonment of his unit.

8.7 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the common expenses for a given fiscal year is or will become inadequate to meet the common expenses for any reason, including, but not limited to, delinquencies in the payment of Assessments, or in the event the Association has insufficient reserves to perform its obligations under this Declaration, then the Board shall determine the approximate amount of such shortfall, shall provide a summary thereof to all of the members of the Association

along with the Board's recommendation for a special assessment to meet such shortfall, and shall set a date for a meeting of the Owners which is not less than fourteen (14) nor more than thirty (30) days after the mailing of the summary. Unless at that meeting a majority of all members of the Association votes to reject the proposed special assessment, the proposed special assessment shall be deemed ratified by the members of the Association, whether or not a quorum is present at such meeting, and shall become a special assessment against, and allocated equally to, the owners of the units. The Board may, in its discretion, provide for payment of any special assessment in any number of installments or provide that it is payable in one (1) installment within such time period as the Board deems reasonable.

8.8 Liens for Assessments. Each owner shall pay all common expenses assessed against him and all other assessments made against him by the Board in accordance with the terms of this Declaration. Each assessment shall be separate and distinct of personal debts and obligations of the owner against whom the same are assessed.

8.8.1 Unpaid Fines and Assessments Constitute a Lien on Unit. The amount of any assessment to any unit, whether regular or special, plus interest at the maximum rate allowed by law, plus costs and a reasonable attorney's fees, plus any fines imposed by the Association against that unit, shall be secured by a lien on that unit in favor of the Association from the date the Assessment or fine becomes due. If an Assessment or fine is payable in installments, the full amount of the Assessment or fine is a lien from the time the first installment becomes due. Notice of any lien imposed against a unit under this provision shall be recorded in accordance with the Act, and may be enforced as provided in the Act for enforcement of such liens. Any lien imposed against a unit under this provision shall be prior to all other liens and encumbrances on that unit, except for: (a) valid tax and special assessment liens in favor of any governmental assessing authority; (b) liens and encumbrances recorded before the recordation of the Declaration; and (c) a First Deed of Trust recorded before the date on which the Assessment or fine sought to be enforced became delinquent. The lien created by this Declaration for unpaid Annual Assessments is also prior to a First Deed of Trust to the extent of the amount of such Annual Assessments which would have become due during the six (6) month period immediately preceding institution of an action to enforce the lien.

8.8.2 Release of Lien. Upon the timely curing of any default for which a notice of lien was filed or recorded by the Association, the Board shall file or record, or cause to be filed or recorded, an appropriate release of such notice or release of lien, upon payment by the defaulting owner of a fee, to be determined by the Board,

but not to exceed $100 to cover the costs of preparing the filing or recording such release.

8.8.3 Non-Exclusive Remedy. The assessment lien, and the rights to foreclose on and sale under an assessment lien, shall be in addition to and not in substitution of all other rights and remedies that the Association and its assigns may have under this Declaration and the Act, and according to law, including a suit to recover money judgment for any unpaid assessments.

8.9 Vesting of Voting Rights. Notwithstanding anything contained in this Declaration, voting rights attributable to condominiums shall not vest until assessments against those condominiums have been levied by the Association.

8.10 Increase in Annual Assessments. Notwithstanding any other provisions of this Declaration, the Board may not, without the vote or written consent of a majority of the members of the Association, impose a regular annual assessment per unit which is more than twenty percent (20%) greater than the regular assessment for the immediately preceding fiscal year.

ARTICLE IX

UTILITIES

9.1 Easement Granted to Units' Owners. Whenever any connection, or portion of any connection, for sanitary sewer, water, electricity, gas, cable TV, or telephone lines installed within the project lie in or upon any unit served by those connections, the owner of the unit served by those connections shall have the right, and are hereby granted an easement to the full extent necessary, to have utility companies, with proper notice and agreed scheduling, enter upon the unit in or upon which said connections, or any portion thereof, lie, to repair, replace, and generally maintain said connections as and when the same may be necessary.

9.2 Use and Enjoyment. Whenever sanitary sewer, water, electricity, gas, cable TV, or telephone lines are installed within the project, which connections serve more than one unit, the owner of each unit served by said connections shall be entitled to the full use and enjoyment of such portions of those connections that service his condominium.

9.3 Dispute Resolution. In the event of a dispute between unit owners with

respect to the repair or rebuilding of any utility connections, or with respect to the sharing of the costs thereof, upon written request by one of such owners addressed to the Association, the matter shall be submitted to the Board of Directors, which shall decide the dispute. The decision of the Board shall be final and conclusive on the parties. If any disputing owner is a member of the Board of Directors, he shall not be entitled to vote on the disputed issue. The remaining non-disputing Board members shall temporarily appoint another owner to serve on the Board solely for the purpose of voting on such dispute.

ARTICLE X

INSURANCE

10.1 Association Insurance. The Association shall obtain and maintain in full force and effect at all times and for the benefit of the condominium owners, the following: (a) adequate public liability insurance; (b) officers and directors liability insurance; (c) workers' compensation insurance; (d) fire and property damage insurance covering the entire project (except the personal property of the owners located within the project) and the encumbrances upon the project or any part thereof as their interests may appear. All insurance obtained by the Association shall meet the requirements of NRS 116.3113.

10.1.1 Adequate fire insurance shall mean coverage in an amount equal to full replacement value (exclusive of land, foundation, excavation and other items normally excluded from coverage), with an "agreed amount" endorsement or its equivalent, if available, or an "inflation guard" endorsement, payable to the Association, subject to the least deductible the insurer will permit or any other deductible the Board deems reasonable.

10.1.2 Insurance obtained by the Association pursuant to this provision shall comply as to form, content, and insurer with the requirements of the encumbrancers. The premiums for said insurance are to be paid out of the maintenance fund, with each condominium unit bearing an equal share of the cost thereof.

10.1.3 All insurance obtained by the Association shall be provided by companies duly authorized to do business in Nevada, and as required by any state or federal entities with which the Community has been qualified.

10.2 Owner Insurance. Each owner should provide adequate insurance, as follows:

10.2.1 Insurance, including insurance for loss of theft, on all personal property located on and within the owner's unit or stored by the owner in or on the common areas and any other portion of the Property.

10.2.2 Insurance for casualty and public liability coverage within each Unit to the extent not covered by the Association's insurance.

10.2.3 Insurance coverage for activities of the owner, not acting for the Association, with respect to the common areas.

10.2.4 Insurance against loss from theft on all personal property.

10.3 Authority to Negotiate Loss Settlements. The Board of Directors is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers with respect to loss or damage occurring on or to the common areas. Any two (2) members of the Board may sign a loss claim relating to Association insurance, and such signatures shall be binding on all the owners.

ARTICLE XI

NON-SEVERABILITY OF CONDOMINIUM INTEREST AND SUSPENSION OF PARTITION

11.1 Suspension of Right of Severability. No owner shall be entitled to sever, or bring any such action for partition of; (1) his unit from his pro-rated undivided interest in the building in which the owner's unit is located; (2) his interest in the real property under the building in which his unit is located; or (3) his interest in the Association. No such component interest may be severally sold, conveyed, transferred, encumbered, hypothecated, bequeathed, or otherwise dealt with, and any attempt to do so in violation of this provision shall be void and of no effect. The suspension of this right of severability shall in no event extend beyond the period in which the right to partition is suspended under NRS 117.050.

11.2 Suspension of Right of Partition. The right of partition of the common areas is suspended. The project may only be partitioned and sold as a whole upon a showing of the occurrence of any one of the events provided in NRS 117.050.

Additionally, partition may be available upon a showing that six (6) months from the date of any partial or total destruction of the project, a certificate or resolution to rebuild has not been filed of record, or if reconstruction has not actually commenced within said six (6) months. The suspension of the right of partition shall in no event extend beyond the period in which the right to partition is suspended under NRS 117.050. Nothing in this provision shall prevent the partition or division of interests between joint or common owners of one condominium unit.

11.3 **Presumption of Entire Condominium Conveyance.** Each unit and its appurtenant undivided interest in the Common Areas shall always be conveyed, transferred, devised, encumbered, bequeathed, and otherwise affected only as the entire Condominium.

ARTICLE XII

USE RESTRICTIONS

In addition to all other covenants contained in this Declaration, the use of the Property, each of its condominium units, and the common areas are subject to the following:

12.1 **Residential Use Only.** All condominiums on the Property shall be used for residential purposes only.

12.2 **Business Usage Prohibited.** No condominium or any part of the project shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly for any business, commercial, manufacturing, mercantile, storage, vending, or other such non-residential purposes; provided, however, that this provision shall not prohibit an owner from leasing or renting his unit or permitting its use by his guests.

12.3 **Billboards and Signs Prohibited.** Except for signs approved by the Board of Directors for the benefit of the entire project, and except for one (1) professional sign not exceeding 12 inches by 18 inches in size advertising a unit for sale or lease, no signs of any kind shall be displayed in the public view on or about the exterior of any unit.

12.4 **Owner Structural Changes.** No structural alterations to the interior of any Unit shall be made, and no plumbing or electrical work within any bearing or

party walls shall be made by an individual owner without the prior written consent of the Architectural Committee as provided in Article XIII of this Declaration.

12.5 Association Maintenance and Decoration Authority. The Board of Directors, or its duly appointed agent, including the manager, if any, shall have the exclusive right to paint, decorate, repair, maintain and alter or modify the exterior walls, balconies, railings, exterior door surfaces, roof, and all installations and improvements in the common area, and no owner of a condominium shall be permitted to do, or have done, any such work. The approval of the Board of Directors shall be required in writing for the installation of any awnings, sunshades, or screen doors, or any antennae or structures on the roof of any condominium building.

12.6 Children. All unit owners shall be accountable to the remaining owners, their families, visitors, guests, and invitees for the conduct and behavior of their children and any visiting children temporarily residing in or visiting their units.

12.7 Pets. Pets shall be permitted, subject to the Rules and Regulations adopted by the Board.

12.8 Offensive Activities. No owner shall permit or suffer anything to be done or kept upon or in his unit or the common areas that will increase the rate of insurance on the Property. No owner shall obstruct or interfere with the rights of other owners, their families, guests, and invitees, or in any way interfere with the quiet enjoyment by any other owner of his unit by: (1) annoying any other owner with unreasonable noises or otherwise; (2) committing or permitting any nuisance, noxious or offensive activity; or (3) committing any immoral or illegal act. Each owner shall comply with all of the requirements of the Local and State Boards of Health, and with all other governmental authorities with respect to the occupancy and use of the Property.

12.9 Owner Liability. Each owner shall be liable to the Association for any damage to the Association-owned areas or any equipment thereon which may be sustained by reason of the negligence of that owner, his family, guests, or invitees, to the extent that any such damage shall not be covered by insurance.

12.10 Garages. The garages are to be used for the parking of car They are not to be converted to any type of living space or used for recreational or business activities.

12.11 Rubbish. Each owner shall remove all rubbish, trash, and garbage from his unit. Rubbish, trash, and garbage shall not be allowed to accumulate on or within

any unit or the Property. All clothes lines, refuse containers, wood piles, storage areas, and machinery and equipment shall be prohibited upon or in any condominium, unless approved, in writing, by the Architectural Committee.

12.12 Snow and Ice. Snow and ice shall be removed from the Property without the use of any soluble toxic materials, and provisions must be made for maintenance of the siltation trenches and skimmer chambers in the drainage system.

12.13 Prohibited Restrictions. No condominium owner shall execute or file for record any instrument which imposes restrictions upon the sale, leasing, or occupancy of his condominium on the basis of race, color, creed, religion or sex.

12.14 Interval Ownership Prohibited. Legal title to any one condominium may not be held by any more than ten (10) unrelated persons at any one time. As used herein, a husband and wife shall be considered one "person", and "unrelated persons" shall mean persons not related within the third degree of consanguinity. Time-sharing, as defined by any applicable state or local ordinances, is prohibited.

12.15 Rules. The Board, from time to time, may adopt reasonable Rules and Regulations in furtherance of this Declaration, the Articles and Bylaws of the Association. These rules may be enforced as provided in this Declaration.

ARTICLE XIII

ARCHITECTURAL CONTROL COMMITTEE

13.1 Organization. There shall be an Architectural Control Committee comprised of the Board of Directors; provided, however, that the Board may appoint an Architectural Control Committee of three (3) or more members, none of whom need be members of the Board.

13.2 Duties. It shall be the duty of the Architectural Control Committee to consider and act upon any proposals or plans submitted to it pursuant to the terms of this Article, to adopt Architectural Control Committee Rules if it so chooses, to perform other duties delegated to it by the Association, and to carry out all other duties imposed upon it by this Declaration.

13.3 Meetings. The Architectural Control Committee shall meet from time to time as necessary to perform its duties as stated in this Article. The vote or

written consent of any two (2) members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Architectural Control Committee may charge a filing fee to be used to pay an architect, who may or may not be a member of the Architectural Control Committee, to review any submitted plans and specifications. The Board may reimburse members for reasonable expenses incurred by them in the performance of any Architectural Committee function.

13.4 Architectural Control Committee Rules. The Architectural Control Committee may prepare and promulgate "Architectural Control Committee Rules" containing guidelines and review procedures on behalf of the Association. The Architectural Control Committee Rules shall be those of the Association, and the Architectural Control Committee shall have sole and full authority to prepare and to amend the Architectural Control Committee Rules, provided the Architectural Control Committee Rules are otherwise in compliance with the Articles, the Bylaws and this Declaration. The Architectural Control Committee shall make any Architectural Committee Rules available to Owners.

13.5 Approval by the Architectural Control Committee. No owner may make or commence any structural addition, structural alteration, or improvement on the Property or in his unit, including, without limitation, the alteration or construction of a building, fence, wall, or structure, or the placement, erection, or alteration of any Limited Common Areas, without the prior written consent of the Architectural Control Committee. The Architectural Control Committee and any of its members may consult with knowledgeable outsiders with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Control Committee.

13.6 Requests for Approval. Any request by a unit owner for approval by the Architectural Control Committee for any improvements or work that requires Architectural Control Committee approval must be submitted in writing to the Architectural Control Committee. Any such submittal shall contain and set forth such information and in such detail as required by the Architectural Control Committee to reasonably inform the Architectural Control Committee of the proposed work of improvement for the purpose of determining its compliance with the terms and provisions of this Article and the propriety of granting or denying any such application. All improvements or modifications, if approved by the Architectural Control Committee, shall be undertaken, prosecuted and completed in full and timely compliance with all applicable zoning laws, building codes, and all other applicable laws, ordinances and regulations relating to the construction, use and occupancy of

the Improvements.

13.7 The Architectural Control Committee shall answer any written request for approval within sixty (60) days after receipt of the request. Any consent or approval by the Board or Architectural Control Committee shall be in writing. The failure of the Architectural Control Committee to answer the request within this time shall not constitute consent or approval by the Architectural Control Committee to the proposed action. Any such request shall be reviewed in accordance with any Architectural Committee rules then in effect.

13.8 Limitations on Improvements. Subject to the provisions of this Article, an owner:

13.8.1 May make any improvements or alterations to the interior of his unit that do not impair or lessen the structural integrity, mechanical systems, or support of any portion of the Property or Community, or otherwise alter, in any way, the condition of any component contained within the framing of the structure, provided that any such improvements or alterations to the interior of the unit do not result in a violation, in and of itself or as a result of the use thereof, of any other term or provision of this Declaration.

13.8.2 May not change the appearance of the Common Areas, the exterior appearance of a unit, any component that may be seen from the exterior of the building, or any other portion of the Project, or make any change or modification to that Owner's Unit, such as replacing carpeting with hardwood floors, without permission of the Board or the Architectural Control Committee, as applicable.

13.8.3 After acquiring an adjoining Unit, may not remove or alter any intervening partition or create apertures therein.

13.9 Right of Inspection. Any member or authorized consultant of the Board or the Architectural Control Committee, or any authorized officer, manager, employee or other agent of the Association, may enter upon any unit, as provided in paragraph 6.5.4, without being deemed guilty of trespass, in order to inspect any structural addition, alteration or improvement constructed or under construction in the Unit to determine whether the work has been or is being completed in compliance with the plans and specifications approved by the Board or the Architectural Control Committee. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

13.10 Effect on Insurance. Any additions, alterations, and improvements to the units and common areas shall not, except by prior approval of the Board, cause any increase in the premiums of any insurance policies carried by the Association or by the owners of any units other than those affected by the change.

13.11 Limitation on Liability of Architectural Control Committee. Provided that the Architectural Control Committee, or a particular member of the Architectural Control Committee, has acted in good faith on the basis of information as the Architectural Control Committee or the member, as the case may be, may possess, then neither the Architectural Control Committee nor any of its members shall be liable to the Association, to any Owner, or any other person for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings, and specifications, whether defective or not; or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications.

13.12 Discretion of the Board of Directors and Architectural Control Committee. Except as may be expressly provided in this Declaration, any consent or approval of the Architectural Control Committee that is required under the provisions of this Article may be granted or withheld in the sole and absolute discretion of the Architectural Control Committee. In that regard, the granting or withholding of such consent or approval shall not be subject to any objective standards of "reasonableness" or otherwise. The approval of or consent to any matter shall not be deemed to be a waiver of the right to disapprove the same or similar matters in subsequent requests for consents or approvals from the same or other parties.

ARTICLE XIV

DESTRUCTION OF THE PROJECT OR ITS ELEMENTS

14.1 Partial Destruction of Common Areas. In the event of partial destruction of the common areas, the Association shall restore and repair the affected area to its former condition as promptly as practicable and in a lawful and workman-like manner.

14.1.1 Partial destruction shall mean any destruction that is less than that defined as total destruction in this Article.

14.1.2 The proceeds of any insurance shall be made available for such purpose subject to prior rights of beneficiaries of deeds of trust or mortgagees whose interests may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such partial reconstruction shall be inadequate by more than the policy's deductible, the condominium owners shall proceed with such partial reconstruction unless by a three-fourths (3/4) vote of all the Owners, the Owners vote not to proceed with partial reconstruction. In the absence of a three-fourths (3/4) vote, a special assessment shall be levied against the owners of the common area partially destroyed upon the basis of the ratio of the square footage of the floor area of the unit to be assessed to the total square footage of floor area of all units which are to be assessed. In the event of the three-fourths (3/4) determination by the owners that it would not be in their best interests to proceed with the same, the owners may, in their discretion proceed as provided in this Article.

14.2 Total Destruction of Common Areas. In the event of the total destruction of the common areas ("total") being defined as sixty percent (60%) of the units, or a lesser percentage if the condominium owners, by a three-fourths (3/4) vote, have so agreed prior to the destruction, the owners shall have authority to determine whether said improvements shall be rebuilt, or whether said project shall be sold. Unless there is a determination by a three-fourths (3/4) vote not to rebuild, the necessary funds shall be raised as provided in this Article and the Association shall prepare the necessary documents to effect such reconstruction as promptly as practicable, in a lawful and workmanlike manner.

14.3 Destruction of Individual Unit. In the event of total or partial destruction of any individual unit not affecting any other unit or any portion of the common areas, it shall be the responsibility of that unit's owner to rebuild the unit using any insurance proceeds available and allocable for said purposes, and the same shall be done as promptly as practicable in a lawful and workmanlike manner. This section shall likewise apply unless there is a determination not to rebuild after partial or total destruction as defined in this Article.

14.4 Lapse of Covenant Against Partition. If, after eighteen months from the date of any partial or total destruction as defined in this Article, reconstruction be not actually commenced, the covenant against partition set forth in this Declaration shall terminate and be of no further force and effect.

14.5 Determination Not to Rebuild. In the event of a determination not to rebuild after partial or total destruction as defined in this Article, the Association

may: (1) bring an action for partition of the entire Project as provided in NRS 117.050; or (2) if, by a two-thirds (2/3) vote of members entitled to vote in person or by proxy the Association agrees, it may proceed to sell the entire project for the benefit of all the owners at public or private sale for the highest and best price obtainable, either in its damaged condition, or after the damaged structure has been razed. For the purpose of implementing this section, every owner of a condominium within the project shall be deemed to have consented to, authorized, and granted to the Association his, her, or its respective irrevocable power of attorney upon the delivery to such owner of his instrument of title.

14.5.1 Distribution of Proceeds. The net proceeds of any sale ordered by decree of court or by decision of the Association and the proceeds, if any, of insurance carried by the Association as a whole on the Property, plus any reserves, interest, and other funds, shall be divided among the owners of the affected units according to the respective fair market values of the units at the time of the destruction as determined by an independent appraisal to be conducted by an M.A.I. Appraiser selected by the Board, whose appraisal shall be final. The balance then due on any individual encumbrance executed in good faith and for value shall first be paid before the distribution of any proceeds to the owner whose condominium is still encumbered.

14.5.2 If the Project is destroyed or razed, it may be rebuilt only in conformity with the original recorded plans; otherwise, a new tract map and condominium plan shall be filed, approved and recorded. A new tract map and condominium plan may be filed and recorded only upon prior written approval of three-fourths (3/4) of the members entitled to vote.

ARTICLE XV

AMENDMENTS

Except as otherwise provided in NRS 116.2117 and in this Declaration, each provision and all of the provisions of this Declaration may be modified, amended, added to, or deleted from by a further Declaration or Agreement, in writing, properly executed and acknowledged by a fifty-one per cent vote of the members of the Association, and by appropriate governmental authority if such amendment would affect the obligation to maintain the common areas. Any such amendments shall be effective only upon recordation in the office of the Recorder of Washoe County. The prohibition against interval ownership cannot be amended deleted by the owners without the prior approval of Washoe County.

ARTICLE XVI

TERM OF DECLARATION: COMPLIANCE WITH THE RULES AGAINST PERPETUITIES AND WITH THE RULE AGANST RESTRAINT OF ALIENATION

The covenants contained in this Declaration shall run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2020, after which time the covenants shall be automatically extended for successive periods of twenty-one (21) years, unless an instrument executed by not less than three-fourths (3/4) of the members of the Association entitled to vote shall be recorded canceling and terminating this Declaration on or after January 2, 2020.

ARTICLE XVII

CONDEMNATION

In the event of a taking by condemnation or by eminent domain of all or any part of the Community, the award made for such taking and the disbursement of the proceeds of that award shall be undertaken in accordance with NRS 116.1107. The Association is designated to represent the Owners in all proceedings (including negotiations and settlements) related to any condemnation, and each Owner appoints the Association as attorney-in-fact for this purpose. The proceeds of any settlement related to any condemnation of the Project shall be paid to the Association for the benefit of the Owners, as their interests may appear.

ARTICLE XVIII

MISCELLANEOUS PROVISIONS

18.1 Liberal Construction. All of the provisions of this Declaration shall be liberally construed to effectuate and promote the purpose of creating a uniform plan for the operation of McCloud Condominiums. No breach of any provision of this Declaration nor the enforcement of any assessment lien as provided in this Declaration shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of the provisions shall be binding upon and shall be effective against any owner whose title is derived through foreclosure or trustee's sale or otherwise.

18.2 Independent and Severable Provisions. The provisions of this

Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any of this Declaration's provisions shall not affect the validity of the remaining provisions.

18.3 Notice of Transfer. Immediately after any transfer of title to any condominium, the transferring owner shall so advise the Board, giving the name and address of the new owner, and the effective date of the transfer.

18.4 Amendments to the Articles and Bylaws. The owners shall have the right to adopt reasonable amendments to the Articles and Bylaws. The Articles shall be amended by the vote or written assent of a majority of the Board and a majority of the Association members. The Bylaws shall be amended by the vote or written assent of a majority of the members of the Association. To the extent that any provision of the Articles or Bylaws that are or may be adopted by the owners shall conflict with the provisions of this Declaration, the provisions of this Declaration shall control.

18.5 Violations and Nuisance. Every act or omission by which a covenant, condition, or restriction of this Declaration is violated in whole or in part is considered a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action.

18.6 Violation of Law. Any violation of any state, municipal, or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any portion of the Property is a violation of this Declaration and subject to any or all of the enforcement procedures provided in this Declaration.

18.7 Cumulative Remedies. Each remedy provided in this Declaration is cumulative and not exclusive.

18.8 Nonwaiver. The failure to enforce the provisions of any covenant, condition, or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

18.9 Notices. Unless this Declaration provides otherwise, all notices required under the provisions of this Declaration shall be as follows:

18.9.1 All notices to the Association or to the Board shall be sent by regular mail, registered mail, or certified mail, return receipt requested, addressed to the Board at the address of the Manager, or to such other place as the Board may designate from time to time by notice in writing to the Owners of all of the Units.

Until the Owners are notified otherwise, all notices to the Association or to the Board shall be addressed to:

McCloud Condominium Homeowners' Association
c/o Associated Management, Inc. 931 Tahoe Blvd., Ste 2, Incline Village NV 89451

18.9.2 All notices by the Association or the Board to any Owner shall be sent by regular mail, by registered mail, or certified mail, return receipt requested, to such Owner's Unit address or to such other address as may be designated by such Owner from time to time, in writing, to the Board.

18.9.3 All notices shall be deemed to have been received within seventy-two (72) hours after the mailing thereof, except notices of changes of address, which shall be deemed to have been given when actually received.

18.10 **Termination of Former Owner's Liability for Assessments.** Upon the conveyance, sale, assignment, or other transfer of a Unit to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Unit after notification to the Association of such transfer and payment of any transfer fee that may be required. No person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration.

18.11 **Singular Includes Plural.** Unless the context requires otherwise, the use of the singular in this Declaration shall include the plural, and the use of the plural shall include the singular.

18.12 **Gender.** Unless the context requires otherwise, the exclusive use of and reference to the masculine, feminine, or neuter in this Declaration is for convenience only, and shall each include the masculine, feminine, and neuter.

18.13 **Captions.** All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions or of any paragraph.

18.14 **This Declaration Supersedes Prior Declaration.** This Declaration supersedes that certain Condominium Declaration of McCloud Condominiums, dated April 29, 1982. In the event of any conflict between the 1982 Declaration and this Declaration, the provisions of this Declaration shall control.

Certification

We, the undersigned officers of McCloud Condominium Homeowners' Association, hereby certify, under penalty of perjury, that the Declaration of Covenants, Conditions and Restrictions set forth herein was duly adopted with the vote or written consent of Members constituting at least seventy-five percent (75%) of the total voting power held by the membership of the Association.

McCLOUD CONDOMINIUM HOMEOWNERS' ASSOCIATION

Dated: Nov 17, 2007 By: _____

Print Name: Richard Edward Byfield

Its: President

Dated: Nov 17, 2007 By: _____

Print Name: KAREN D. WILLIAMS

Its: Secretary

Subscribed and sworn to before me

this 17 day of November, 2007.

_____ *SEAL:*

NOTARY

J. TARANTINO
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 98-49428-2 - Expires November 7, 2010.

F I L E D
Electronically
2015-09-17 12:46:35 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5146157 : csulezic

EXHIBIT "2"

EXHIBIT "2"

KERN & ASSOCIATES, LTD.
ATTORNEYS AT LAW

GAYLE A. KERN, ESQ.
gaylekern@kernltd.com

KAREN M. AYARBE, ESQ.
karenayarbe@kernltd.com

5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511

TELEPHONE: (775) 324-5930
FACSIMILE: (775) 324-6173

April 4, 2013

Via email [djdezzani@yahoo.com] and first class mail

David and Rochelle Dezzani
David J Dezzani Trust
13 Calle Altea
San Clemente, CA 92673

Re: *McCloud Condominium Association*
939 Incline Way

Dear Mr. and Mrs. Dezzani:

I represent McCloud Condominium Homeowners Association. The Board requested I respond to your email request to review communications and/or information related to another unit and Board minutes. First, it is my understanding you have been provided the requested minutes. If there are additional minutes you are requesting, please advise.

Further, with respect to your request for owner names, information or communications, the information Ms. Conway provided in her March 21, 2013 email to you is correct. All information related to another unit's owner is confidential pursuant to Chapter 116 of the Nevada Revised Statutes. *See* NRS 116.31175. The statute prohibits the Association from disclosing information relating to another unit, regardless of the reason for which it is requested. *Id.*

The Board understands your frustration and appreciates you are addressing the matter of the unapproved deck extension that wrongfully encroaches in the common area. There is no question the extension exists in the common area, as do the other extensions. The common area is owned in common by *all* owners of the community. While it is unfortunate the issue of deck extensions and the wrongful taking of common area was not addressed earlier, the Association has properly taken action to protect the integrity of the common area. There is no question common area is not permitted to be given to any one owner for his/her exclusive use and enjoyment, thereby reducing the common area for the other homeowners. It is the wrongful conversion of common area that is the problem. Simply put, there is no lawful transfer of common area to individual owners absent a vote of the membership. *See* NRS 116.3112.

My client has deliberated over this issue at length. It was done at meetings with frequent homeowner involvement. The Board feels the solution and options provided are fair and equitable and appropriately address the preservation of the common area.

Very truly yours,

KERN & ASSOCIATES, LTD.

Gayle A. Kern

c: Client

F I L E D
Electronically
2015-09-17 12:46:35 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5146157 : csulezic

EXHIBIT "3"

EXHIBIT "3"

KERN & ASSOCIATES, LTD.
ATTORNEYS AT LAW

GAYLE A. KERN, ESQ.
gaylekern@kernltd.com

KAREN M. AYARBE, ESQ.
karenayarbe@kernltd.com

May 10, 2013

Via email only djdezzani@yahoo.com

David and Rochelle Dezzani
13 Calle Altea
San Clemente, CA 92673

Re: *McCloud Condominium Association*
Unit #211

Dear Mr. and Mrs. Dezzani:

The Board of Directors requested I respond to your various communications. First, the Board has granted your request to have the hearing re-scheduled. The next meeting is August 23, 2013. Therefore, the hearing will be continued to August 23, 2013 at 1:00 p.m. With respect to the upcoming hearing on the alleged violation of the governing documents and encroachment of the common area, this will acknowledge receipt of a certified letter received May 9, 2013. This communication will be placed in your file and will be considered by the Board when it deliberates following the hearing to be conducted on August 23, 2013. We acknowledge your request that the hearing conducted on August 23, 2013 be an open hearing rather than one in executive session as allowed by NRS 116.31085(4). Finally, this will acknowledge your May 6, 2013 request for documents of the Association pursuant to NRS 116.31175. We are assembling such documents responsive to your requests, if any there be and to the extent available for review by another unit's owner.

If you have any further communications, the Board requests that you communicate with me. We appreciate your anticipated cooperation. If I have failed to address any of your communications, please advise me.

Very truly yours,

KERN & ASSOCIATES, LTD.

Gayle A. Kern

c: Client

F I L E D
Electronically
2015-09-17 01:23:10 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5146272

Return Of NEF

Recipients

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

–

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:	09-17-2015:12:46:35
Clerk Accepted:	09-17-2015:13:22:30
Court:	Second Judicial District Court - State of Nevada Civil
Case Title:	DAVID DEZZANI ETAL VS. KERN & ASSOC (D10)
Document(s) Submitted:	Motion - **Continuation - **Continuation - **Continuation
Filed By:	Gayle Kern

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

–

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

GAYLE A. KERN, ESQ.

KERN & ASSOCIATES, LTD

ROCHELLE DEZZANI

DAVID DEZZANI

David and Rochelle Dezzani
17 Camino Lienzo
SanClemente, CA 92673
(808) 291-2302

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and
ROCHELLE DEZZANI,
Plaintiffs

vs.

KERN &ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; &ASSOCIATES LTD. JANE DOES 1-10; DOE BUSINESSES 1-5

Case No. CV15 00826
Dept. No. 10

MEMORANDUM IN OPPOSITION TO DEFENDANTS, KERN AND GAYLE KERN'S MOTION TO DISMISS COMPLAINT

_____/

In opposition to the above-indicated Motion to Dismiss, Plaintiffs submit the following;

The Motion to Dismiss Complaint should be denied because neither it nor its accompanying Memorandum of Points and Authorities address the claims actually stated in the Complaint.

The motion and accompanying memorandum misperceive and/or misstate the allegations of the Complaint as asserting causes of action requiring privity of contract, i.e. the attorney/client relationship between defendants and an Association of homeowners of which plaintiffs are members.

The first eight pages of defendants' moving papers indicate that defendants are hoping to characterize plaintiff's complaint as a dispute which requires privity of contract between them and plaintiffs, while not

addressing the fact that plaintiffs claims are actually based upon specific provisions of the Nevada Revised Statutes cited.

For example, paragraph 26 of the Complaint cites, refers to and relies upon a specific provision of the Nevada Revised Statutes, **NRS 116.31183**, entitled **"Retaliatory action prohibited; separate action by unit's owner"**.

NRS116.31183 clearly authorizes civil complaints against agents of an association, *as defendants' memorandum admits their capacity to have been*, who take retaliatory action against homeowners who complain in good faith and/or recommend replacement of an attorney, *such as plaintiffs did,* in their May 3, 2013 email to the Board, (See Complaint, Exhibit 2), which Defendants have chosen to call a ***" lengthy tirade ... against Kern directly"*** (motion to dismiss, pp. 5-6, emphasis added).

Regarding the other three claims for relief stated in the Complaint, paragraphs 36 and Paragraph 38 allege statute-based claims, specifically citing NRS 116.3108, .31083, .31084, .31087 and .31175, completely different from the type of claims decided in *Vainnuku v Kern etal., B.L.M v.Sabo & Deutsch* or any authority referred to in the pages served upon defendants with the Motion to Dismiss.

Although Defendants' papers hardly address the NRS provisions cited in the Complaint, the statements at pages 9-10 considered in light of Exhibits 2 through 8 attached to the verified complaint, make clear that there are questions of fact regarding Kerns' claim that she "merely responded to the allegations contained in Plaintiffs' numerous emails, ... " and whether her actions were motivated by a desire to retaliate against plaintiffs for their "lengthy tirades" against her.

Chapter 38 of the NRS does not require this matter to be submitted to mediation before a civil complaint can be filed.

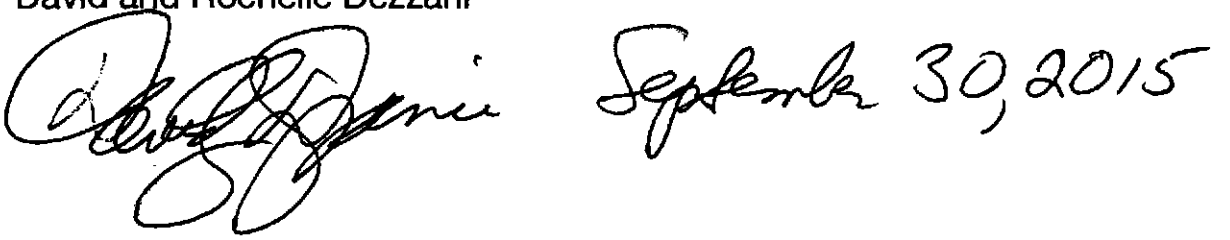
Defendant's assertion is based upon the premise that the claims for relief in the Complaint "depend entirely upon interpretation, application, (sic) and/or enforcement of the CC&Rs" (Defendants' Memorandum, page 11).

None of the four claims presented in the Complaint, inarticulately or not, depend upon, concern or arise out of the CC&Rs.

To the contrary, the claims arise from Defendant's' actions and motivations, after defendants became aware of our complaints and criticism of defendants' competence as attorney for the association.

For all of the reasons stated about, plaintiffs respectfully request that Defendants Motion to Dismiss be denied.

David and Rochelle Dezzani



AFFIRMATION
and
CERTIFICATE OF SERVICE

The undersigned affirms that the foregoing document does not contain the social security number of any person and certifies he placed a true copy of such document in a sealed envelope for collection and mailing in the United States Mail at San Clemente California, postage prepaid, on September 30, 2015, addressed as follows: KERN & ASSOCIATES LTD, 5421 Kietze Lane,Suite 200,Reno, Nevada 89511.

DATED THIS 30TH DAY OF SEPTEMBER, 2015

DAVID DEZZANI, pro se

FILED
Electronically
2015-10-12 04:58:30 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5184808 : ccovingt

3795
GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane Suite 200
Reno, Nevada 89511
Telephone: (775) 324-5930
Telefax: (775) 324-6173
E-mail: gaylekern@kernltd.com

Attorneys for Kern & Associates, Ltd. and Gayle Kern

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5,

Defendants.
_____/

CASE NO.: CV15-00826

DEPT. NO.: 10

DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT

Defendant GAYLE A. KERN, dba KERN & ASSOCIATES, LTD., ("Kern"), in *pro per*, hereby files this Reply to Plaintiffs' Memorandum in Defendants Kern and Gayle Kern's Motion pursuant to NRCP 12(b)(1), NRCP 12(b)(5), NRCP 12(h)(3), and NRS 38.310. Plaintiffs have failed to state any claim upon which relief may be granted, may not recover against Kern directly as the attorney for the Association, and, even if the Court recognizes any claims the Plaintiffs may have against Kern, must submit those claims to mediation pursuant to the provisions of NRS 38.300 to 38.360, inclusive, because any such claims necessarily involve the interpretation of the Association's CC&Rs.

I. Defendant Kern's Motion to Dismiss Must be Granted Against Plaintiff Rochelle Dezzani

The opening salvo of the Complaint states "Come now David Dezzani and Rochelle Dezzani, Plaintiffs, and for complaint against Defendants allege as follows." Both David and Rochelle Dezzani signed the Complaint. Of critical import is the fact that the Memorandum in Opposition the Motion to

Dismiss ("Memorandum") is not signed by Rochelle Dezzani. Rather, the Memorandum is signed only by David Dezzani. This fact renders the Memorandum fatally defective and of no force or effect, as a matter of law, as to Rochelle Dezzani.

Quite simply, Rochelle Dezzani never filed a response to Kern's Motion to dismiss within ten (10) days after service of the Motion as required by WDCR 12(2). The Memorandum is fatally defective as to Rochelle Dezzani because she did not sign it. *See* NRCP 11(a) and DCR 20. Rochelle Dezzani, therefore, failed to timely oppose the Motion to Dismiss.

Further, David Dezzani is not a member of the State Bar of Nevada and may not represent Rochelle Dezzani in this litigation. A litigant appearing without representation by counsel cannot represent another litigant also appearing in *pro per*. Pursuant to the Rules of the Nevada Supreme Court ("SCR"), no person may practice law in the State of Nevada unless that person is an active member of the State Bar of Nevada. *See* NRS § 7.285(1); SCR 77. A person may be found in criminal contempt for assuming to be an attorney or acting as such without authority. *See* NRS § 199.340(8).

The fact that the Dezzanis are husband and wife is also irrelevant. Just as a husband and wife must both sign a deed in order to convey real property held in their joint names, both in *pro per* litigants must sign a pleading and have their signatures notarized. NRCP 11(a); DCR 20. As a result, Kern's Motion to Dismiss must be granted with prejudice as to Rochelle Dezzani.

II. The Memorandum Should Not Be Considered.

Plaintiffs did not follow proper procedures with the Memorandum. The Memorandum was filed on October 6, 2015. Pursuant to WDCR 12(2), it was due ten days after service of Defendant Kern's Motion to Dismiss, which was on or before October 5, 2015. Additionally, the Memorandum did not contain a valid certificate of service. Plaintiffs are obligated to adhere to the procedural rules governing civil litigation and should be required to follow proper procedures going forward. Plaintiffs are responsible for the contents of any applicable procedural rules.

III. Plaintiffs Have No Cause of Action Against Kern who Acted as Attorney for the Association.

Plaintiffs contend that the Complaint should survive dismissal because it asserts no causes of action requiring privity of contract between them and Kern, and is in fact based upon alleged violations of various

provisions of Chapter 116 of the Nevada Revised Statutes. Plaintiffs mischaracterize the legal theories on which Kern's Motion to Dismiss is premised. Kern asserts that she cannot be held personally liable to the Plaintiffs for her actions that were taken solely in connection with her representation of the Association because, as the attorney for the Association, she had a duty only to the Association, not the Plaintiffs. An attorney is not liable to a third party for damages resulting from the attorney's actions taken during the scope of representation. *See Martin v. Trevino,* 578 S.W.2d 763, 771 (Tex. Civ. App. Corpus Christi 1978). Courts have recognized the risk of exposing attorneys to liability to third parties with whom the client deals at arm's length. *See Goodman v. Kennedy*, 18 Cal. 3d 335, 344 (Cal. 1976). Such exposure would "inject undesirable self-protective reservations into the attorney's counseling role." *Id.* At all times relevant to the Complaint, Kern was acting as the attorney for the Association. Her duty extended to her client to advise on the best course of action for the Association. Her actions do not give rise to any liability to Plaintiffs as individual owners within the Association. Plaintiffs' Complaint, therefore, states no cognizable claim against Kern for her actions taken on behalf of her client, the Association, and must be dismissed in its entirety against Kern, with prejudice, in accordance with NRCP 12(b)(5).

IV. Plaintiffs' Complaint Fails to State a Claim Upon Which Relief May be Granted

Plaintiffs' Complaint must be dismissed because Plaintiffs failed to set forth sufficient facts to show that they are entitled to relief in satisfaction of NRCP 8(a). Under NRCP 8(a), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." A complaint which fails to satisfy this standard is subject to dismissal for failure to state a claim upon which relief can be granted. NRCP 12(b)(5). In order to survive dismissal under NRCP 12(b)(5), the complaint must allege some "set of facts, which, if true, would entitle [the plaintiff] to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 674 (Nev. 2008). The allegations must give fair notice of a *legally sufficient claim. See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (Nev. 1993) (emphasis added), citing *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407,408 (1984). A complaint "must set forth sufficient facts to establish all necessary elements of a claim for relief;" bare allegations are not enough. *See Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 875, 8 P.3d 837, 840 (Nev. 2000) (*quoting Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984)).

///

Plaintiffs' Complaint simply fails to state any facts which would entitle them to relief against Defendant Kern. Plaintiffs must adhere to the pleading standards and submit facts which, if true, would set forth a plausible claim against Kern. Kern acknowledges that Plaintiffs are proceeding pre se in this matter. Generally, pro se litigants are afforded some leniency in the pleading process and are held to less stringent standards. *Erickson v. Pardus*, 551 U.S. 89, 94 (U.S. 2007)(interpreting similar federal rule); *Konrad v. Epley*, 2013 U.S. Dist. LEXIS 168976, 27 (E.D.N.Y. July 31, 2013). However, when the pro se litigant is an attorney, he or she is not entitled to the same benefit of relaxed pleading standards. *Konrad*, 2013 U.S. Dist. LEXIS at 27-28. Mr. Dezzani is a retired attorney. *See* Kern Exhibit 1. [1] He has more than adequate knowledge of the applicable pleading standards and can ensure that his pleadings meet those standards. He has not done so. He has merely asserted that Kern violated various provisions of Chapter 116 of the Nevada Revised Statutes without any corresponding supporting facts.

Plaintiffs attempt to avoid the conclusion that Kern cannot, as a matter of law, be held liable for her actions taken on behalf of the Association during the course of her representation of the Association by maintaining that Kern directly violated various provisions of Chapter 116 of the Nevada Revised Statutes. Chapter 116 governs common interest communities created within the State of Nevada. *See* NRS 116.1201. It regulates the conduct of members of an association, members of an executive board, community managers, employees, and agents of an association. It does not provide for attorneys to be personally liable for actions taken on behalf of an association. Plaintiffs point out that Kern is an agent of the Association as a purported justification to bring suit against her directly. However, Chapter 116 distinguishes between agents of an association and an attorney of an association.[2] An attorney is not

---

[1] The State Bar of California website contains an attorney profile for Mr. Dezzani, who's member status is inactive but eligible to become active. In ruling on a motion to dismiss, a court may take into account matters of public record. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847 (Nev. 1993).

[2] *See* NRS 116.31164:

1. The sale must be conducted in the county in which the common-interest community or part of it is situated, and may be conducted by the association, *its agent or attorney*, or a title insurance company or escrow agent licensed to do business in this State, except that the sale may be made at the office of the association if the notice of the sale so provided, whether the unit is located within the same county as the office of the association or not. The association or other person conducting the sale may from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale.

subject to liability for actions taken on behalf of an association and authorized by the association. Further, Plaintiffs make no allegations that the Association acted wrongfully and Plaintiffs make no allegations that Kern violated any of these provisions individually. Further, any such allegation would be entirely without merit. Rather, Plaintiffs assert that Kern took actions in violation of Chapter 116 on behalf of the Association. Kern cannot be held liable under the provisions of Chapter 116 for her actions taken as the attorney for the Association during the course of her representation of the Association.

Plaintiffs assert that Kern violated NRS 116.31183 by taking retaliatory action against them as a result of their numerous communications detailing their dissatisfaction with Kern's representation of the Association. In addition to this contention being barred against Kern as the attorney for the Association, there is no relationship between the actions Kern took on behalf of the Association and any communications the Plaintiffs had with Kern. The Notice of Violation was issued on March 18, 2013. *See* Plaintiffs' Exhibit 1. The Notice of Violation was issued after deliberation between the Association and Kern regarding multiple deck extensions on units in the Association that resulted in an unlawful taking of common area by certain owners without a vote of the membership. *See* Plaintiffs' Exhibit 5. The actions taken after the Plaintiffs sent the May 3, 2013 email to the Board of Directors were in continuation of the Notice of Violation and made in an effort to amend the violations of the CC&Rs caused by the unapproved decks. They were in no way taken in response to any of Plaintiffs' communications directed at Kern or the Board of Directors regarding Kern's representation of the Association. The Notice of Violation could not have been in retaliation of Plaintiffs' May 3, 2013 email because it was issued *before* the Plaintiffs sent the email. The Result of Hearing followed from the Notice of Hearing. The Board declined to take further action because it deemed the matter resolved as of the date of the Notice of Hearing. *See* Plaintiffs' Exhibit 7. There is simply no connection with the course of action Kern took as the attorney for the Association to correct the violation of the CC&Rs and Plaintiffs' communications with Kern and/or the Association.

See also NRS 116.311831:

1. An executive board, a member of an executive board, a community manager or an officer, employee or *agent of an association* shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

(a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

(b) Recommended the selection or replacement of an *attorney*, community manager or vendor; or

(c) Requested in good faith to review the books, records or other papers of the association.

The facts contained in Plaintiffs' Complaint, even if true, are inadequate to show any retaliatory action and therefore the Complaint should be dismissed pursuant to NRCP 12(b)(5).

Further, Plaintiffs allege violations of various other provisions of Chapter 116 of the Nevada Revised Statutes, including NRS 116.3108, NRS 116.31083, NRS 116.31084, NRS 116.31087, and NRS 116.31175. *See* Plaintiffs' Memorandum ¶ 5. The facts in the Complaint do not illustrate any violations of these provisions by Kern individually. Kern is the attorney for the Association and advised the Board of Directors regarding how to proceed with the violation process. As stated in further detail above, these provisions provide no basis by which the Plaintiffs may hold Kern directly responsible for her representation of the Association.

V. Dismissal is Mandatory Where Plaintiff has Failed to Comply with NRS 38.310 and the Court Lacks Subject Matter Jurisdiction.

NRCP 12(h)(3) provides that "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Nevada law requires that all claims involving the interpretation, application or enforcement of the governing documents applicable to residential property be mediated pursuant to the provisions of NRS 38.300 to 38.360, inclusive, before any action may be filed in this Court. Even if the arguments set forth above do not merit dismissal of all claims against Kern, Plaintiffs' claims against Kern are not exempt from the requirements of NRS 38.310 and this Court lacks subject matter jurisdiction.

Plaintiffs contend that "none of the four claims presented in the Complaint, inarticulately or not, depend upon, concern or arise out of the CC&Rs." Plaintiff's Memorandum ¶ 7. Plaintiffs attempt to whittle the claims down to Kern's alleged retaliatory action against them. Plaintiffs cannot assert that the Association's CC&Rs are not applicable to the claims in the Complaint while having referred to them directly in the Complaint. *See* Complaint ¶¶11, 12, 25, 30, and 33. Plaintiffs completely ignore the fact that the entire underlying transaction and any relationship between Kern, the Plaintiffs and the Association depends upon the provisions in the CC&Rs. The Association retained Kern to aid in the interpretation, application and enforcement of the CC&Rs. During the course of her representation, Kern advised the Association how to proceed with a number of deck extensions that constituted violations of the CC&Rs. As a result, the Association took the actions that are the subject of the Complaint. The Court cannot

address the merits of the Plaintiffs' claims without an analysis of the Association's CC&Rs. Because Plaintiffs claims involve an interpretation of the CC&Rs, they must be submitted to mediation or arbitration under NRS 38.310 before a civil action may be filed. The Court has no jurisdiction over the subject matter of the Complaint until a Chapter 38 action had been prosecuted.

VI. Plaintiffs May Not Ignore the Procedural Rules Governing this Court.

Kern hereby objects and challenges, to the extent possible, Plaintiffs' blatant disregard of the procedural rules governing this Court. Mr. and Ms. Dezzani are proceeding pro se in this litigation. However, the United States Supreme Court has held that the procedural rules are not relaxed for persons who proceed without counsel in ordinary civil litigation. *See McNeil v. United States*, 508 U.S. 106, 113 (U.S. 1993). "Even pro se litigants must follow the rules." *Gleash v. Yuswak*, 308 F.3d 758, 761 (7th Cir. Ill. 2002). Rules may not be relaxed or applied differently for a pro se party. *Bonnell v. Lawrence*, 282 P.3d 712, 718 (Nev. 2012). Kern was made aware of the email Mr. Dezzani sent to Judge Sattler, through Sheila Mansfield, dated September 30, 2015. This email *was not received* by Kern. Kern first obtained a copy of the email from counsel for the Association, Chris Phipps. This email was an entirely inappropriate communication with the Court.

First, any request for an extension of time must be made by motion, supported by accompanying points and authorities. WDCR 11 & 12. No ex parte application for extension of time may be granted except for good cause shown, upon a satisfactory showing that a "good faith effort has been made to notify the opposing counsel of the motion." WDCR 12. Not only was the request for an extension, to the extent the email may be construed as such, not made in proper format as a motion, it was not served upon any of the parties. Written motions, other than those which may be made ex parte, must be served on each party. NRCP 5(a). Defendant Kern did not receive the email sent by Mr. Dezzani. Acknowledging the issues with Plaintiffs' email requesting that all proceedings be postponed, Defendant Kern hereby responds that any further delay in this matter would result in unnecessary delay and prejudice to the Defendants. Plaintiffs filed the Complaint on May 4, 2014, and have had ample time to obtain counsel in Nevada.

///

///

///

VII. Conclusion.

Plaintiff Rochelle Dezzani failed to oppose the Motion to Dismiss. It must be granted as to her. With respect to David Dezzani, not only has he failed to submit any legally cognizable claim against Kern, but the claims were not submitted to mediation pursuant to NRS 38.310. As such, all claims against Kern must be dismissed, with prejudice, in their entirety.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this 12th day of October, 2015.

KERN & ASSOCIATES, LTD.

By _____
GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd. and Gayle Kern

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

____ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 12th day of October, 2015.

Teresa A. Gearhart
TERESA A. GEARHART

F I L E D
Electronically
2015-10-13 08:58:49 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5185127

Return Of NEF

Recipients

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:	10-12-2015:16:58:30
Clerk Accepted:	10-13-2015:08:58:19
Court:	Second Judicial District Court - State of Nevada Civil
Case Title:	DAVID DEZZANI ETAL VS. KERN & ASSOC (D10)
Document(s) Submitted:	Reply
Filed By:	Gayle Kern

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

GAYLE A. KERN, ESQ.

KERN & ASSOCIATES, LTD

ROCHELLE DEZZANI

DAVID DEZZANI

FILED
Electronically
2015-10-13 10:05:28 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5185421 : mcholico

3860
GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane Suite 200
Reno, Nevada 89511
Telephone: (775) 324-5930
Telefax: (775) 324-6173
E-mail: gaylekern@kernltd.com

Attorneys for Kern & Associates, Ltd. and Gayle Kern

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5,

Defendants.
_____/

CASE NO.: CV15-00826

DEPT. NO.: 10

REQUEST FOR SUBMISSION

Defendants, Kern & Associates, Ltd. and Gayle Kern, filed their Motion to Dismiss Complaint on September 17, 2015. Plaintiffs, David Dezzani and Rochelle Dezzani, filed a Memorandum in Opposition [to] Defendants, Kern & Associates Ltd. and Gayle Kern's Motion to Dismiss Complaint on October 6, 2015. Defendants, Kern & Associates, Ltd. and Gayle Kern filed their Reply in Support of Motion to Dismiss Complaint on October 12, 2015.

It is requested that the Motion be submitted to the Court for decision.

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this 13th day of October, 2015.

KERN & ASSOCIATES, LTD.

By _____
GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd. and Gayle Kern

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

REQUEST FOR SUBMISSION

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

____ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 13th day of October, 2015.

Teresa A. Gearhart
TERESA A. GEARHART

F I L E D
Electronically
2015-10-13 11:16:11 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5185692

Return Of NEF

Recipients

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:	10-13-2015:10:05:28
Clerk Accepted:	10-13-2015:11:15:38
Court:	Second Judicial District Court - State of Nevada Civil
Case Title:	DAVID DEZZANI ETAL VS. KERN & ASSOC (D10)
Document(s) Submitted:	Request for Submission
Filed By:	Gayle Kern

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

GAYLE A. KERN, ESQ.

KERN & ASSOCIATES, LTD

ROCHELLE DEZZANI

DAVID DEZZANI

David and Rochelle Dezzani
17 Camino Lienzo
SanClemente, CA 92673
(808) 291-2302

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and
ROCHELLE DEZZANI,
Plaintiffs

vs.

KERN &ASSOCIATES, LTD; GAYLE KERN; **OR**
KAREN HIGGINS; JOHN DOES 1-10; **PROCEEDINGS;**
JANE DOES 1-10; DOE BUSINESSES 1-5 **DEZZANI;**
_____/

Case No. CV15 00826
Dept. No. 10

MOTION TO POSTPONE AND/

TEMPORARILY STAY

AFFIDAVIT OF DAVID

CERTIFICATE OF SERVICE; AFFIRMATION

Plaintiff DAVID DEZZANI moves for an Order postponing and/or temporally staying all proceedings

in this matter until December 1, 2015.

This motion is based upon the affidavit of David Dezzani, below, and the record

herein.

DATED this 14 day of October, 2015.

David Dezzani

AFFIDAVIT OF DAVID DEZZANI

I, DAVID DEZZANI, being duly sworn according to law deposes and says:

1. That he is one of the plaintiffs in this action.

2. That he is 79 years old, has been married to Plaintiff Rochelle Dezzani since 1967 and they lived in incline Village, Nevada from 2004 until 2010, when they moved to San Clemente, California, where they reside now.

3. That, earlier this year, he was diagnosed with cancer and, since receiving that diagnosis, he and Plaintiff Rochelle Dezzani have visited numerous doctors who specialize in oncology, all of whom agree regarding affiant's diagnosis but several of whom expressed differing opinions and recommendations regarding treatment options.

4. That, in July, 2015, affiant committed to a treatment program which requires daily medication and, commencing in September, radiation therapy five-days per week until late October, to be followed by another procedure during the 2-3 weeks thereafter.

5. That, although the exact date of affiant's subsequent procedure has not yet been scheduled, he has been told by the doctor who is to perform that procedure that it likely will be during the first two weeks of November

6. That affiant's radiation therapy sessions and the subsequent procedure are and will be at a cancer center facility located approximately an hour's drive, each way from affiant's home in San Clemente.

7. That, since affiant was diagnosed with cancer, Plaintiff Rochelle has driven him to and from every doctor appointment and every radiation session and she has told him that she intends to continue to do so for the remainder of the recommended treatment

8. That, beginning shortly after commencing the recommended treatment,

affiant has been experiencing weakness, nausea, fatigue, and difficulty with concentration.

9. That affiant's chief reason for filing the Complaint herein *on the date he did*, rather than waiting until completion of the recommended treatment, was the potential claim of a statute of limitation defense, asserted on behalf of defendants Kern.

10. That affiant and his wife intend to retain the services of a Reno-based attorney, to advise and represent them in this matter, and that he has spoken with several over the telephone, however, travel difficulties arising from his illness and circumstances involving conflicts of interest related to those attorneys' business clientele, personal acquaintance and/or co-counsel relationships with defendants Kern have thus far prevented retention of local counsel.

8. That affiant's treating doctors have informed him that they prognosticate their recommended treatment to be successful and, based upon what they have told him, affiant affirms and believes that it is probable that by, but not before December 1, 2015, he will be able to focus his attention again upon matters related to CV15 00826.

October 14, 2015 Date

NOTARY CERTIFICATE ATTACHED

Subscribed and Sworn before me on

October 14th, 2015.

John T. Allard Notary Public or Deputy Clerk

David Dezzani Plaintiff

17 Camino Lienzo, CA 92673 Address City, State, Zip

(808) 2912302 Phone #

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CERTIFICATE OF SERVICE

JOHN T. ALLARD
Commission # 2116883
Notary Public - California
Orange County
My Comm. Expires Jun 23, 2019

JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange } ss.

Subscribed and sworn to (or affirmed) before me on this 14th day of October, 20 15, by John T. Allard, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

JOHN T. ALLARD
Commission # 2116883
Notary Public - California
Orange County
My Comm. Expires Jun 23, 2019

(seal)

Signature of Notary

(seal)

OPTIONAL INFORMATION

Date of Document: 10-14-15

Type or Title of Document: Affidavit of David Dezzani

Number of Pages in Document: 2

Document in a Foreign Language: N/A

Capacity of Signer:
X Individual
_____ Corporate Officer – Title(s):_____
_____ Partner – □ Limited □ General
_____ Attorney In Fact
_____ Trustee
_____ Guardian or Conservator
_____ Other: _____

Signer Is Representing:_____

The undersigned certifies that he placed a true copy of the above document in the U.S. mail, in a sealed envelope postage prepaid, on October ____, 2015, addressed as follows: KERN & ASSOCIATES LTD, 5421 Kietze Lane,Suite 200, Reno, Nevada 89511.

DATED THIS 14th DAY OF OCTOBER, 2015

David Dezzani

AFFIRMATION

The undersigned does hereby affirm that the preceding document, **Motion to Postpone and/or Temporally Stay Proceedings**, filed in CV15 00826 does not contain the social security number of any person.

DATED THIS 14th DAY OF OCTOBER, 2015

David Dezzani

FILED
Electronically
2015-10-22 01:51:38 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5201878 : csulezic

2645
GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane Suite 200
Reno, Nevada 89511
Telephone: (775) 324-5930
Telefax: (775) 324-6173
E-mail: gaylekern@kernltd.com

Attorneys for Kern & Associates, Ltd. and Gayle Kern

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5,

Defendants.
_____/

CASE NO.: CV15-00826

DEPT. NO.: 10

DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S OPPOSITION TO MOTION TO POSTPONE AND TEMPORARILY STAY PROCEEDINGS

Defendant GAYLE A. KERN, dba KERN & ASSOCIATES, LTD. ("Kern"), in *pro per*, hereby files this Opposition to Plaintiff David Dezzani's[1] Motion to Postpone and Temporarily Stay Proceedings. Granting a temporary stay would only result in further delay and prejudice to Defendants. Further, Plaintiff has cited no legal authority under which his Motion may be granted. Plaintiff cannot continually submit pleadings to this Court deficient in any legal reasoning. Defendant Kern hereby respectfully requests that this Court deny Plaintiff's Motion and continue proceedings in this matter, including issuing an Order on Defendant Kern's Motion to Dismiss.

I. Plaintiff Is Not Entitled to a Stay of All Proceedings.

Defendant Kern extends her condolences to Plaintiff regarding his diagnosis and hopes for a successful treatment. However, there is simply no authority under which Plaintiff may request a stay of all proceedings in this matter because of his illness. This Court does have discretion to stay proceedings

[1]Rochelle Dezzani makes no request for any relief.

in order to control the docket, but not for the circumstances presented by Plaintiff's Motion. "The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). When determining whether to stay proceedings, a court should "weigh competing interests and maintain an even balance" and "the suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward." *Id.*

Plaintiff's Motion does not present a situation under which a stay should be granted. There is no pending proceeding or other judgement affecting Plaintiff's interest in the present proceeding or threatening injury to Plaintiff. *See Kress v. Corey*, 65 Nev. 1, 17, 189 P.2d 352, 360 (Nev. 1948)(holding that "[a] stay can only be sought of that which has an existence, and by its operation is supposed to work injury to appellant. It is therefore, from the nature of the case, only of orders or judgments which command or permit some acts to be done, that a stay of proceedings can be had"). Plaintiff's illness, though it undoubtedly causes him personal hardship, does not justify suspending all further proceedings in this case, when it was Plaintiff that filed this frivolous lawsuit. *See Ballesteros v. Schriro*, 2006 U.S. Dist. LEXIS 98653, 15 (D. Ariz. Nov. 28, 2006)(finding that "[a] petitioner's pro se status, ignorance of the law, lack of representation during the applicable filing period, and temporary incapacity do not constitute extraordinary circumstances justifying equitable tolling").

Plaintiff filed the Complaint on May 4, 2014. He had months and months and more than ample time to obtain counsel in Nevada. His failure to do so until this point in the case should not justify further delay against the Defendants, especially when Plaintiff has wrongfully sued Kern as the attorney for the Association and has not followed any applicable provision of Nevada law.

There are procedures by which Plaintiff can request specific extensions of time rather than a blanket stay of the proceedings if he requires more time in certain circumstances. For example, Rule 6 of the Nevada Rules of Civil Procedure provides that when an action is required to be done within a specified time, the court may "(1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." Plaintiff has not made any request to extend any specified

deadline for responding to or filing any pleading. Rather, he is seeking to postpone *all proceedings*. Additionally, pursuant to Rule 14 of the District Court Rules and Rule 13 of the Washoe District Court Rules Plaintiff may seek a continuance of a trial. There is, however, no trial date set for this case and therefore no trial proceedings to continue.

Further, while this Court has discretion to grant a continuance, lack of counsel due to unnecessary delay in obtaining counsel is not grounds for a continuance. *See Benson v. Benson*, 66 Nev. 94, 98-99, 204 P.2d 316, 318 (Nev. 1949)(holding "when new counsel is engaged just prior to the trial date, the alleged lack of preparation on the part of such counsel is not necessarily a ground for continuance, particularly where the party has been guilty of negligence, such as inexcusable delay in employing the new counsel, or where such recently retained counsel could have prepared himself for trial by the exercise of reasonable diligence).

Plaintiff filed the Complaint. He initiated this litigation process. As a retired attorney, he should be well aware of the preparation and time constraint brought about by litigation. If Plaintiff was unable to participate in the litigation process because of travel constraints, Plaintiff could have obtained local counsel on or before the date he filed the Complaint. Plaintiff now seeks to delay proceedings so that he may obtain counsel more than 120 days after he filed the Complaint and with no action necessary to be taken by him. Plaintiff does not want this Court to take action on a fully briefed and submitted Motion to Dismiss. It would be a serious prejudice to the undersigned for this Court not to take action on Defendant Kern's Motion to Dismiss which addresses the clear legal deficiencies in his case. Plaintiff seeks to put a hold on this entire case, thereby precluding any progress to be made whatsoever. Such a stall in the proceedings, especially consideration and ruling on Defendant Kern's Motion to Dismiss, which requires no further action by Plaintiff, would result in unnecessary delay and prejudice to Defendant Kern. Defendant Kern's Motion to Dismiss is before the Court for decision and Plaintiff has already submitted his Opposition. There is no need for Plaintiff to suspend the proceedings to obtain counsel at this point.

II. Conclusion.

Plaintiff failed to provide any legal authority under which all proceedings in this case should be stayed or suspended. Further, Plaintiff had ample opportunity to adequately prepare for litigation, including

obtaining local counsel. Finally, granting a stay of all proceedings will prejudice Defendant Kern who has had to expend significant time and resources on this case, despite the action being wrongfully filed in this Court. Plaintiff refuses to accept that this is not the appropriate avenue for the causes of action set forth in the Complaint. His attempt to delay this matter any further should not be granted by this Court.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this 22nd day of October, 2015.

KERN & ASSOCIATES, LTD.

By _____
GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd. and Gayle Kern

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S OPPOSITION TO MOTION TO POSTPONE AND TEMPORARILY STAY PROCEEDINGS

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

____ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 22nd day of October, 2015.

Teresa A Gearhart
TERESA A. GEARHART

F I L E D
Electronically
2015-10-22 02:49:35 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5202142

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2015-10-22 14:49:34.963.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

–

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:	10-22-2015:13:51:38
Clerk Accepted:	10-22-2015:14:48:57
Court:	Second Judicial District Court - State of Nevada Civil
Case Title:	DAVID DEZZANI ETAL VS. KERN & ASSOC (D10)
Document(s) Submitted:	Opposition to Mtn
Filed By:	Gayle Kern

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

–

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN, KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI

FILED

2015 NOV -3 AM 8:55

JACQUELINE BRYANT
CLERK OF THE COURT
BY [signature]
DEPUTY

David and Rochelle Dezzani
17 Camino Lienzo
SanClemente, CA 92673
(808) 291-2302

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and
ROCHELLE DEZZANI,
Plaintiffs

vs.

KERN &ASSOCIATES, LTD; GAYLE KERN;
KAREN HIGGINS; JOHN DOES 1-10;
JANE DOES 1-10; DOE BUSINESSES 1-5
_____/

Case No. CV15 00826
Dept. No. 10

**NOTICE OF CORRECTION,
AFFIDAVIT,
CERTIFICATE OF SERVICE;
AFFIRMATION**

Plaintiff ROCHELLE DEZZANI signs, corrects and endorses the MEMORANDUM IN OPPOSITION TO DEFENDANT, KERN AND GALYE KERN'S MOTION, previously signed and filed by Plaintiff David Dezzani herein.

DATED this 27th day of October, 2015.

Rochelle Dezzani
Rochelle Dezzani

AFFIDAVIT OF DAVID DEZZANI

I, DAVID DEZZANI, being duly sworn according to law deposes and says:

1. That he is one of the plaintiffs in this action.

2. That he is 79 years old, has been married to Plaintiff Rochelle Dezzani since 1967.

3. That he was diagnosed with cancer earlier this year and, since receiving that diagnosis, he and Plaintiff Rochelle Dezzani have visited numerous doctors who specialize in oncology, all of whom agree regarding affiant's diagnosis but several of whom expressed differing opinions and recommendations regarding treatment options.

4. That, in July, 2015, affiant committed to a treatment program which requires daily medication and, commencing in September, radiation therapy five-days per week until late October, to be followed by another procedure within 6 weeks thereafter.

5. That Plaintiff Rochelle has driven him to and from every doctor appointment and every radiation session, since affiant was diagnosed with cancer.

6. That, beginning shortly after commencing the recommended treatment, affiant has been experiencing weakness, nausea, fatigue, and difficulty with concentration.

7. That, after receiving defendants' Motion to Dismiss in the mail, at their home, in Southern California, in late September, he and Plaintiff Rochelle discussed the moving papers and, in order to be able to serve and file a timely memorandum in opposition, he hastily prepared a document to be signed by both of them.

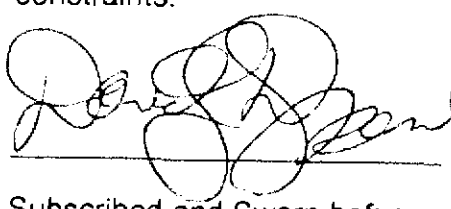
8. That Plaintiff Rochelle told him that she agreed with and intended to sign the document after he was able to finalize and print it, however, due to inadvertence and conflicting medical commitments, she did not sign before it was sent to the Court and filed without her signature.

9. That he signed and sent the Memorandum in Opposition to the clerk of the Second Judicial District Court, 75 Court Street, Reno, Nevada 89501, for filing, via U.S. Postal Service priority mail, after receiving assurance from the postal service employee that it would arrive in Reno and be delivered to the courthouse, before noon, on Monday, October 5, 2015.

10. That the USPS tracking system shows that the Memorandum in Opposition was in fact "Delivered" to the Courthouse at 11:17 in the morning, on October 5, 2015, within the time conceded by Defendants Kern to be correct. (See Section II of Kerns' Reply In Support of Motion to Dismisss, page 2 "it was due ... on or before October 5,2015").

11. That affiant previously had mailed a copy of the Memorandum in Opposition to Defendants Kern on September 30, 2015 and affiant therefore believes that that opposition memorandum was actually received by Defendants Kern, at Defendants Kerns' office in Reno, several days before October 5, 2015.

12. That, in light of the tracking information showing that the plaintiffs' Memorandum in Opposition was delivered for filing in Reno before noon on October 5, 2015, and notwithstanding that the clerk's stamp states "Filed 2015 OCT - 6 AM 9:08" on the first page of the copies of the document returned to affiant by the Clerk of Court, in the stamped, self-addressed envelope affiant had included in the envelope containing the original document delivered on October 5, 2015, affiant believes that the Memorandum in Opposition was served and filed within the applicable time constraints.



Date October 28, 2015

Subscribed and Sworn before me on

October 28th, 2015.

by John T. Allard Notary Public

David Dezzani Plaintiff

17 Camino Lienzo, CA 92673 Address City, State, Zip

(808) 2912302 Phone #

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

JURAT

State of California
County of Orange } ss.

Subscribed and sworn to (or affirmed) before me on this 28th day of October, 2015, by David Dezzani and _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

JOHN T. ALLARD
Commission # 2116883
Notary Public - California
Orange County
My Comm. Expires Jun 23, 2019

Signature of Notary
Name of Notary: **John T. Allard**

OPTIONAL INFORMATION

Date of Document: 10-25-15

Type or Title of Document: Affidavit of David Dezzani

Number of Pages in Document: 2

Document in a Foreign Language: N/A

Capacity of Signer:
X Individual
_____ Corporate Officer – Title(s): _____
_____ Partner – □ Limited □ General
_____ Attorney In Fact
_____ Trustee
_____ Guardian or Conservator
_____ Other: _____

Signer Is Representing: _____

CERTIFICATE OF SERVICE

The undersigned certifies that he placed a true copy of the above document in the U.S. mail, in a sealed envelope postage prepaid, on October 28, 2015, addressed as follows: KERN & ASSOCIATES LTD, 5421 Kietze Lane,Suite 200, Reno, Nevada 89511.

DATED THIS 28th DAY OF OCTOBER, 2015

David Dezzani

AFFIRMATION

DD Notice of Correction, Affidavit, DD Certificate of Service, Affirmation DD DD

The undersigned does hereby affirm that the preceding document, **~~Motion to Postpone and/or Temporally Stay Proceedings~~**, filed in CV15 00826 does not contain the social security number of any person.

DATED THIS 28th DAY OF OCTOBER, 2015

David Dezzani

David and Rochelle Dezzani
17 Camino Lienzo
SanClemente, CA 92673
(808) 291-2302

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and
ROCHELLE DEZZANI,
Plaintiffs

vs.

KERN &ASSOCIATES, LTD; GAYLE KERN;
KAREN HIGGINS; JOHN DOES 1-10;
JANE DOES 1-10; DOE BUSINESSES 1-5

Case No. CV15 00826
Dept. No. 10

NOTICE OF CORRECTION, AFFIDAVIT, CERTIFICATE OF SERVICE; AFFIRMATION

Plaintiff ROCHELLE DEZZANI signs, corrects and endorses the MEMORANDUM IN OPPOSITION TO DEFENDANT, KERN AND GALYE KERN'S MOTION, previously signed and filed by Plaintiff David Dezzani herein.

DATED this 27th day of October, 2015.

Rochelle Dezzani
Rochelle Dezzani

AFFIDAVIT OF DAVID DEZZANI

I, DAVID DEZZANI, being duly sworn according to law deposes and says:

1. That he is one of the plaintiffs in this action.

2. That he is 79 years old, has been married to Plaintiff Rochelle Dezzani since 1967.

3. That he was diagnosed with cancer earlier this year and, since receiving that diagnosis, he and Plaintiff Rochelle Dezzani have visited numerous doctors who specialize in oncology, all of whom agree regarding affiant's diagnosis but several of whom expressed differing opinions and recommendations regarding treatment options.

4. That, in July, 2015, affiant committed to a treatment program which requires daily medication and, commencing in September, radiation therapy five-days per week until late October, to be followed by another procedure within 6 weeks thereafter.

5. That Plaintiff Rochelle has driven him to and from every doctor appointment and every radiation session, since affiant was diagnosed with cancer.

6. That, beginning shortly after commencing the recommended treatment, affiant has been experiencing weakness, nausea, fatigue, and difficulty with concentration.

7. That, after receiving defendants' Motion to Dismiss in the mail, at their home, in Southern California, in late September, he and Plaintiff Rochelle discussed the moving papers and, in order to be able to serve and file a timely memorandum in opposition, he hastily prepared a document to be signed by both of them.

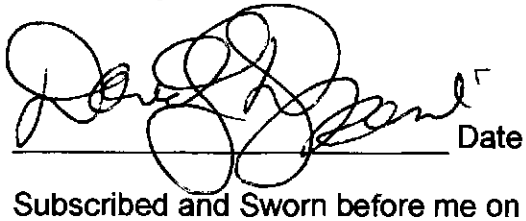
8. That Plaintiff Rochelle told him that she agreed with and intended to sign the document after he was able to finalize and print it, however, due to inadvertence and conflicting medical commitments, she did not sign before it was sent to the Court and filed without her signature.

9. That he signed and sent the Memorandum in Opposition to the clerk of the Second Judicial District Court, 75 Court Street, Reno, Nevada 89501, for filing, via U.S. Postal Service priority mail, after receiving assurance from the postal service employee that it would arrive in Reno and be delivered to the courthouse, before noon, on Monday, October 5, 2015.

10. That the USPS tracking system shows that the Memorandum in Opposition was in fact "Delivered" to the Courthouse at 11:17 in the morning, on October 5, 2015, within the time conceded by Defendants Kern to be correct. (See Section II of Kerns' Reply In Support of Motion to Dismisss, page 2 "it was due ... on or before October 5,2015").

11. That affiant previously had mailed a copy of the Memorandum in Opposition to Defendants Kern on September 30, 2015 and affiant therefore believes that that opposition memorandum was actually received by Defendants Kern, at Defendants Kerns' office in Reno, several days before October 5, 2015.

12. That, in light of the tracking information showing that the plaintiffs' Memorandum in Opposition was delivered for filing in Reno before noon on October 5, 2015, and notwithstanding that the clerk's stamp states "Filed 2015 OCT - 6 AM 9:08" on the first page of the copies of the document returned to affiant by the Clerk of Court, in the stamped, self-addressed envelope affiant had included in the envelope containing the original document delivered on October 5, 2015, affiant believes that the Memorandum in Opposition was served and filed within the applicable time constraints.



Date October 28, 2015

Subscribed and Sworn before me on

October 28th, 2015.

by John T. Allard Notary Public

David Dezzani Plaintiff

17 Camino Lienzo, CA 92673 Address City, State, Zip

(808) 2912302 Phone #

NOTARY CERTIFICATE ATTACHED

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

JURAT

State of California
County of Orange } ss.

Subscribed and sworn to (or affirmed) before me on this 28th day of October, 2015, by David Dezzani and _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

JOHN T. ALLARD
Commission # 2116883
Notary Public - California
Orange County
My Comm. Expires Jun 23, 2019

(seal)

Signature of Notary
Name of Notary: **John T. Allard**

(seal)

OPTIONAL INFORMATION

Date of Document: 10-28-15

Type or Title of Document: Affidavit of David Dezzani

Number of Pages in Document: 2

Document in a Foreign Language: N/A

Capacity of Signer:
X Individual
_____ Corporate Officer – Title(s):_____
_____ Partner – □ Limited □ General
_____ Attorney In Fact
_____ Trustee
_____ Guardian or Conservator
_____ Other: _____

Signer Is Representing:_____
_____

CERTIFICATE OF SERVICE

The undersigned certifies that he placed a true copy of the above document in the U.S. mail, in a sealed envelope postage prepaid, on October 28, 2015, addressed as follows: KERN & ASSOCIATES LTD, 5421 Kietze Lane,Suite 200, Reno, Nevada 89511.

DATED THIS 28th DAY OF OCTOBER, 2015

David Dezzani

AFFIRMATION

DD Notice of Correction, Affidavit, DD Certificate of Service, Affirmation DD DD

The undersigned does hereby affirm that the preceding document, ~~**Motion to Postpone and/or Temporally Stay Proceedings**~~, filed in CV15 00826 does not contain the social security number of any person.

DATED THIS 28th DAY OF OCTOBER, 2015

David Dezzani

3795

David and Rochelle Dezzani
17 Camino Lienzo
SanClemente, CA 92673
(808) 291-2302

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and
ROCHELLE DEZZANI,
Plaintiffs

vs.

KERN &ASSOCIATES, LTD; GAYLE KERN;
KAREN HIGGINS; JOHN DOES 1-10;
JANE DOES 1-10; DOE BUSINESSES 1-5
_____/

Case No. CV15 00826
Dept. No. 10

REPLY IN SUPPORT OF MOTION TO POSTPONE AND/OR TEMPORARILY STAY PROCEEDINGS; CERTIFICATE OF SERVICE; AFFIRMATION

Preliminarily, in reply to **Defendants, Kern & Associates Ltd. and Gayle Kern's Opposition to Motion to Postpone and** (sic)**Temporarily Stay Proceedings** ("MIO"), Movant points out that, although the opposition brief is founded upon an assertion that "temporary stay would only result in further delay and prejudice to Defendants" (id., page 1, first paragraph), that assertion is not supported by any factual affidavit or reference to written record.

Movant also points out that Defendants Kern (hereinafter simply "Defendants") repeatedly acknowledge this Court's discretion to grant or deny Movant's request, thereby emphasizing the importance of their own failure to present any facts or reference showing "delay and prejudice", attempting to compensate for this lack of support and add weight to their argument by adding adjectives, such as "inexcusable" and "serious" (id. at p.3); hyperbole, not appropriate factual support.

To the extent the MIO repeatedly uses the word "delay" to describe the period of time until December 1st, no showing is made of any actual adverse consequences which would result from postponement until then.

To the extent the MIO uses the word "prejudice", also does on multiple occasions, except for adding the adjective "serious", nothing is presented to support any claimed prejudicial effect, other Defendand's conjecture about the matters stated in Movant's affidavit.

Instead of supplying proper facts or other support, the MIO relies upon unsupported, unwarranted, unprofessional and unkind speculation about Movant, accusing him of being"guilty of negligence", "inexcusable neglect" and "unnecessary delay" (id.).

The lack of any factual support for Defendant's opposition to Movant's request for a brief delay, combined with their allusion to purported "clear legal deficiencies" (id.) in the complaint, suggest that Defendants hope to benefit from plaintiffs' current health difficulties and lack of Reno counsel by hurrying this matter forward, so that the Court might rule on Defendants' pending **Motion to Dismiss** ("MTD") before recognizing that Plaintiffs' claims in this case are not based upon principles of legal malpractice law, as Defendants' assert and argue in their MTD, but rather upon statutory rights created and codified *in NRS111.30183 and other Nevada statutes.*

Finally, in reply, it should be noted that beyond submitting an MIO totally devoid of support for their claimed "delay and prejudice", the last sentences of Defendants's MIO make statements which are inconsistent with contrary to written representations they have made elsewhere in this lawsuit.

On page 3 of their MIO, after accusing Movant of attempting to "delay proceedings" on what they refer to as a "fully briefed and submitted Motion to Dismiss", Defendants go on to state:

"Defendant Kern's (sic) Motion to Dismiss is before the Court for decision and Plaintiff has already submitted his Opposition. There is no need for Plaintiff to suspend the proceedings to obtain counsel at this point" (id.).

The quoted statements are totally inconsistent with, and contrary to, what Defendants presented to the Court, in their **"Reply in Support of Motion to Dismiss Complaint"**herein, signed and submitted by Defendants Kern on October 12, 2015, wherein they describe Movant's opposing memorandum as "of no force and effect" and state that it "should not be considered", completely contrary to the above-quoted statements from the MIO.

Where an attorney states in one filing, that a party's request for time to retain local counsel should be denied because that party "already submitted his Opposition" and, in another filing, that very same attorney states that that very

same Opposition is "of no force and effect", at the very least, both statements should be disregarded.

Movant respectfully requests that his motion be granted, for the reasons stated therein and above.

Respectfully submitted,

David Dezzani

DATED this 31st day of October, 2015.

CERTIFICATE OF SERVICE

The undersigned certifies that he placed a true copy of the above document in the U.S. mail, in a sealed envelope postage prepaid, on October ____, 2015, addressed as follows: KERN & ASSOCIATES LTD, 5421 Kietze Lane,Suite 200, Reno, Nevada 89511.

DATED THIS 31st DAY OF OCTOBER, 2015

David Dezzani

AFFIRMATION

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

DATED THIS 31st DAY OF OCTOBER, 2015

David Dezzani

David and Rochelle Dezzani
17 Camino Lienzo
SanClemente, CA 92673
(808) 291-2302

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and
ROCHELLE DEZZANI,
Plaintiffs

vs.

KERN &ASSOCIATES, LTD; GAYLE KERN;
KAREN HIGGINS; JOHN DOES 1-10;
JANE DOES 1-10; DOE BUSINESSES 1-5
_____/

Case No. CV15 00826
Dept. No. 10

REQUEST FOR SUBMISSION; NOTICE OF ERRATA AND CORRECTION; CERTIFICATE OF SERVICE; AFFIRMATION

Plaintiff David Dezzani filed his Motion to Postpone and/or Temporarily Stay Proceedings on October 20, 2015, Defendants Kern & Associates and Gayle Kern filed their Opposition to Motion the Postpone and Temporarily Stay Proceedings on October 22, 2015 and Plaintiff David Dezzani delivered his Reply in Support of Motion to Postpone and/or Temporally Stay Proceedings to the Clerk of Second District Judicial Court of the State of Nevada in and for the County of Washoe, at 75 Court Street, Reno, Nevada 89501 on November 2, 2015 via U.S. postal service. It is requested that the Motion to Postpone and/or Temporarily Stay Proceedings

be submitted to the Court for decision.

Plaintiff David Dezzani gives notice of a typographical error, on the bottom line of the fourth

paragraph of the second page of his Reply in Support of Motion to

Postpone and/or Temporally Stay Proceedings, and corrects that error as follows:

> The numbers *111.30183* were erroneously typed instead of the correct provision of the Nevada Revised Statutes NRS116.31183 and, therefore, the final
>
> portion of the fourth paragraph of the second page of the Reply is hereby is corrected to state::

"... Plaintiffs' claims in this case are not based upon principles of legal mal-practice law , as defendants' assert and argue in their MTD, but rather upon statutory rights created and codified in *NRS116.31183* **Retaliatory action prohibited; separate action by unit's owner** *and other Nevada Revised Statutes*.

David Dezzani

DATED this 3rd day of November, 2015.

CERTIFICATE OF SERVICE

The undersigned certifies that he placed a true copy of the above document in the U.S. mail, in a sealed envelope postage prepaid, on October ____, 2015, addressed as follows: KERN & ASSOCIATES LTD, 5421 Kietze Lane,Suite 200, Reno, Nevada 89511.

DATED THIS 3rd DAY OF November 2015

David Dezzani

AFFIRMATION

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

DATED THIS 3rd DAY OF November, 2015

David Dezzani

FILED
Electronically
2015-11-19 11:12:50 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5243232

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5;

Defendants.

_____/

Case No.: CV15-00826

Dept. No: 10

ORDER

Presently before the Court is DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S MOTION TO DISMISS COMPLAINT ("the Motion") filed by Defendants GAYLE A. KERN, DBA KERN & ASSOCIATES, LTD. ("Kern") on September 17, 2015. Plaintiffs DAVID DEZZANI and ROCHELLE DEZZANI (collectively "the Plaintiffs") filed a MEMORANDUM IN DEFENDANTS, KERN AND GAYLE KERN'S MOTION[1] ("the Opposition") on October 6, 2015. Kern filed DEFENDANTS, KERN & ASSOCIATES, LTD.

[1]. The Reply asserts the Opposition was required to be filed no later than October 5, 2015, pursuant to WDCR 12(2). The Reply further argues the Opposition should not be considered by the Court for failure to contain a valid certificate of service. The Court finds refusing to consider the Opposition would be contrary to the strong policy in the State of Nevada to resolve cases on their merits. *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992); *Yochum v. Davis*, 98 Nev. 484, 487, 653 P.2d 1215, 1217 (1982) (holding "the court must give due consideration to the state's underlying basic policy of resolving cases on their merits wherever possible."). Accordingly, the Court will consider the Opposition.

AND GAYLE KERN'S REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT on October 12, 2015. Kern submitted the matter for the Court's consideration on October 13, 2015.

The Plaintiffs filed a COMPLAINT ("the Complaint") on May 4, 2015. The Complaint alleges four causes of action for various violations of Chapter 116 of the Nevada Revised Statutes. The Complaint alleges Kern engaged in retaliatory action against the Plaintiffs. This case arises out of a dispute between the Plaintiffs and the McCloud Condominium Homeowner's Association ("the HOA"). The Plaintiffs' property contains a rear deck extended from original dimensions by a previous owner. The HOA cited the Plaintiffs for a violation indicating the deck extension was contrary to the Covenants Conditions and Restrictions ("CC&Rs") of the HOA. Kern engaged in correspondence between the Plaintiffs and the HOA as the HOA's counsel. A hearing regarding the violation was conducted and a RESULT OF HEARING was issued by the HOA on September 5, 2014. At all times relevant to this matter Kern was acting as an attorney for the HOA.

The Motion seeks an order from the Court dismissing the Complaint as to Kern pursuant to NRCP 12(b)(1), NRCP 12(b)(5), NRCP 12(h)(3), and NRS 38.310. The Motion alleges the Plaintiffs have failed to assert any claims against Kern for which relief may be granted because there is no theory of liability by which Kern could be independently liable to the Plaintiffs. The Motion asserts, as a matter of law, no cause of action can be asserted against her because she was acting as an attorney for the HOA and owed no duty to Plaintiffs in their individual capacities. Any communication between Kern and the Plaintiffs was communicated on behalf of the HOA, not for the benefit of the Plaintiffs.

The Opposition contends Kern mischaracterizes the claims as those which required privity of contract. The Opposition asserts NRS 116.3118 authorizes civil complaints against agents of an association. The Opposition asserts Kern admitted to being an agent of the HOA and therefore can be liable for retaliatory action. The Reply contends Kern cannot be liable for actions taken solely in connection with her representation of the HOA.

N.R.C.P. 12(b)(5) provides that a defendant may make a motion for dismissal on the grounds of failure to state a claim upon which relief can be granted. Nevada is a notice-pleading jurisdiction, and its "courts liberally construe pleadings to place into issues matters which are

fairly noticed to the adverse party." *Hay v Hay,* 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). The Court must construe the pleadings liberally and draw every fair inference in favor of the non-moving party when considering a motion to dismiss on the grounds of failure to state a claim upon which relief can be granted. *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002), citing *Blackjack Bonding v. Las Vegas Mun. Ct.,* 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000).

The Court finds there is no basis in law or fact to support the causes of action alleged against Kern. The Court finds to permit such causes of action against Kern would result in a chilling effect on individuals' ability to hire and retain counsel. NRS 116.3118 does not permit attorneys to be personally liable for actions taken on behalf of an association.

IT IS HEREBY ORDERED the DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S MOTION TO DISMISS COMPLAINT is GRANTED.

The Court notes the Plaintiffs filed a MOTION TO POSTPONE AND/TEMPORARILY STAY ("the Motion for Stay") on October 20, 2015. Kern filed DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S OPPOSITION TO MOTION TO POSTPONE AND TEMPORARILY STAY PROCEEDINGS ("the Opposition to Stay") on October 22, 2015. The Plaintiff filed a REPLY IN SUPPORT OF MOTION TO POSTPONE AND/OR TEMPORARILY STAY PROCEEDINGS on November 5, 2015. The Plaintiffs submitted the matter for the Court's consideration on November 10, 2015.

The Motion for Stay seeks an order from the Court staying all proceedings until December 1, 2015, based upon the medical treatment of Plaintiff Mr. Dezzani. The Opposition to Stay contends there are no grounds on which this Court may render a decision to stay this matter. The Opposition to Stay asserts the Plaintiffs had ample opportunity to secure local counsel to ensure all proceedings in this matter could be conducted in a timely fashion. The Opposition to Stay further points out the Plaintiffs have not made any specified requests regarding what should be stayed.

The Court finds the Plaintiffs have not provided legal authority warranting a stay, or what proceedings the Plaintiffs seek to have stayed. Further, the Court finds Defendant KAREN HIGGINS has not been served in this matter. The 120 days for service has lapsed. NRCP 4(i).

IT IS HEREBY ORDERED the MOTION TO POSTPONE AND/TEMPORARILY STAY is denied. IT IS FURTHER ORDERED the above-captioned matter is DISMISSED in its entirety.

DATED this 19 day of November, 2015.

ELLIOTT A. SATTLER
District Judge

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 19 day of November, 2015, I deposited in the 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:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 19 day of November, 2015, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gayle Kern, Esq.

Sheila Mansfield
Administrative Assistant

F I L E D
Electronically
2015-11-19 11:13:48 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5243234

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2015-11-19 11:13:47.293.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:	11-19-2015:11:12:50
Clerk Accepted:	11-19-2015:11:13:16
Court:	Second Judicial District Court - State of Nevada Civil
Case Title:	DAVID DEZZANI ETAL VS. KERN & ASSOC (D10)
Document(s) Submitted:	Ord for Dismissal of Case
Filed By:	Judicial Asst. SMansfield

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN, KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI

FILED
Electronically
2015-11-19 03:40:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5244444

2540
GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane Suite 200
Reno, Nevada 89511
Telephone: (775) 324-5930
Telefax: (775) 324-6173
E-mail: gaylekern@kernltd.com

Attorneys for Kern & Associates, Ltd. and Gayle Kern

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5,

Defendants.
_____/

CASE NO.: CV15-00826

DEPT. NO.: 10

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 19th day of November, 2015, an Order (dismissing case in its entirety) ("Order"), was entered in the above-captioned matter. A copy of the Order is attached hereto.

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this 19th day of November, 2015.

KERN & ASSOCIATES, LTD.

By _____
GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd. and Gayle Kern

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

NOTICE OF ENTRY OF ORDER

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

____ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 19th day of November, 2015.

Teresa A. Gearhart

TERESA A. GEARHART

FILED
Electronically
2015-11-19 11:12:50 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5243232

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5;

Defendants.

_____/

Case No.: CV15-00826

Dept. No: 10

ORDER

Presently before the Court is DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S MOTION TO DISMISS COMPLAINT ("the Motion") filed by Defendants GAYLE A. KERN, DBA KERN & ASSOCIATES, LTD. ("Kern") on September 17, 2015. Plaintiffs DAVID DEZZANI and ROCHELLE DEZZANI (collectively "the Plaintiffs") filed a MEMORANDUM IN DEFENDANTS, KERN AND GAYLE KERN'S MOTION[1] ("the Opposition") on October 6, 2015. Kern filed DEFENDANTS, KERN & ASSOCIATES, LTD.

[1]. The Reply asserts the Opposition was required to be filed no later than October 5, 2015, pursuant to WDCR 12(2). The Reply further argues the Opposition should not be considered by the Court for failure to contain a valid certificate of service. The Court finds refusing to consider the Opposition would be contrary to the strong policy in the State of Nevada to resolve cases on their merits. *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992); *Yochum v. Davis*, 98 Nev. 484, 487, 653 P.2d 1215, 1217 (1982) (holding "the court must give due consideration to the state's underlying basic policy of resolving cases on their merits wherever possible."). Accordingly, the Court will consider the Opposition.

AND GAYLE KERN'S REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT on October 12, 2015. Kern submitted the matter for the Court's consideration on October 13, 2015.

The Plaintiffs filed a COMPLAINT ("the Complaint") on May 4, 2015. The Complaint alleges four causes of action for various violations of Chapter 116 of the Nevada Revised Statutes. The Complaint alleges Kern engaged in retaliatory action against the Plaintiffs. This case arises out of a dispute between the Plaintiffs and the McCloud Condominium Homeowner's Association ("the HOA"). The Plaintiffs' property contains a rear deck extended from original dimensions by a previous owner. The HOA cited the Plaintiffs for a violation indicating the deck extension was contrary to the Covenants Conditions and Restrictions ("CC&Rs") of the HOA. Kern engaged in correspondence between the Plaintiffs and the HOA as the HOA's counsel. A hearing regarding the violation was conducted and a RESULT OF HEARING was issued by the HOA on September 5, 2014. At all times relevant to this matter Kern was acting as an attorney for the HOA.

The Motion seeks an order from the Court dismissing the Complaint as to Kern pursuant to NRCP 12(b)(1), NRCP 12(b)(5), NRCP 12(h)(3), and NRS 38.310. The Motion alleges the Plaintiffs have failed to assert any claims against Kern for which relief may be granted because there is no theory of liability by which Kern could be independently liable to the Plaintiffs. The Motion asserts, as a matter of law, no cause of action can be asserted against her because she was acting as an attorney for the HOA and owed no duty to Plaintiffs in their individual capacities. Any communication between Kern and the Plaintiffs was communicated on behalf of the HOA, not for the benefit of the Plaintiffs.

The Opposition contends Kern mischaracterizes the claims as those which required privity of contract. The Opposition asserts NRS 116.3118 authorizes civil complaints against agents of an association. The Opposition asserts Kern admitted to being an agent of the HOA and therefore can be liable for retaliatory action. The Reply contends Kern cannot be liable for actions taken solely in connection with her representation of the HOA.

N.R.C.P. 12(b)(5) provides that a defendant may make a motion for dismissal on the grounds of failure to state a claim upon which relief can be granted. Nevada is a notice-pleading jurisdiction, and its "courts liberally construe pleadings to place into issues matters which are

fairly noticed to the adverse party." *Hay v Hay,* 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). The Court must construe the pleadings liberally and draw every fair inference in favor of the non-moving party when considering a motion to dismiss on the grounds of failure to state a claim upon which relief can be granted. *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002), citing *Blackjack Bonding v. Las Vegas Mun. Ct.,* 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000).

The Court finds there is no basis in law or fact to support the causes of action alleged against Kern. The Court finds to permit such causes of action against Kern would result in a chilling effect on individuals' ability to hire and retain counsel. NRS 116.3118 does not permit attorneys to be personally liable for actions taken on behalf of an association.

IT IS HEREBY ORDERED the DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S MOTION TO DISMISS COMPLAINT is GRANTED.

The Court notes the Plaintiffs filed a MOTION TO POSTPONE AND/TEMPORARILY STAY ("the Motion for Stay") on October 20, 2015. Kern filed DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S OPPOSITION TO MOTION TO POSTPONE AND TEMPORARILY STAY PROCEEDINGS ("the Opposition to Stay") on October 22, 2015. The Plaintiff filed a REPLY IN SUPPORT OF MOTION TO POSTPONE AND/OR TEMPORARILY STAY PROCEEDINGS on November 5, 2015. The Plaintiffs submitted the matter for the Court's consideration on November 10, 2015.

The Motion for Stay seeks an order from the Court staying all proceedings until December 1, 2015, based upon the medical treatment of Plaintiff Mr. Dezzani. The Opposition to Stay contends there are no grounds on which this Court may render a decision to stay this matter. The Opposition to Stay asserts the Plaintiffs had ample opportunity to secure local counsel to ensure all proceedings in this matter could be conducted in a timely fashion. The Opposition to Stay further points out the Plaintiffs have not made any specified requests regarding what should be stayed.

The Court finds the Plaintiffs have not provided legal authority warranting a stay, or what proceedings the Plaintiffs seek to have stayed. Further, the Court finds Defendant KAREN HIGGINS has not been served in this matter. The 120 days for service has lapsed. NRCP 4(i).

IT IS HEREBY ORDERED the MOTION TO POSTPONE AND/TEMPORARILY STAY is denied. IT IS FURTHER ORDERED the above-captioned matter is DISMISSED in its entirety.

DATED this 19 day of November, 2015.

ELLIOTT A. SATTLER
District Judge

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 19 day of November, 2015, I deposited in the 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:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 19 day of November, 2015, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gayle Kern, Esq.

Sheila Mansfield
Administrative Assistant

F I L E D
Electronically
2015-11-19 03:41:57 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5244447

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2015-11-19 15:41:56.926.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:	11-19-2015:15:40:54
Clerk Accepted:	11-19-2015:15:41:28
Court:	Second Judicial District Court - State of Nevada Civil
Case Title:	DAVID DEZZANI ETAL VS. KERN & ASSOC (D10)
Document(s) Submitted:	Notice of Entry of Ord
Filed By:	Gayle Kern

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN, KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI

FILED
Electronically
2015-11-20 03:13:45 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5246523 : mfernand

1950
GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane Suite 200
Reno, Nevada 89511
Telephone: (775) 324-5930
Telefax: (775) 324-6173
E-mail: gaylekern@kernltd.com

Attorneys for Kern & Associates, Ltd. and Gayle Kern

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5,

Defendants.
_____/

CASE NO.: CV15-00826

DEPT. NO.: 10

MEMORANDUM OF COSTS

Filing Fees	$243.00
Photocopies	$ 82.60
Postage	$ 26.74
TOTAL COSTS	$352.34

///

///

///

///

///

///

///

STATE OF NEVADA)
: ss.
COUNTY OF WASHOE)

Gayle A. Kern, being first duly sworn, deposes and says that to the best of my knowledge and belief these items are correct and that the disbursements have been necessarily incurred in this action by Plaintiff *(NRS 18.005; NRS 18.110).*

GAYLE A. KERN

SUBSCRIBED and SWORN to before me this 20th day of November, 2015.

TERESA A. GEARHART
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 09-10-18
Certificate No: 94-0132-2

NOTARY PUBLIC

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this 20th day of November, 2015.

KERN & ASSOCIATES, LTD.

By
GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd. and Gayle Kern

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

MEMORANDUM OF COSTS

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

____ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 20th day of November, 2015.

Teresa A. Gearhart
TERESA A. GEARHART

F I L E D
Electronically
2015-11-20 03:59:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5246690

Return Of NEF

Recipients

GAYLE KERN, ESQ. - Notification received on 2015-11-20 15:59:40.792.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV15-00826

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:	11-20-2015:15:13:45
Clerk Accepted:	11-20-2015:15:59:07
Court:	Second Judicial District Court - State of Nevada Civil
Case Title:	DAVID DEZZANI ETAL VS. KERN & ASSOC (D10)
Document(s) Submitted:	Memorandum of Costs
Filed By:	Gayle Kern

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GAYLE A. KERN, ESQ. for GAYLE A. KERN, KERN & ASSOCIATES, LTD

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

KAREN HIGGINS

ROCHELLE DEZZANI

DAVID DEZZANI