

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ARTEMIS EXPLORATION COMPANY,  
A NEVADA CORPORATION,

No. 77721

Appellant,

APPELLANT'S APPENDIX  
VOLUME 2

vs.

RUBY LAKE ESTATES  
HOMEOWNERS ASSOCIATION,

Appeal from Fourth Judicial  
District Court, Division 2  
Case No. CV-C-12-175

Respondent.

**APPELLANT'S APPENDIX - VOLUME 2 - Pgs. 111 - 200**

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FILED

1 CASE NO. CV-C-12-175

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4 not contain the social security  
5 number of any person.

ELKO DISTRICT COURT

CLERK DEPUTY

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

8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,

Plaintiff,

10 vs.

11 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION, et. al.,

12 Defendants.

**PLAINTIFF'S OPPOSITION TO**  
**MOTION FOR ATTORNEY'S FEES**  
**AND COSTS**

13 Plaintiff ARTEMIS EXPLORATION COMPANY, a Nevada corporation, by and through  
14 counsel of Gerber Law Offices, LLP, hereby files Plaintiff's Opposition to Motion for Attorney's Fees  
15 and Costs based upon the points and authorities set forth below, the exhibits attached hereto, and all  
16 papers, pleadings, and documents on file herein.

17 Dated this 26th day of April, 2018.

18 GERBER LAW OFFICES, LLP

19 By: 

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ATTORNEYS FOR PLAINTIFF

24 **NOTICE OF MOTION**

25 A hearing on this motion is requested and a court reporter is not requested. It is estimated that  
26 one hour should be set aside for the hearing on this motion.

27 **POINTS AND AUTHORITIES**

28 RLEHOA previously filed a motion for attorney's fees and costs, which this Court granted;

1 however, the Supreme Court of Nevada determined that the award was in error because the attorney's  
2 fees and costs award was not justified under Nevada law. (Order to Show Cause, filed October 7,  
3 2013.)

4 RLEHOA has again moved this Court for attorney's fees and costs; however, RLEHOA is not  
5 entitled to an award of attorney's fees and costs as requested because 1) the authority RLEHOA relies  
6 upon does not support the requested award, and 2) the amount of the requested award is unreasonable.  
7 RLEHOA attorney's fees and costs request is based upon the claims that RLEHOA voluntarily  
8 dismissed and therefore the request should be denied. RLEHOA is also requesting fees and costs that  
9 have been specifically rejected by the Supreme Court of Nevada and that RLEHOA stipulated not to  
10 pursue. Therefore, RLEHOA's requested award should be denied.<sup>1</sup>

11 **I. The authority RLEHOA presents does not entitle it to the requested award.**

12 RLEHOA relies upon NRS 116.4117, 116.3115(6), 18.010(2), and the CC&Rs for its  
13 attorney's fees and costs request. None of the authorities support RLEHOA's requested award.  
14 *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 879 P.2d 69, 73 (Nev. 1994); NRS 18.010 (Nevada  
15 allows attorney's fees only when "authorized by rule, statute, or contract").

16 **A. NRS 116.4117 does not support RLEHOA's requested award.**

17 A single cause of action for declaratory relief was brought, maintained, and decided by this  
18 Court in this case. (*See* Second Amended Complaint; Final Judgment.) The declaratory relief claim  
19 was brought pursuant to NRS 30.010 et seq. (Order: Joinder of Necessary Parties 2:1-5.); *R Ventures*  
20 *I, LLC v. Wells Fargo Bank, N.A.*, 393 P.3d 660 (Nev. 2017) (unpublished) (*citing to* Pursuant To,  
21 Black's Law Dictionary (10th ed. 2014) (equating "pursuant to" with "[a]s authorized by" or "under").  
22 When a case is brought pursuant to NRS 30.010 et. seq. a claim for attorney's fees under NRS  
23 116.4117 is inapplicable. *R Ventures I, LLC*, 393 P.3d 660; *See also Bank of Am., N.A. v. Treasures*

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25 <sup>1</sup> Counsel for Artemis Exploration Company ("Artemis") served the Notice of Entry of Final  
26 Judgment on Ruby Lake Estates Homeowner's Association's ("RLEHOA") counsel on February 28,  
27 2018, via mail. (See Certificate of Service to NOE, filed herein.) Upon reading RLEHOA's footnote  
28 1 on page 2 of its Motion for Attorney's Fees and Costs, Artemis's counsel was informed, for the  
first time, that RLEHOA's counsel had not actually received the NOE. Upon reading the footnote,  
counsel immediately sent the NOE to RLEHOA's counsel via electronic mail.

1 *Landscape Maint. Ass'n*, No. 216CV380JCMNJK, 2017 WL 3116233, at \*3 (D. Nev. July 21, 2017)  
2 (denying attorney's fees pursuant to NRS 116.4117 because declaratory relief claim was brought  
3 pursuant to NRS 30.010 et. seq., even though case may have relied on NRS 116.4117). Therefore,  
4 RLEHOA is not entitled to attorney's fees and costs under NRS 116.4117 because the cause of action  
5 was brought pursuant to NRS 30.010 et seq., not NRS 116.4117, which is not applicable to this case.  
6 *Id.*

7       *B.       NRS 116.3115(6) does not support RLEHOA's requested award.*

8       RLEHOA is not entitled to an award of attorney's fees and costs pursuant to NRS 116.3115(6)  
9 because the single, declaratory relief cause of action was brought pursuant to NRS 30.010 et seq. and  
10 did not even rely on NRS 116.3115(6). (Order: Joinder of Necessary Parties 2:1-5); *R Ventures I,*  
11 *LLC*, 393 P.3d 660; *Bank of Am., N.A.*, 2017 WL 3116233, at \*3.

12       NRS 116.3115(6) does not allow for an award of attorney's fees. The statute provides in  
13 pertinent part:

14       If damage to a unit or other part of the common-interest community, or if any other  
15 common expense is caused by the willful misconduct or gross negligence of any unit's  
16 owner, tenant or invitee of a unit's owner or tenant, the association may assess that  
17 expense exclusively against his or her unit, even if the association maintains insurance  
18 with respect to that damage or common expense, unless the damage or other common  
19 expense is caused by a vehicle and is committed by a person who is delivering goods  
20 to, or performing services for, the unit's owner, tenant or invitee of the unit's owner  
21 or tenant.

22       NRS 116.3115(6).

23       RLEHOA's counsel misquotes the statute, employing quotations, as follows: "If any common  
24 expense is caused by the misconduct of any unit's owner, the association may assess that expense  
25 exclusively against his unit." (Motion for Attorney's Fees and Costs 7:20-23.) The misquotation is  
26 so inaccurate and misleading that, unless it is a mistake, it appears intentional. RLEHOA is  
27 attempting to misconstrue the language of the statute to broaden its application to the instant case;  
28 however, NRS 116.3115(6) is inapplicable.

      NRS 116.3115(6) is narrow in its application. The statute specifically refers to "damage to  
a unit" or "other common expense" caused by the "willful misconduct or gross negligence" of any  
unit's owner. Therefore, RLEHOA could only recover "damage to a unit" or "other common expense"



1 under the statute. The statute does not provide an avenue for RLEHOA to recover attorney's fees and  
2 costs, which must be specifically "authorized by rule, statute, or contract." NRS 18.010.

3 Even if RLEHOA could collect fees and costs under NRS 116.3115(6), RLEHOA would be  
4 required to prove "damage to a unit" or "willful misconduct or gross negligence." RLEHOA does not  
5 assert that any of Artemis's actions caused "damage to a unit" or that Artemis was "gross[ly]  
6 negligent." However, RLEHOA, through strained logic, argues that Mr. Essington's alleged actions  
7 constituted "willful misconduct" and were imputed to Artemis and caused RLEHOA to incur "other  
8 common expenses," which include attorney's fees and costs from Artemis's declaratory judgment  
9 claim. (Motion for Attorney's Fees and Costs 9:20-10:2.) Such logic is unsupported.

10 RLEHOA voluntarily dismissed its claims against Artemis regarding Mr. Essington, which  
11 were all contained in RLEHOA's counterclaims. (Stipulation and Order for Dismissal of  
12 Counterclaims and Cross-Claim Without Prejudice.) RLEHOA expressly stated in its Motion that it  
13 is "not seeking fees or costs specific to the prosecution of its now dismissed Counterclaims and  
14 Cross-Claim." (Motion for Attorney's Fees and Costs 4 ft. 3.) It also stipulated to not pursue any  
15 attorney's fees and costs regarding its Counterclaims and Cross-claims, and those claims are the only  
16 claims in this case that relate to by Mr. Essington, who is not even a party to the case. (Stipulation and  
17 Order Dismissing Counterclaims and Cross-claim Without Prejudice 2:19-21 ("**all Parties stipulate**  
18 **and agree to bear their own fees and costs incurred in the prosecution and/or defense of the**  
19 **Counterclaims and Crossclaim.**") (emphasis added.)) By voluntarily dismissing the claims and not  
20 pursuing any fees and costs associated with such claims, RLEHOA abandoned its pursuit of fees and  
21 costs related to its allegations regarding Mr. Essington contained in RLEHOA's counterclaims, and  
22 determined to only seek fees and costs related to Artemis's declaratory judgment claim.

23 Furthermore, this Court never entered any order or judgment finding any damage or "willful  
24 misconduct." Consequently, NRS 116.3115(6) does not support an award of attorney's fees and costs.

25 *C. The CC&Rs do not support RLEHOA's requested award.*

26 RLEHOA is not entitled to an award of attorney's fees and costs pursuant to the CC&Rs  
27 because the CC&Rs do not include any provision that allows a homeowners' association to collect  
28 attorney's fees and costs as a prevailing party. The CC&Rs only provide that an "owner of any lot,

1 DECLARANT, or any representative of the Architectural Review Committee” is entitled to attorney’s  
2 fees and costs. (CC&Rs.) Given that RLEHOA is an association, the CC&Rs do not provide that an  
3 association is entitled to an award of attorney’s fees and costs. Therefore, RLEHOA cannot collect  
4 attorney’s fees and costs pursuant to the contract. The language of the CC&Rs “is clear and  
5 unambiguous,” and therefore must be “enforced as written.” *Am. First Fed. Credit Union v. Soro*, 131  
6 Nev. Adv. Op. 73, 359 P.3d 105, 106 (2015) (quotations and citations removed).

7 D. NRS 18.010 does not support RLEHOA’s requested award.

8 RLEHOA is not entitled to an award of attorney’s fees and costs pursuant to NRS 18.010(2)(a)  
9 because RLEHOA was not awarded a money judgment. The Supreme Court of Nevada has ruled:

10 Since the 1985 amendments to NRS 18.010, this court has held that a party may  
11 recover attorney fees pursuant to NRS 18.010(2)(a) only if that party received a money  
12 judgment at trial. *Woods v. Label Investment Corp.*, 107 Nev. 419, 427, 812 P.2d  
1293, 1299 (1991) (“[A] money judgment is a prerequisite to an award of attorney  
fees under [NRS 18.010(2)(a) ].”)

13 *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 280, 890 P.2d 769, 771 (1995).

14 Given that RLEHOA did not recover a money judgment, it cannot recover attorney’s fees and  
15 costs. (Final Judgment.)

16 RLEHOA is not entitled to an award of attorney’s fees and costs pursuant to NRS  
17 18.010(2)(b). Artemis’s case is based on reasonable grounds, and was not “without reasonable  
18 grounds or to harass the prevailing party. The Court’s decision is one of first impression in the state  
19 of Nevada, and is based upon an interpretation of statute that has been in controversy among the  
20 Legislative Council Bureau, Attorney General’s office, the legislature, lot owners, and associations.  
21 NV S. Jour., 75th Sess. No. 120 (June 1, 2009); (Order Granting MSJ 7 ft. 3; Legislative Counsel  
22 Bureau legal opinion, attached hereto as Exhibit "A"). As this Court noted in its Order Granting  
23 Defendant’s Motion for Summary Judgment, the Court “spent hour upon hour” reviewing the case  
24 to come to its conclusion. (Order Granting Defendant’s Motion for Summary Judgment 6:8.) The  
25 Court’s conclusion rested on an interpretation that Ruby Lake Estate’s CC&Rs are considered “real  
26 property,” that the CC&Rs required lot owners to pay for common expenses “at least by implication,”  
27 and that NRS 116.3101 should not apply to pre-1992 subdivisions. (*Id.* 6:1; 7:1-4; 9:16.) The issues  
28 are of first impression, have been in controversy among leading agencies within the state, and

1 required an interpretation of statute and contract, and therefore Artemis's declaratory relief claim was  
2 supported and not groundless. Failing to prevail on a claim does not mean that a claim is groundless.  
3 "[A] claim is groundless if 'the allegations in the complaint ... are not supported by any credible  
4 evidence at trial.'" *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev.  
5 1348, 1354, 971 P.2d 383, 387 (1998) (quoting *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063,  
6 1069 (Colo.1984)).

7 Artemis's case was not brought to harass RLEHOA. As stated, many top legal agencies in the  
8 state, including the Legislative Council Bureau, Attorney General's office, and legislature, have  
9 grappled with the interpretations included in this case. The differing legal interpretations have caused  
10 uncertainty regarding common-interest communities in Nevada. Thus, this case, of first impression  
11 is needed to resolve the legal interpretations set forth by the state's leading agencies. Artemis's  
12 declaratory relief claim and this Court's Final Judgment have brought the issues to judgment.  
13 Bringing such a case is not "harassment." RLEHOA again relies on its attenuated logic regarding Mr.  
14 Essington in an attempt to prove "harassment"; however, as explained above, RLEHOA abandoned  
15 those claims and attorney's fees and costs, and RLEHOA specifically stipulated not to pursue  
16 attorney's fees and costs related to such claims.

17 Consequently, RLEHOA is not entitled to attorney's fees and costs based upon NRS  
18 18.010(2)(a) or (b).

19 **II. RLEHOA's requested award should be denied.**

20 As explained above, RLEHOA's attorney's fees and costs request is not supported by the  
21 authority RLEHOA presents, or any authority. In fact, RLEHOA's Motion requests fees and costs that  
22 were specifically found to be improper by the Supreme Court of Nevada and that RLEHOA  
23 specifically stipulated not to pursue. These requests are improper and should be denied. First, no  
24 authority exists to confirm or grant fees and costs in the non-binding arbitration. Second, RLEHOA  
25 should not be awarded any fees or costs related to its request to confirm the arbitration award because  
26 the Supreme Court of Nevada determined that such a request was not authorized by statute. Third,  
27 RLEHOA should not be awarded any attorney's fees and costs related to its counterclaims and cross-  
28 claims because RLEHOA voluntarily dismissed the claims, and stipulated not to request attorney's

1 fees for those claims. Fourth, RLEHOA should not be awarded any costs because it presented no  
2 authority for an award of costs in its Motion for Attorney's Fees and Costs. Fifth, RLEHOA should  
3 not be awarded attorney's fees for staff time billed at attorney rates, unsupported redacted slips, and  
4 duplicate slips.

5       A.       *RLEHOA is not entitled to fees and costs associated with the non-binding arbitration.*

6       There is no authority to support a confirmation of the non-binding arbitration award. The  
7 Supreme Court of Nevada stated in its Order to Show Cause dated October 7, 2013:

8       NRS 38.330(5) allows a party to apply to the district court for confirmation of a  
9 nonbinding arbitration award **if no action concerning the arbitrated issues has been**  
10 **commenced within 30 days of service of the award.** Here, however, an action was  
11 commenced within the applicable time frame, and the district court resolved the issues  
12 on their merits, not under the standard applicable for reviewing arbitration awards.  
**Accordingly, it appears that this matter does not fall within NRS Chapter 38's**  
**confirmation of an arbitration award provisions . . . despite the district court's**  
**confirmation language . . . .**

13       Exhibit "B" (emphasis added).

14       Therefore, the Supreme Court has determined that it is improper to confirm the arbitration  
15 award in this case, and, for that reason, this Court entered its Order Granting Motion for Relief from  
16 Judgment, entered April 14, 2015, which granted relief "even as it relates to an award of attorney's  
17 fees and costs in this action . . . ." (Order Granting Motion for Relief from Judgment 5:23.). Despite  
18 the Supreme Court's clear finding and this Court's Order rejecting the confirmation award, RLEHOA  
19 has now attempted to have this Court approve the rejected arbitration award stating only that it was  
20 "previously approved and awarded by the Court." (Motion for Attorney's Fees and Costs 14:5-7.)  
21 RLEHOA's statement is a clear misstatement of this Court's Orders and is intended to have this Court  
22 approve an award that it has already rejected. RLEHOA's request lacks merit and is highly improper.  
23 RLEHOA has presented no authority in its Motion for Attorney's Fees and Costs for this Court to  
24 confirm or award the arbitration award. Therefore, RLEHOA's request for attorney's fees and costs  
25 from the non-binding arbitration is groundless and should not be granted.

26       The non-binding arbitration award of attorney's fees and costs was previously determined to  
27 total \$26,810.67. (Judgment on an Arbitration Award and Award of Attorney's Fees and Costs  
28 entered June 6, 2013 2:4). RLEHOA includes this amount in its present request. (Motion for

1 Attorney's Fees and Costs 14:5-7.) This sum of, \$26,810.67 in attorney's fees and costs should not  
2 be granted, and the Court should find that this request is groundless.

3       *B. RLEHOA is not entitled to fees and costs associated with its request for confirmation*  
4       *of the arbitration award.*

5       As explained above, the Supreme Court and this Court have found and ruled that RLEHOA's  
6 confirmation request was improper. Therefore, the "work actually performed by" RLEHOA's counsel  
7 and "the result" in requesting confirmation of the arbitration award was unsuccessful and no "benefits  
8 were derived" from the work because the work only caused delay in this case and burdened judicial  
9 resources by requiring this Court, the Supreme Court, and opposing counsel to reverse the effect of  
10 the request. *Rios v. Progressive N. Ins. Co.*, No. 71225, 2017 WL 3725246, at \*2 (Nev. App. Aug.  
11 24, 2017) (unpublished) (*Citing Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349–50, 455 P.2d  
12 31, 33 (1969)). For this reason, RLEHOA cannot and should not be awarded attorney's fees and costs  
13 for its unsuccessful and improper confirmation request.

14       The attorney's fees and costs RLEHOA incurred in improperly requesting confirmation totaled  
15 \$4,500.24. \$2,676.24 of the fees were supplemented to RLEHOA's original request and included fees  
16 and costs incurred after the summary judgment Order were entered on February 14, 2013.  
17 (Supplemental Affidavit of Gayle A. Kern in Support of Attorney's Fees and Costs 2:1.) \$1,824.00  
18 of fees and costs were included in RLEHOA's other requests. (See orange highlights in Affidavit of  
19 Gayle A. Kern in Support of Attorney's Fees and Costs, attached hereto as Exhibit "C.") RLEHOA  
20 includes this amount in its present request. (Motion for Attorney's Fees and Costs 14:5-7.) Therefore,  
21 \$2,676.54 in attorney's fees and costs were related to the improper request and should not be granted.

22       *C. RLEHOA is not entitled to fees and costs associated with its counterclaims and cross-*  
23       *claim.*

24       RLEHOA specifically agreed and stipulated not to request attorney's fees and costs related  
25 to its counterclaims and cross-claim. (Stipulation and Order for Dismissal of Counterclaims and  
26 Cross-claim Without Prejudice 2:19-21; Motion for Attorney's Fees and Costs 4 ft. 3.) Therefore, it  
27 is improper for RLEHOA to request such attorney's fees and costs, such a request is a violation of  
28 its Stipulation and this Court's Order, and those attorney's fees and costs related to the counterclaims  
and cross-claim should not be granted.

1 RLEHOA voluntarily dismissed its counterclaims and cross-claim. Therefore, the “work  
2 actually performed by” RLEHOA’s counsel and “the result” in pursuing the voluntarily dismissed  
3 counterclaim and cross-claim was unsuccessful and no party, including RLEHOA, derived any benefit  
4 from the work because RLEHOA’s dismissed claims caused extensive delay in this case and burdened  
5 judicial resources by extending this case for an additional five years, from February 2013 (entry of  
6 Orders resolving Artemis’s single claim) to February 2018 (voluntary dismissal of RLEHOA’s  
7 counterclaim and cross-claim, and Final Judgment). *Rios v. Progressive N. Ins. Co.*, No. 71225, 2017  
8 WL 3725246, at \*2 (Nev. App. Aug. 24, 2017) (unpublished) (*Citing Brunzell v. Golden Gate Nat.*  
9 *Bank*, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969)). For these reasons, RLEHOA cannot and should  
10 not be awarded attorney’s fees and costs for maintaining its voluntarily dismissed counterclaims and  
11 cross-claim.

12 The attorney’s fees and costs related to RLEHOA’s abandoned counterclaims and cross-claims  
13 totaled \$6,942.00. (See pink highlights to Exhibit “C.”) RLEHOA improperly includes this amount  
14 in its present request. (Motion for Attorney’s Fees and Costs 14:5-7.) Therefore, \$6,942.00 in  
15 attorney’s fees and costs should not be granted or considered.

16 *D. RLEHOA is not entitled to any costs.*

17 RLEHOA has requested a total award of costs in the amount of \$7,591.14; however,  
18 RLEHOA has not presented any authority to support its award of costs. Instead, RLEHOA lumped  
19 its costs requests under its request for attorney’s fees. (Motion for Attorney’s Fees and Costs 14:5-7.)  
20 Therefore, RLEHOA should not be awarded its costs because it has not provided any authority to  
21 support its request.

22 *E. Attorney’s Fees for all staff time and redactions should be reviewed, reduced, or not*  
23 *be granted.*

24 Throughout RLEHOA’s attorney’s fees slip reports, RLEHOA’s counsel includes multiple  
25 slips for many days. These slips include duplicate services (see Exhibit “C” 2/14/2014 slips “Draft  
26 Notice of Entry of Order” and “draft notice entry of order”) and slips for hours of “oversee[ing]”  
27 preparation of exhibits that are commonly completed by staff (see Exhibit “C” 5/29/201 slip “Oversee  
28 preparation of all exhibits”). Many of these slips appear to be for staff time; however, all of them are

1 at the hourly rate of \$240.00 per hour. It is unreasonable and *Brunzell* does not support an argument  
2 for billing the staff time, without reduction, at the same rate as the attorney's time. Consequently, all  
3 fees for days where duplicate slips were entered, all slips for staff time, and all duplicate service slips  
4 should not be granted.

5 Furthermore, almost every page of RLEHOA's counsel's time slip reports include redactions.  
6 Some of the redacted slips are for days either preceding or following slips for fees regarding either  
7 the confirmation of the arbitration award or RLEHOA's counterclaims and cross-claim. (*See* Exhibit  
8 "C" 12/17/20013 and 12/19/2013 slips.) The redactions make it impossible to distinguish whether  
9 those slips were entered in regards to fees for the confirmation of the arbitration award or RLEHOA's  
10 counterclaims and cross-claim. Given that RLEHOA has requested fees for the confirmation of the  
11 arbitration award and regarding its counterclaims and cross-claim (see above and orange and pink  
12 highlights to Exhibit "C"), it is likely that at least a portion of the redacted slips include fees  
13 regarding the confirmation of the arbitration award and RLEHOA's counterclaims and cross-claim.  
14 As explained above, fees and costs related to these issues cannot be granted as determined by the  
15 Supreme Court, this Court, and by Stipulation.

16 Given that RLEHOA's counsel has submitted Affidavits that include requests for fees and  
17 costs that likely include staff time, duplicate requests, and fees related to the arbitration confirmation,  
18 counterclaims, and cross-claim, RLEHOA's Motions should be denied.

19 RLEHOA has presented no authority that entitles it to an award of attorney's fees and costs.  
20 Furthermore and given that RLEHOA has violated the Stipulation and Order by requesting fees and  
21 costs related to its abandoned counterclaims and crossclaim and improperly requested fees and costs  
22 related to arbitration, the Court should find that RLEHOA has made unmeritorious claims for fees  
23 and costs and that its Motion should be denied in its entirety given that such requests were groundless  
24 as evidenced by this Court's and the Supreme Court of Nevada's prior Orders.


### 25 **III. CONCLUSION**

26 For the forgoing reasons Artemis respectfully requests that RLEHOA's Motion for Attorney's  
27 Fees and Costs be denied, and the Court grant such other and further relief as deemed proper.

28

1 Dated this 26<sup>th</sup> day of April, 2018.

2 **GERBER LAW OFFICES, LLP**

3  
4 By:   
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2 AA000122

# EXHIBIT A

# EXHIBIT A

STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

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LEGISLATIVE COMMISSION (775) 684-6800  
BARBARA B. BUCKLEY, Assemblywoman, Chair  
Lorne J. Malkiewicz, Director, Secretary

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April 27, 2006

Senator Randolph J. Townsend  
P.O. Box 20923  
Reno, NV 89515-0923

Dear Senator Townsend:

You have asked this office to discuss the criteria to be used in determining whether a real estate development constitutes a "common-interest community" and whether the real estate development must comply with the requirements of the Uniform Common-Interest Ownership Act as set forth in chapter 116 of the Nevada Revised Statutes ("NRS"), including, without limitation, the requirements to register with the Ombudsman for Owners in Common-Interest Communities and to pay fees to the Administrator of the Real Estate Division. You have also specifically inquired about the status of the Hidden Valley Homeowners Association and asked us to determine whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, including, without limitation, registering with the Ombudsman and paying fees to the Administrator.

To answer your questions, we will first discuss the criteria to be used in determining whether a real estate development constitutes a "common-interest community." Next, we will examine the statutory provisions governing the applicability of chapter 116 of NRS to certain types of common-interest communities. Finally, we will address the status of the Hidden Valley Homeowners Association and discuss whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, including, without limitation, registering with the Ombudsman and paying fees to the Administrator.

### I. Definition of "Common-Interest Community"

As a preliminary matter, in determining whether a real estate development is subject to the provisions of chapter 116 of NRS, we turn first to the statutory definition of "common-interest community" to ascertain whether the real estate development falls within the ambit of the

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Page 2

definition. Pursuant to NRS 116.021, "common-interest community" means "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit." NRS 116.021 (emphasis added). Thus, if ownership of a unit within a particular real estate development obligates a person to pay for real estate other than the person's specific unit, such as being required to pay assessments for the maintenance of a community pool, a walking trail or another common element, then the real estate development falls within the ambit of the definition of "common-interest community." Conversely, if ownership of a unit within a particular real estate development does not obligate a person to pay for real estate other than the person's specific unit, then the real estate development does not fall within the ambit of the definition of "common-interest community" and is not subject to the provisions of chapter 116 of NRS.

## II. Applicability of Chapter 116 of NRS

If a real estate development does fall within the ambit of the definition of "common-interest community," we turn then to the statutory provisions governing the applicability of chapter 116 of NRS to certain types of common-interest communities. Subsection 1 of NRS 116.1201 sets forth the broad general rule that "[e]xcept as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State." Subsection 2 of NRS 116.1201 then sets forth several exceptions to the broad general rule that chapter 116 of NRS applies to all common-interest communities created within this State.

For example, chapter 116 of NRS does not apply to "[a] planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter does apply to that planned community." NRS 116.1201(2)(b). Chapter 116 of NRS also does not apply to "[c]ommon-interest communities or units located outside of this State, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this State by any party unless exempt under subsection 2 of NRS 116.4101." NRS 116.1201(2)(c). Additionally, chapter 116 of NRS does not apply to "[a] common-interest community that was created before January 1, 1992, is located in a county whose population is less than 50,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing." NRS 116.1201(2)(d). Also, except as otherwise provided in chapter 116 of NRS, the chapter does not apply to time shares governed by the provisions of chapter 119A of NRS. NRS 116.1201(2)(e). Finally, chapter 116 of NRS does not apply to a "limited-purpose association,"<sup>1</sup> except that a limited-

<sup>1</sup> Pursuant to subsection 6 of NRS 116.1201, "limited-purpose association" means an association that:

- (a) Is created for the limited purpose of maintaining:
  - (1) The landscape of the common elements of a common-interest community;
  - (2) Facilities for flood control; or
  - (3) A rural agricultural residential common-interest community; and

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Page 3

purpose association is required to register with the Ombudsman, pay fees to the Administrator and comply with certain specific provisions of chapter 116 of NRS, and a limited-purpose association is prohibited from enforcing any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community. NRS 116.1201(2)(a).

Furthermore, NRS 116.1203 contains a limited exception, for certain small planned communities, to the general rule that chapter 116 of NRS applies to all common-interest communities created within this State. Subsection 1 of NRS 116.1203 states that "[e]xcept as otherwise provided in subsection 2, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.<sup>2</sup> Subsection 2 of NRS 116.1203 provides that planned communities with 6 or more units are still subject to certain provisions in chapter 116 of NRS pertaining to the organization, powers and duties of unit owners' associations and executive boards of such associations.

### III. Hidden Valley Homeowners Association

You have also specifically inquired about the status of the Hidden Valley Homeowners Association and asked us to determine whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, including, without limitation, registering with the Ombudsman and paying fees to the Administrator. Based on the information provided to our office, we understand that the Hidden Valley Homeowners Association is a nonprofit cooperative corporation that does not own or maintain any buildings or common elements. For this reason, homeowners are not obligated to pay any assessments or other fees. Homeowners who are interested in receiving a monthly newsletter or attending various social events organized by the Hidden Valley Homeowners Association pay an annual membership fee of \$25, but homeowners who are not interested in such benefits are not required to pay the annual membership fee.

To determine whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, we turn first to the statutory definition of "common-interest community" and examine the plain language of the statute. See Salas v. Allstate Rent-A-Car, Inc., 116 Nev. 1165, 1168 (2000) ("Our objective in construing statutes is to give effect to the legislature's intent. In so doing, we first look to the plain language of the statute.") (citation omitted).

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(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

<sup>2</sup> NRS 116.1106 pertains to the applicability of local ordinances, regulations and building codes, while NRS 116.1107 pertains to the use of eminent domain.

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As stated previously, "common-interest community" is defined as "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit." NRS 116.021 (emphasis added). However, as set forth above, the homeowners in Hidden Valley are not obligated to pay, by virtue of their ownership of property, for any real estate other than their own property. Thus, based upon the plain language of NRS 116.021, the Hidden Valley Homeowners Association is not a "common-interest community" as defined by the statute. For this reason, it is the opinion of this office that the Hidden Valley Homeowners Association is not required to comply with the provisions of the Uniform Common-Interest Ownership Act as set forth in chapter 116 of NRS, including, without limitation, registering with the Ombudsman for Owners in Common-Interest Communities and paying fees to the Administrator of the Real Estate Division.

We would note that some of the confusion with respect to this issue has probably arisen solely because the name of the association, "Hidden Valley Homeowners Association," tends to suggest that the Hidden Valley Homeowners Association is operating as a unit-owners' association pursuant to chapter 116 of NRS. In reality, the name is a misnomer, as the Hidden Valley Homeowners Association is actually functioning as something more akin to a neighborhood social club. We would also note that the Legislature has attempted to address the issue of the appropriate naming of unit-owners' associations by providing that a unit-owners' association must "[c]ontain in its name the words 'common-interest community,' 'community association,' 'master association,' 'homeowners' association' or 'unit-owners' association'". NRS 116.3101(3)(c). The Legislature has also enacted for each type of business entity provisions which prohibit the Secretary of State from accepting for filing any documents of organization<sup>3</sup>, or any amendment to those documents of organization, if the name of the entity contains the words "common-interest community," "community association," "master association," "unit-owners' association" or "homeowners' association" unless the Administrator certifies that the entity has registered with the Ombudsman and paid the required fees to the Administrator. See, NRS 78.045, 81.055, 81.205, 81.445, 82.106, 86.171, 87.540, 88.320 and 88.6065.

Thus, when a new entity that intends to operate as a unit-owners' association is formed, the name of the entity will make it readily apparent that the entity is, indeed, a unit-owners' association. Conversely, when a new entity that will not actually operate as a unit-owners' association attempts to form and selects its name, if that name suggests that the entity will be operating as a unit-owners' association, the entity will not be allowed to file its organizational documents with the Secretary of State unless it first registers with the Ombudsman and pays fees to the Administrator. Consequently, a neighborhood social club which is similar to the Hidden Valley Homeowners Association and which will not operate as a unit-owners' association will never mistakenly include "homeowners' association" in its name or choose another name that tends to suggest that the organization is operating as a unit-owners' association. Therefore, the statutory provisions enacted by the Legislature should assist in avoiding the creation of needless

<sup>3</sup> Documents of organization would include such documents as articles of incorporation, articles of association, articles of organization, certificates of registration, certificates of limited partnership and certificates of trust.


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confusion, in the future, about the applicability of chapter 116 of NRS to new entities. However, with respect to the names of entities that were already formed before the enactment of those statutory provisions, such as the Hidden Valley Homeowners Association, those statutory provisions will not have any effect as to those preexisting entities unless the entities seek to amend their documents of organization, in which case the Secretary of State will prevent them from doing so.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes  
Legislative Counsel

By   
Kelly E. Lee  
Principal Deputy Legislative Counsel

By   
Bradley A. Wilkinson  
Chief Deputy Legislative Counsel

cc: Scott Young  
KEL:dtm  
Ref No. 0603021202  
File No. OP\_Townsend06032185445

# EXHIBIT B

# EXHIBIT B



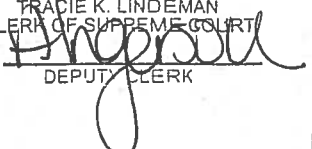
IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION COMPANY,  
A NEVADA CORPORATION,  
Appellant,  
vs.  
RUBY LAKE ESTATES  
HOMEOWNER'S ASSOCIATION,  
Respondent.

No. 63338

**FILED**

**OCT 07 2013**

TRADIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER TO SHOW CAUSE*

This is an appeal from a district court order granting a motion to confirm and enter judgment on an arbitration award and awarding additional attorney fees and costs.

Our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(g) reveals a potential jurisdictional defect. Specifically, it appears that the district court has not entered a final, written judgment adjudicating all the rights and liabilities of all the parties, in that respondent's counterclaims for breach of contract, negligence, and violations of the governing documents, and its request for a permanent injunction, appear to remain pending below. As a result, this court ostensibly lacks jurisdiction over this appeal, at least with respect to appellant's arguments concerning the earlier summary judgment order. NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000).

According to appellant's docketing statement, after losing in NRS Chapter 38 nonbinding arbitration, it filed a district court complaint for declaratory relief to determine whether the Ruby Lakes Estates

subdivision was a common-interest community under NRS Chapter 116, in order to establish that respondent homeowner's association was not authorized to compel participation therein.<sup>1</sup> Respondent then filed counterclaims, and the district court granted respondent's motion for summary judgment on appellant's declaratory relief request, concluding that the subdivision was a common-interest community and that the respondent was a valid homeowner's association. While the summary judgment resolved all of appellant's claims, it did not mention respondent's counterclaims noted above. Later, upon respondent's motion, the district court confirmed the arbitration award for the purposes of awarding the attorney fees and costs granted in the arbitration, as well as for awarding additional attorney fees and costs under NRS 38.243, and entered judgment on both attorney fees and costs awards.

NRS 38.330(5) allows a party to apply to the district court for confirmation of a nonbinding arbitration award if no action concerning the arbitrated issues has been commenced within 30 days of service of the award. Here, however, an action was commenced within the applicable time frame, and the district court resolved the issues on their merits, not under the standard applicable for reviewing arbitration awards. Accordingly, it appears that this matter does not fall within NRS Chapter 38's confirmation of an arbitration award provisions, such that, despite the district court's confirmation language, NRS 38.247 does not apply and a final judgment is necessary to procure appellate jurisdiction under NRAP 3A(b)(1). Moreover, to the extent that the order confirming and entering judgment on the attorney fees and costs award is deemed independently

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<sup>1</sup>Appellant's damages claims were dismissed as abandoned below.

appealable under NRS 38.247(1)(c) or (f), it does not appear that this court could reach the subdivision and homeowner's association issues in the context of this appeal from that order, since it confirms only the attorney fees and costs awarded and awards additional fees and costs to the prevailing party.

Accordingly, appellant shall have 30 days from the date of this order within which to show cause why this appeal should not be dismissed, at least in part, for lack of jurisdiction. In responding to this order, appellant should submit documentation that establishes this court's jurisdiction including, but not necessarily limited to, points and authorities and any order resolving the noted counterclaims. We caution appellant that failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The briefing schedule in this appeal shall be suspended pending further order of this court. Respondent may file any reply within 11 days from the date that appellant's response is served.

It is so ORDERED.

Pickering, C.J.

cc: Gerber Law Offices, LLP ✓  
Kern & Associates, Ltd.

# EXHIBIT C

# EXHIBIT C

1 CASE NO. CV-C-12-175

2 DEPT. NO. 2

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

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

9 ARTEMIS EXPLORATION COMPANY,  
10 a Nevada Corporation,

11 Plaintiff,

12 vs.

13 RUBY LAKE ESTATES HOMEOWNER'S  
14 ASSOCIATION, et al., and DOES I-X,

15 Defendants.

AFFIDAVIT OF GAYLE A. KERN, ESQ.  
IN SUPPORT OF MOTION FOR  
ATTORNEY'S FEES AND COSTS

15 STATE OF NEVADA )  
16 )ss.  
17 COUNTY OF WASHOE )

18 I, Gayle A. Kern, Esq., being first duly sworn do hereby swear under penalty of perjury as  
19 follows:

20 1. I am attorney licensed to practice before all courts of the State of Nevada, and one  
21 of the attorneys of record for Defendant Ruby Lake Estates Homeowner's Association (the  
22 "Association") in the above-referenced matter.

23 2. I make this affidavit of my own personal knowledge except as to those matters  
24 stated on information and belief. I am familiar with the Court's June 6, 2013 award of attorney's  
25 fees and costs to the Association in the total amount of \$82,250.81 and based upon my prior  
26 affidavits submitted in support thereof. I have also reviewed and approved the invoices in this  
27 matter since that date.  
28

1           3.     Since the June 6, 2013 award of attorney's fees and costs, additional fees and costs  
2 have been incurred by the Association in connection with Plaintiff Artemis Exploration  
3 Company's ("Artemis's") declaratory relief claim and the parties' efforts to obtain entry of Final  
4 Judgment consistent with the Court's orders throughout the litigation. The additional amount of  
5 fees through March 18, 2018 fees is calculated to be \$32,101.00 and costs through March 18, 2018  
6 in the amount of \$1,336.33, for a total, additional of amount of \$33,437.33. A compilation of these  
7 additional fees and costs is attached as Exhibit "A" to this affidavit. Substantial effort has been  
8 undertaken to exclude fees and costs specifically incurred to prosecute the Association's now  
9 dismissed Counterclaims and Cross-Claim, including any fees incurred for briefing on the  
10 Counterclaims and Crossclaims. Substantial effort has also been made to identify time spent  
11 preparing for, traveling to Elko, and attending hearings on the cross motions for summary  
12 judgment on the Counterclaims as well as on Artemis's motions for relief from judgment,  
13 reconsideration, and/or for leave to file supplement briefs with respect to the Court's February  
14 2013 Orders. As to those identified time entries, only 1/2 of the fees incurred was included in the  
15 calculation.  
16  
17

18           4.     Redaction has been made of any privileged communications.  
19

20           5.     I have been a practicing attorney in the State of Nevada for approximately thirty-  
21 two (32) years, and have been licensed to practice in the State of California for twenty-nine (29)  
22 years.  
23

24           6.     I have a civil practice with an emphasis on all types of housing associations  
25 including condominiums, town homes, landscape maintenance, single family, master and sub  
26 associations and mobile home parks, as well as litigation, bankruptcy and real property law.  
27

28           7.     I currently serve as counsel to over two hundred (200) associations throughout  
Northern Nevada. I provide all aspects of legal services upon request to my associations including

1 interpretation of governing documents and applicable local, state and federal laws; guidance and  
2 training to Boards of Directors in connection with running a non-profit common-interest  
3 community; developer transition; collection of delinquent assessments; filing and responding to  
4 Intervention Affidavits with the Nevada Real Estate Division; all forms of litigation including  
5 Alternative Dispute Resolution, complaints in front of the Fair Housing Division of HUD, Small  
6 Claims Court, Justice Court, District Court, and the Nevada Supreme Court; and assistance in  
7 collections, liens and foreclosures.  
8

9 8. I lecture regularly for the Ombudsman's office, the Nevada Real Estate Division,  
10 and teach seminars on common-interest community law.  
11

12 9. I serve on the Community Association Institute's Legislative Action Committee,  
13 which participates in review and comment on legislation affecting common-interest communities  
14 and regulations promulgated by the Ombudsman and Nevada Real Estate Division.  
15

16 10. In September 2015 I was inducted as a fellow in the Community Association  
17 Institute's College of Community Association Lawyers.  
18

19 11. I regularly attend CAI's National Law Seminars to keep apprised of new  
20 developments in the industry, not only in Nevada, but throughout the country, and I also serve on  
21 the subcommittee for the Common Interest Communities for the Nevada State Bar Real Estate  
22 section.  
23

24 12. I worked with the Real Estate Division in the development of the first community  
25 manager exam, and I am approved by the Real Estate Division to teach classes to community  
26 managers and Board members.  
27

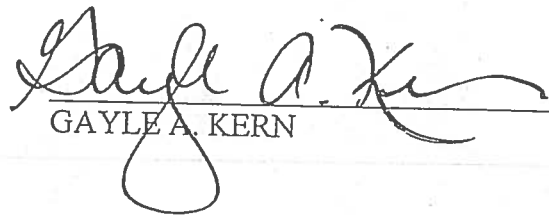
28 13. The fees and costs billed in this matter are reasonable and appropriate. The total  
additional time billed from June 6, 2013 through March 18, 2018 described above and as set forth  
herein and Exhibit "A" is calculated to be 133.75 hours, at an hourly rate of \$240.00, totaling

1 \$32,101.00. Additional costs through March 18, 2018, itemized in the accompanying  
2 Memorandum of Costs, are in the amount of \$1,336.33, for additional fees and costs due and owing  
3 of \$33,437.33 This amount plus the \$82,250.81 originally awarded by the Court on June 6, 2013,  
4 and which award should also be reinstated, brings the total amount of fees and costs to  
5 \$115,688.14 as of March 18, 2018.  
6

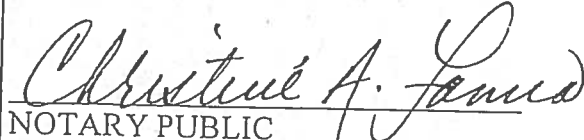
7 14. The hourly rate of my firm is reasonable given my experience practicing law in  
8 general and my experience in practicing in the specialized area of common interest communities.  
9 Despite my experience and expertise, my firm's hourly rate is lower than rates routinely charged  
10 by other attorneys who practice in this area and/or who do not have the same amount of experience  
11 that I have.  
12

13 15. Based upon all of the above factors, these fees and costs are reasonable, appropriate  
14 and should be awarded.

15 DATED this 19<sup>th</sup> day of March 2018.  
16

17   
18 GAYLE A. KERN

19 SUBSCRIBED AND SWORN to before me  
20 this 19<sup>th</sup> day of March 2018 by Gayle A. Kern.  
21

22   
23 NOTARY PUBLIC





# EXHIBIT “A”

[REDACTED]

[REDACTED]

[REDACTED]

In Reference To: Ruby Lake Estates HOA adv. Artemis Exploration Company

Professional Services

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
6/25/2013 - GAK	Review Notice of No Transcript; draft letter to Gerber pursuant to Rule 9; review Docketing Statement; obtain copy of amended order increasing award of attorney's fees and costs.	240.00/hr		240.00
6/27/2013 - GAK	Prepare letter to Travis Gerber demanding increased Supersedeas Bond based on Judgment entered on June 6, 2013, and disappointment that he will not discuss settlement.	240.00/hr		96.00
6/28/2013 - GAK	Prepare Notice of Entry of Order Granting Defendant's Motion for Confirmation of Judgment on an Arbitration Award and Award of Attorney's Fees and Costs; prepare Notice of Entry of Judgment on an Arbitration Award and Award of Attorney's Fees and Costs.	240.00/hr		48.00
7/2/2013 - GAK	Review and respond to email from [REDACTED] re: [REDACTED]	240.00/hr		48.00
7/11/2013 - GAK	Return telephone call to Travis Gerber re: settlement of litigation; drat status to [REDACTED]	240.00/hr		168.00
7/17/2013 - GAK	Review and respond to [REDACTED] from [REDACTED] regarding communication from Travis Gerber.	240.00/hr		48.00
- GAK	Review notice of filing supplemental supersedeas bond; review supplement to docketing statement; provide copies to client.	240.00/hr		96.00

		Rate	Tax#	Amount
7/23/2013 - GAK	Review and respond to email from client about [REDACTED]			
	- GAK Draft Updated Notice of Pending Litigation as required by Nevada law.	240.00/hr		48.00
9/9/2013 - GAK	Review email from [REDACTED] regarding settlement; follow up with Mr. Gerber re: previous settlement discussions.	240.00/hr		72.00
10/7/2013 - GAK	Review order of court regarding appeal; supervise sending to [REDACTED]	240.00/hr		NO CHARGE
10/9/2013 - GAK	Telephone call from Travis Gerber re: status of matter; discussion of order by the Supreme Court and appendix; raised issue of settlement.	240.00/hr		120.00
10/11/2013 - GAK	Review email from Travis Gerber as to his view of the Supreme Court order and begin analysis of response.	240.00/hr		72.00
10/14/2013 - GAK	Telephone call from Travis Gerber and long conference about further action and his client's refusal to discuss settlement at all.	240.00/hr		144.00
10/30/2013 - GAK	Review email from Mr. Gerber re: notice of withdrawal of appeal in response to court's order; draft response as to its acceptability and acknowledgment that we will be proceeding in the district court to obtain complete resolution to all remaining claims.	240.00/hr		144.00
11/14/2013 - GAK	Review and respond to email from [REDACTED]			
11/17/2013 - KMA	Initial review and evaluation of pleadings, motion to confirm arbitration award; judgment confirming arbitration award and inclusion of additional fees and costs upon request	240.00/hr		48.00
11/18/2013 - KMA	Review cross motions for summary judgment as to validity of association, court's order granting associations motion for summary judgment; evaluate necessity of [REDACTED]	240.00/hr		144.00
11/19/2013 - KMA	[REDACTED]			360.00

[REDACTED]

[REDACTED]

		Rate	Tax#	Amount
12/2/2013 - GAK	Review motions for reconsideration and motion for summary judgment; Telephone call Travis Gerber re: extension to respond; draft confirming email.	240.00/hr		120.00
12/17/2013 - KMA	Initial review of Artemis Motion for Relief from Judgement and Motion for Summary Judgment; telephone call to counsel's office re: opposition date; review local rules re: [REDACTED] [REDACTED] review and evaluate [REDACTED] supplement of [REDACTED] of [REDACTED] email to Artemis counsel re: date for filing of opposition.	240.00/hr		<del>\$ 120</del> -240.00
12/19/2013 - KMA	Further evaluation of motion for relief from judgment or order under NRCP 60(b) due to alleged error in confirming arbitration award from "non-binding arbitration"; reevaluate Supreme Court order re: same and in applicability of statutory provisions for confirmation of awards of non-binding arbitration with subsequent district court action; research and review Chapter 38 provisions re: applicability of statutes on confirmation of arbitration award at district court level.	240.00/hr		192.00
12/20/2013 - KMA	[REDACTED]			
12/28/2013 - KMA	[REDACTED]			
1/2/2014 - KMA	Continued work on draft opposition to motion for relief and motion for summary judgment, draft of undisputed facts.	240.00/hr		<del>\$ 144.00</del> -288.00
1/3/2014 - KMA	Continued preparation of draft opposition to motion to set aside and motion for summary judgment; revise arguments in relation [REDACTED] [REDACTED] evaluate [REDACTED]	240.00/hr		<del>\$ 600.00</del> -1,200.00

[REDACTED]

[REDACTED]

Rate Tax# Amount

[REDACTED] research [REDACTED] review procedural  
rules as specific basis for entry of judgment following  
order granting summary judgment [REDACTED]

1/4/2014 - KMA

[REDACTED]

[REDACTED]

[REDACTED]

1/6/2014 - KMA

[REDACTED]

[REDACTED]

[REDACTED]

- KMA

[REDACTED]

[REDACTED]

[REDACTED]

1/7/2014 - KMA

[REDACTED]

[REDACTED]

[REDACTED]

1/8/2014 - GAK

Review and revise opposition to motion for relief from  
judgment and to summary judgment; review [REDACTED]  
and analyze [REDACTED]

240.00/hr

\$ 168<sup>00</sup>  
336.00

- KMA

Additional revisions to Opposition; follow-up legal  
research regarding [REDACTED]  
[REDACTED] draft proposed Judgment.

240.00/hr

\$ 240<sup>00</sup>  
480.00

- AAD

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

		<u>Rate</u>	<u>Tax/</u>	<u>Amount</u>
	for Summary Judgment and provide revisions to affidavits that will be filed in support of the opposition to the motions.			
1/9/2014 - KMA	Additional revisions to Opposition, Affidavits, proposed Judgment, in preparation for filing with the Court; final citation check of authorities, minor revisions re: cited authorities; finalized Oppositions [REDACTED]	240.00/hr		<del>\$300.00</del> -600.00
- GAK	Review proposed Stipulation; telephone call with Mr. Gerber; execute documents for Opposition.	240.00/hr		168.00
- CAL	Finalize Second Supplemental Memorandum of Costs and Opposition to Artemis Exploration Company's Motion for Relief from Judgment or Order (NRCP 60(b)) [REDACTED]	140.00/hr		98.00
	[REDACTED] draft filing letter to Court Clerk to enclose in overnight package with pleadings; email copies of all to opposing counsel.			
1/10/2014 - GAK	Return telephone call to Travis Gerber.	240.00/hr		48.00
1/13/2014 - KMA	[REDACTED]			
- CAL	[REDACTED]			
1/14/2014 - GAK	Telephone call from Travis Gerber re: pleadings and documents on file.	240.00/hr		48.00
1/15/2014 - KMA	[REDACTED]			



		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
				<del>\$24.00</del> 48.00
3/6/2014 - KMA	Several telephone calls with Judicial Executive Assistant (Stefanie Pattani) for Judge Kacin in Elko County to coordinate a date and time for [REDACTED] hearings.	240.00/hr		
3/7/2014 - KMA	Review message from judge's chambers re: oral argument required by court, provide date re: same.	240.00/hr		<del>\$12.00</del> 24.00
3/10/2014 - KMA	Receive and review Order Setting Hearing from the Court; email client a copy of same to advise of the hearing on May 28, 2014.	240.00/hr		48.00 <del>\$12.00</del>
3/17/2014 - KMA	[REDACTED]			
3/27/2014 - KMA	Telephone conference with [REDACTED] to confirm [REDACTED] the May 28, 2014 hearing in Elko on the counter Motions for Summary Judgment.	240.00/hr		<del>\$24.00</del> 48.00
3/28/2014 - KMA	[REDACTED]			
5/26/2014 - KMA	Review and evaluate prior briefing of first motion for summary judgment, court orders granting Ruby Lakes MSJ, subsequent judgment fees and costs award, supreme court order to show cause; begin preparation for oral argument in Elko on Artemis motion for relief under Rule 60(b), counter motions for summary judgment on Rule Lakes' counterclaims.	240.00/hr		600.00 <del>\$300.00</del>
5/27/2014 - KMA	Continued preparation for oral argument on motion for relief from judgment, and counter motions for summary judgment; telephone conference with local counsel Bob Wines re: same, briefs, and particular [REDACTED] [REDACTED] [REDACTED] telephone conference with [REDACTED] re: oral argument [REDACTED] outline for oral argument, exhibit references for court.	240.00/hr		1,560.00 <del>\$780.00</del>
- KMA	Prepare oral argument binders for hearing on May 28, 2014, including pleadings, rules, exhibits, research, etc.	240.00/hr		<del>\$60.00</del> 120.00
5/28/2014 - KMA	Completed preparation for oral argument on motion for relief and counter motions for summary judgment; travel to Elko to Reno and back for oral argument; conference with [REDACTED]	240.00/hr		3,120.00 <del>\$1,560.00</del>



[REDACTED]

[REDACTED]

		Rate	Tax#	Amount
	[REDACTED] attended oral argument before Judge Kacin in Elko.			
5/29/2014 - KMA	Telephone conference with [REDACTED] re: [REDACTED] [REDACTED]	240.00/hr		<del>246.00</del> \$108.00
6/3/2014 - KMA	Review proposed order for release of costs bond from opposing counsel; preparation of status email to [REDACTED] and on motion for relief and counter motions for summary judgment; revise and finalize status report.	240.00/hr		<del>244.00</del> \$70.00
6/17/2014 - KMA	Receive and review conformed Order Releasing Cost Bond & Supersedeas Bonds from the Court; [REDACTED]	240.00/hr		24.00
8/12/2014 - KMA	Status update and review information from court clerk re: potential decision from court, still under submission and pending.	240.00/hr		24.00
12/8/2014 - KMA	Exchange emails with [REDACTED] re: status [REDACTED]	240.00/hr		24.00
1/20/2015 - GAK	Review Second Request for Review filed by the Plaintiff; [REDACTED]	240.00/hr		48.00
3/27/2015 - KMA	Review information from Judge Kacin assistant as to time line for written decision on motions; email to [REDACTED]	240.00/hr		72.00
4/20/2015 - KMA	Review and evaluate order granting motion for relief; reevaluate articulated basis in order re: relief under 60(b)(4) judgment void for lack of subject matter jurisdiction; reevaluate [REDACTED] by [REDACTED] [REDACTED] reevaluate [REDACTED] status [REDACTED] email/report to [REDACTED] forthcoming orders on [REDACTED] [REDACTED]	240.00/hr		<del>408.00</del> \$204.00



[REDACTED]

[REDACTED]

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
	[REDACTED]			
5/19/2015 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
5/26/2015 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
5/28/2015 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
6/1/2015 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
6/8/2015 - KMA	Initial review and evaluation of Motion for Reconsideration of court's prior order granting summary judgment in favor of Association and Motion for Leave to file supplement to on motion for summary judgment on remaining counterclaims; evaluate [REDACTED]	240.00/hr		288.00
6/15/2015 - KMA	Status email to [REDACTED] re: [REDACTED] [REDACTED] review [REDACTED] [REDACTED] revise and finalize [REDACTED]	240.00/hr		192.00
6/19/2015 - KMA	Reevaluate motions for reconsideration and leave to file supplemental brief; review [REDACTED] re: [REDACTED] [REDACTED] review [REDACTED]	240.00/hr		1,200.00

[REDACTED]

[REDACTED]

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
	oppositions to motions for reconsideration and leave to file supplemental brief.			
6/21/2015 - KMA	Continued draft of opposition to motion for leave to supplement briefing and motion for reconsideration; review [REDACTED] further revisions to oppositions.	240.00/hr		816.00
6/22/2015 - KMA	Further revisions to oppositions to motion for supplemental briefing and motion for reconsideration, finalize and [REDACTED] filing of signature copy with court with overnight delivery of original; follow up email to [REDACTED] re: [REDACTED]	240.00/hr		528.00
6/23/2015 - KMA	Telephone conference with Artemis counsel office re: date of reply; email re: same and requesting email copy of filed reply.	240.00/hr		48.00
- KMA	[REDACTED]			
6/25/2015 - KMA	Emails from [REDACTED] re: [REDACTED] documents for exhibit; email to [REDACTED] re: [REDACTED] latest motions filed by Artemis, association opposition thereto, inquiry as to status of [REDACTED] revise and finalize status email; review additional documents [REDACTED]	240.00/hr		360.00
6/26/2015 - KMA	Continued review and compilation of [REDACTED] for exhibit for court; review [REDACTED] email to [REDACTED] re: [REDACTED] on roster.	240.00/hr		312.00
6/29/2015 - KMA	[REDACTED]			

[REDACTED]

[REDACTED]

Rate    Tax#    Amount

[REDACTED]

6/30/2015 -

[REDACTED]

[REDACTED]

[REDACTED]

7/1/2015 -

[REDACTED]

[REDACTED]

[REDACTED]

9/21/2015 - KMA Review and evaluate order from Judge Kacin re: joinder of parties to declaratory relief counterclaim and declaratory relief complaint; status update re: further proceedings; potential letter to all owners with disclaimer/opt in/opt out forms.

240.00/hr

120.00

9/28/2015 - KMA Reevaluate order re: joinder of necessary parties; draft of status email/report [REDACTED]; email to [REDACTED] status and necessity of discussion re: same; revise draft letter to all owners re: court's joinder, acceptance of service of order, etc; revise acceptance of service forms; email to [REDACTED]; telephone conference with [REDACTED], re: order, proceedings going forward; reevaluate "acceptance of service", "disclaimer"; conference with [REDACTED] maintenance, access for first responders, brush clearance [REDACTED]; follow up email to [REDACTED]

.240.00/hr

696.00

[REDACTED]

[REDACTED]

		Rate	Tax#	Amount
	[REDACTED]; review Rule 20 re: permissive joinder, party alignment.			
9/29/2015	- GAK Review and revise proposed documentation to send to membership.	240.00/hr		144.00
	- KMA Conference with [REDACTED] joinder order, further proceedings in relation thereto; telephone conference with [REDACTED]; same, [REDACTED].	240.00/hr		408.00
	[REDACTED] review itemization as to functions carried out by Association and assessments for same; draft of proposed declaration for owner review; draft of letter to owners re: same; revisions to declaration and letter, and finalized draft of same for review.			
9/30/2015	- KMA Final revisions to proposed letter and declaration; email to [REDACTED]	240.00/hr		72.00
10/1/2015	- KMA Review email from Lee Perks re: [REDACTED] review Chapter 116 provisions re: [REDACTED] requirements; response email [REDACTED]	240.00/hr		96.00
10/5/2015	- KMA Follow up email to [REDACTED] status of draft letter and proposed declaration to owners.	240.00/hr		24.00
10/6/2015	- KMA Review email from [REDACTED] in response to status report, request to update ongoing status.	240.00/hr		24.00
10/7/2015	- KMA Exchange emails with [REDACTED] status; meeting with [REDACTED] re: [REDACTED] joinder order [REDACTED]	240.00/hr		648.00
	[REDACTED] proceedings going forward to comply with court's joinder order; begin revisions [REDACTED] email opposing counsel re: suggested conference time; telephone conference with Ms. Kern, opposing counsel re: joinder order, proposals for compliance with same, procedural issues, potential stipulation to amend complaint, answer, counterclaim and cross claim, provisions of stipulations re: not changes to prior rulings, procedural status of parties, potential telephone conference with court; email to [REDACTED] re: follow up discussions.			
	- GAK Conference call with the Gerber Law Firm regarding the court's order	240.00/hr		300.00
10/8/2015	- KMA Conference with [REDACTED] re: [REDACTED] of stipulation to file amended complaint, join owners as defendants and cross claimants, [REDACTED]	240.00/hr		240.00

[REDACTED]

[REDACTED]

		Rate	Tax#	Amount
	[REDACTED] and final judgment as to declaration Ruby Lakes as 116 association and award of attorney's fees and costs.			
10/9/2015 - KMA	Review owner roster and amend caption to include owners as defendants and cross defendants.	240.00/hr		120.00
10/20/2015 - KMA	Email to Artemis counsel re: status of proposed stipulation for joinder as discussed in telephone conference; follow up email to [REDACTED] re: same.	240.00/hr		96.00
10/22/2015 - KMA	Review and exchange emails to Travis Gerber re: amended caption, amended complaint, draft joint letter, proposed stipulation and order; email to Gerber re: amended caption; initial review proposed letter.	240.00/hr		168.00
11/4/2015 - KMA	Review draft of joint letter to lot owners; revisions to same.	240.00/hr		120.00
11/5/2015 - KMA	Review proposed amended complaint; revise prior answer and counterclaim as amended answer, counterclaim, and cross claim as to declaratory relief claim; review email from Lee Perks re: status and response thereto; additional revisions to draft letter to owners and finalized draft of amended answer, counterclaim and cross claim; email to Lee Perks re: same and forthcoming stipulation for review; continued work on draft stipulation.	240.00/hr		336.00
11/6/2015 - KMA	[REDACTED]	240.00/hr		240.00
11/7/2015 - KMA	Review chronology of case, pleadings, and draft Stipulation to Amend Pleadings and Join Parties Pursuant to Court's Order re: Joinder filed September 11, 2015; redraft and revise same, additional language re: no abrogation, nullification, etc. of rulings to date including order granting summary judgment in favor of Association.	240.00/hr		336.00
11/9/2015 - KMA	Confirm referenced pleading and order dates for inclusion in proposed stipulation; revise and finalize same for forwarding to [REDACTED]	240.00/hr		144.00
11/12/2015 - KMA	Review and exchange emails with Lee Perks re: stipulation, timeframe for same and sending out of joint letter; email to Artemis counsel re: same, potential telephone conference with judge on stipulation.	240.00/hr		72.00

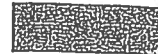
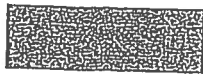


		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
11/19/2015 - GAK	Review and revise proposed letter to owners.	240.00/hr		120.00
11/23/2015 - KMA	Email from Artemis counsel re: status of joint letter and stipulation; response email re: same.	240.00/hr		48.00
11/24/2015 - KMA	Revise proposed stipulation and order re: language as to issue re: Ruby Lake Estates as Chapter 116 common interest community consistent with joint letter to owners; email to Artemis counsel with proposed SAO and letter; review and respond to emails re: same; revise joint letter to include Artemis will be appealing final judgment to Supreme Court; follow up email re: same.	240.00/hr		216.00
12/3/2015 - KMA	Review email from Travis Gerber re: SAO, evaluate suggested changes thereto.	240.00/hr		48.00
12/8/2015 - KMA	Reevaluate proposed language from Artemis counsel re: language of stipulation, questions as to draft amended answer, exhibits to amended complaint..	240.00/hr		72.00
12/15/2015 - KMA	Exchange emails with Artemis counsel re: status; reevaluate requested revisions and; revise SAO re: specific identification of orders and initial revision to draft Answer to First Amended Complaint re: exhibits; email to Gerbers re: same, forthcoming revised Answer.	240.00/hr		240.00
12/16/2015 - KMA	Review and compare original complaint, proposed first amended complaint, and exhibit references; revise proposed answer to First Amended Complaint, include response/reference as to exhibits; finalize same for forwarding to opposing counsel in conjunction with Stipulation to Amend in compliance with Joinder Order; follow up email to opposing counsel re: revisions, comments thereto.	240.00/hr		336.00
12/17/2015 - KMA	Review and evaluate response email from Artemis counsel re: language of stipulation as over inclusive re: filing of First Amended Complaint and Amended Answer.	240.00/hr		48.00
12/18/2015 - KMA	Review email from [REDACTED] re: [REDACTED] response email [REDACTED] re: same, [REDACTED] [REDACTED]	240.00/hr		96.00
12/21/2015 - KMA	Review follow up email from Artemis counsel; reevaluate SAO language; further revisions to language re: pleadings, amendments, compliance with Joinder Order; email to Artemis counsel re: same.	240.00/hr		240.00
1/4/2016 - KMA	Review email from Artemis counsel re: stipulation, setting up of phone conference with judge.	240.00/hr		24.00





		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
1/6/2016	- KMA	Email [REDACTED] Stipulation and Order to join parties; email to Artemis counsel re: same.	240.00/hr	72.00
1/12/2016	- KMA	Review email from Gerber re: submission of SAO to court and request for telephone conference.	240.00/hr	24.00
1/14/2016	- KMA	Email from [REDACTED] review roster and amended caption re: same; correct same per proposed Amended Answer; email to Artemis counsel re: same and copy of corrected caption, inquiry as to status of SAO and attempts to set up telephone conference with Court; response email; revise SAO with corrected caption, email to Artemis counsel re: same; forward original amended SAO with corrected caption to counsel for submission; [REDACTED] copy of amended caption.	240.00/hr	336.00
1/15/2016	- KMA	Telephone conference with [REDACTED]	240.00/hr	72.00
1/19/2016	- KMA	Telephone conference with court clerk and Artemis counsel to schedule phone conference on stipulation and order to comply with joinder order of other property owners.	240.00/hr	48.00
1/29/2016	- KMA	Email update to [REDACTED]	240.00/hr	24.00
2/5/2016	- KMA	Telephone conference with Judge Kacin and Artemis counsel re: the proposed SAO for compliance with joinder order.	240.00/hr	192.00
2/16/2016	- KMA	Review emails from Artemis counsel and signed stipulation and order re: joinder; response email coordinating filing of amended pleadings, service, and letter to owners.	240.00/hr	72.00
2/17/2016	- KMA	Exchange further emails with Artemis counsel re: coordination of filing amended pleadings, service, letters to owners.	240.00/hr	24.00
3/1/2016	- KMA	Initial review letter, packet, summonses, and acceptances of service from Artemis counsel for sending out of joint letter to owners along with amended complaint; answer, counterclaim, and cross claim per court's joinder order.	240.00/hr	72.00
3/4/2016	- KMA	Finalize joint letter, confer with [REDACTED] re: [REDACTED] coordination of same with Artemis counsel for mailing, email counsel.	240.00/hr	96.00



		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
3/4/2016 -	KMA	Review, approve, finalize email to Artemis counsel re: joint letter to owners, filing of amended pleadings, and re: packages to send to owners requesting acceptance of service.	240.00/hr	48.00
3/7/2016 -	KMA	Emails with [REDACTED], further coordinate details re: preparing joint letter for mailing to owners.	240.00/hr	72.00
3/8/2016 -	KMA	Finalized answer to first amended complaint, send for filing with court, review owner roster and coordinate addresses on joint letter to same; telephone conference with Lee Perks re: status, judge sign off on SAO but with changes, potential timeline for packets to go out to owners, owners who might participate vs. those who will not, potential further briefing on Ruby Lake pending MSJ on counterclaim for declaratory relief depending on participation of other owners.	240.00/hr	192.00
3/11/2016 -	KMA	Check status of filing of First Amended Complaint, status of mailing and filing of answer to same; preparation of status report [REDACTED] revise and finalize.	240.00/hr	312.00
3/17/2016 -	KMA	Review prior transmittal to court and status update from court clerk on filing of answer to First Amended Complaint, mailing, and anticipated receipt of same for completion of packages to property owners.	240.00/hr	NO CHARGE
3/24/2016 -	KMA	Review documents and organize packets to send to homeowners; review Acceptances of Service and evaluate issues as to same, necessity to include service of Answer and Cross claim; telephone conference with Zach Gerber requesting inclusion of same in Acceptances of Service.	240.00/hr	192.00
4/1/2016 -	KMA	Review status of mailings to all property owners; confirm list of owners in caption; telephone conferences with [REDACTED] re: [REDACTED]; amend caption for SAO to file second amended complaint with new owners identified, answer to second amended complaint; telephone conference with Zach Gerber re: same, follow up email; additional telephone conference with Zach Gerber re: stipulation to amend; follow up email re: same; prepare SAO to amend to include four additional owners; exchange additional emails re: amended captions on summonses and acceptances.	240.00/hr	408.00
4/4/2016 -	KMA	Exchange further emails with Artemis counsel re: SAO to amend caption, logistics for same, for filing second amended Complaint, answer to same, and mailing to property owners.	240.00/hr	168.00





		Rate	Tax#	Amount
4/4/2016 - KMA	Finalize SAO, emails re: same; revise caption for answer to second amended complaint, etc., double check against answer to first amended complaint.	240.00/hr		NO CHARGE
4/5/2016 - KMA	Exchange emails with Zach Gerber re: status of SAO to file with corrected captions; letter to Mr. Gerber re: same, filing of amended pleadings with corrected captions, forwarding of same with amended summonses and acceptances, completion of mailings to property owners.	240.00/hr		144.00
4/15/2016 - KMA	Email from Zach Gerber re: sign off by judge on SAO for amended complaint, answer, etc., mailing of packet to us; response email re: same.	240.00/hr		24.00
4/20/2016 - KMA	Status emails to [REDACTED] re: [REDACTED] email to Artemis counsel re: same.	240.00/hr		120.00
4/25/2016 - KMA	Telephone conference with property owner Michael Gowen re: mailings re: amended complaint, answer and cross claim, status of lawsuit, general background of lawsuit, option to accept service, option to participate in suit, option to consult with own counsel, divorce from wife and she's no longer record owner; exchange emails with [REDACTED] re: [REDACTED]	240.00/hr		144.00
4/26/2016 - KMA	Emails with [REDACTED] new address for owner Michael and Marnie Brennan.	240.00/hr		NO CHARGE
4/27/2016 - KMA	Exchange emails with [REDACTED] re: [REDACTED] emails with Zach Gerber re: status of acceptances of service, scheduling of telephone conference; double check mailing for owner Bill Noble; telephone conference with owner Shelly Mason.	240.00/hr		216.00
4/29/2016 - KMA	Telephone conference with owner Beverly Patterson re: service of amended complaint, answer and crossclaim, summons, acceptance of same, status of case, court's joinder order, and further proceedings towards final judgment.	240.00/hr		120.00
5/10/2016 - KMA	Telephone conference with Zach and Travis Gerber re: status of acceptances of service, acceptances received, second try to obtain acceptances for remaining lot owners, Answer to be filed by Nobles, but no further briefing, request for email confirmation as to same in order to keep motions submitted, confirm addresses and phone numbers for follow up; email to Gerbers re: contact information for follow up; status email [REDACTED] follow up phone calls, push to get final judgment entered; review proposed follow up letter forwarded by Travis Gerber; revisions to same, and additional email to Travis and Zach Gerber re:	240.00/hr		504.00



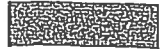
		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
	finalizing letter; review response email re: same and additional changes; review email from [REDACTED] and follow up response re: [REDACTED]			
5/12/2016 - KMA	Review answer to Counterclaim (per follow up with Joinder Order); review emails confirming receipt of acceptance of service by Dennis Cunningham.	240.00/hr		48.00
5/16/2016 - KMA	Exchange emails with Artemis counsel's office re: ongoing status of receipt of acceptances of service; emails with Lee Perks re: updated phone numbers.	240.00/hr		72.00
5/18/2016 - KMA	Review answer filed by Harold and Mary Wyatt; email Artemis counsel re: status of acceptances, any other filed answers, request confirmation in writing no further briefing; follow up email [REDACTED]; review response from Artemis counsel re: remaining owners to obtain acceptance or service; response email as to same, verify filing of answer only on behalf of Wyatts.	240.00/hr		168.00
5/23/2016 - KMA	Initial review and evaluate of requests for production and interrogatories re: road maintenance, other maintenance, common expense; email re: owners left to receive acceptances vs. attempt service.	240.00/hr		96.00
5/31/2016 - KMA	Telephone conference with [REDACTED] re: new discovery requests, [REDACTED] time [REDACTED] of [REDACTED] telephone conference with Artemis counsel re: new discovery requests, reasons therefore, timeline, status of service on owners; follow up email.	240.00/hr		240.00
6/1/2016 - KMA	Review certificate of service from court re: letter sent in by owners Phil and Dorothy Frank; review status emails re: additional acceptances and/or personal service on remaining owners.	240.00/hr		48.00
6/6/2016 - KMA	Email from [REDACTED] telephone call to [REDACTED] re: [REDACTED] review emails from Gerber office re: same.	240.00/hr		96.00
6/8/2016 - KMA	Telephone conference with [REDACTED] re: [REDACTED] status of service on other owners; email to Artemis counsel re: lack of updated address for owner Dibona; review email re: same; preparation of request for updated address for Dibona USPS.	240.00/hr		168.00
6/9/2016 - KMA	Attempts to reach last owners re: acceptances of service, status of suit.	240.00/hr		72.00

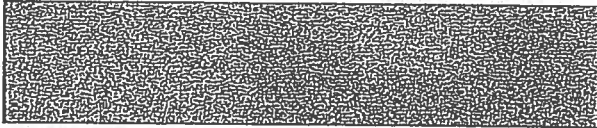


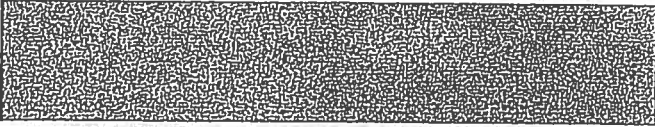







			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
6/10/2016	- KMA	Email from Gerbers re: additional efforts to track down the Dibonas; response email re: same, potential need to serve by publication, and calls to owners Gowan and Teitlebaum.	240.00/hr		48.00
6/16/2016	- CAL	Receive and review email from attorney Gerber regarding status of homeowners that have still not returned the Acceptance of Service ("AOS") Dibonas, Cecchi and Teitlebaum; receive and review email from attorney Gerber advising that Michael Gowan had signed and returned the AOS and that Mary Gowan is due to come into the office to sign her AOS; telephone call from Beth Teitlebaum to advise that she is signing the AOS today and mail back before she leaves the country; email to attorney Gerber to update on telephone conversation with Ms. Teitlebaum and that the Postmaster search came back with no new information.	240.00/hr		120.00
6/20/2016	- KMA	Status conference [REDACTED] re: service on homeowners, compare prior list to determine remaining owners to serve.	240.00/hr		72.00
7/12/2016	- KMA	Email from [REDACTED] re: [REDACTED] new [REDACTED] response email re: [REDACTED] email to Artemis counsel re: request for additional time, status of defaults, new property owner.	240.00/hr		72.00
7/13/2016	- KMA	Additional emails with Artemis counsel re: extension on discovery requests; email to [REDACTED] [REDACTED]	240.00/hr		48.00
7/15/2016	- KMA	Emails with Gerbers re: status of acceptances, SAO to include new owner; follow up email [REDACTED] acceptance as to owner Cecchi.	240.00/hr		72.00
7/25/2016	- KMA	Follow up email [REDACTED] re: status of acceptance of service by Mr. and Mrs. Cecchi.	240.00/hr		24.00
7/26/2016	- KMA	Email to [REDACTED] re: status of service on owners Mr. and Mrs. Cecchi.	240.00/hr		NO CHARGE
7/27/2016	- KMA	Telephone conference with owner Mike Cecchi; follow up email to [REDACTED] email to Artemis counsel re: necessity of personal service on Cecchis.	240.00/hr		432.00
7/28/2016	- KMA	Exhcnage emails re: personal service on Cecchis.	240.00/hr		24.00
	- KMA	Emails with Artemis counsel re: status, coordiante personal service on Cecchis.	240.00/hr		72.00



		<u>Rate</u>	<u>Tax/</u>	<u>Amount</u>
8/4/2016	- KMA	Email to Artemis counsel re: additional time on discovery requests.		48.00
		240.00/hr		
8/8/2016	- KMA	Status update on personal service of Cecchis; meeting [REDACTED] re: documents for discovery requests.		72.00
		240.00/hr		
8/11/2016	- KMA	Review affidavits of service on Cecchis; follow up email re: filing of same.		48.00
		240.00/hr		
9/2/2016	- KMA	Review email from [REDACTED] and brief status report [REDACTED]		72.00
		240.00/hr		
9/6/2016	- KMA	Review email from Artemis counsel re: status of filed acceptances of service, timeline for filing defaults, SAO to remove McGowan from caption due to quitclaim, and add new owner; response email re: same.		48.00
		240.00/hr		
9/16/2016	- KMA	Review and revise proposed stipulations on entry of default, add new owner as party, dismiss Mary Ann McGowan due to sale of interest in property; draft email to Artemis counsel re: same.		96.00
		240.00/hr		
9/19/2016	- KMA	Email to Zach Gerber re: SAO and application for entry of default.		48.00
		240.00/hr		
10/4/2016	- KMA	Review email from Zach Gerber re: status of defaults.		24.00
		240.00/hr		
10/5/2016	- KMA	Exchange emails with Zach Gerber re: status as to defaults, remaining service on new owner.		48.00
		240.00/hr		
10/6/2016	- KMA	Exchange additional emails with Gerber on serving new owner; [REDACTED]		48.00
		240.00/hr		
10/7/2016	- KMA	Review request to take default of joined parties, declaration in support of same, entered default; notice of intent as to defendant Frank, necessity of serving new owner Johnson.		72.00
		240.00/hr		
10/20/2016	- KMA	Review email from Zach Gerber rejoinder in briefing by Wyatt, determination of service on new owner Johnson, any response to joinder; [REDACTED]		72.00
		240.00/hr		
10/21/2016	- KMA	Telephone conferenc with Zach Gerber re: status, need for service on David Johnson, joinder of Wyatts, mutual agreement of not wanting further briefing schedule by Judge; potential timeline for completion of defaults and resubmission of motions to judge for decision.		96.00
		240.00/hr		



			<u>Rate</u>	<u>Tax/</u>	<u>Amount</u>
10/25/2016	- KMA	Exchange emails with Zach Gerber re: status of service on remaining property owner.	240.00/hr		24.00
10/27/2016	- KMA	Exchange emails with Zach Gerber re: service on new owner Johnson; potential acceptance of same.	240.00/hr		24.00
11/7/2016	- KMA	Telephone call to owner David Johnson; emails with Zach Gerber re: efforts to get in touch with Mr. Johnson to accept service.	240.00/hr		48.00
11/16/2016	- KMA	Attempts to reach owner Johnson; email update to Zach Gerber.	240.00/hr		48.00
	- KMA	Telephone conference with attorney David Johnson, advised trustee for owner trust of property, ownership interest conveyed to various beneficiaries, recorded deed in September.	240.00/hr		48.00
11/17/2016	- KMA	Exchange emails with Zach Gerber re: new lot owners, service of same.	240.00/hr		48.00
11/18/2016	- KMA	Review email from Zach Gerber re: conveyance to Van Der Meer Trust beneficiaries, last owners to join to action, inquiry as to means to contact.	240.00/hr		48.00
11/22/2016	- KMA	Telephone conference with Zach Gerber re: status of service, death of owner Van De Meer, joinder of Wyatts in prior motions, necessity of brief response to same, SAOs to amend caption to remove David Johnson in light of information re: trustee of Van De Meer Trust, and to resubmit motions for decision.	240.00/hr		96.00
12/3/2016	- KMA				
12/5/2016	- KMA	Evaluate proposed stipulations forwarded by Gerber; email to Zach Gerber re: same.	240.00/hr		48.00
	- KMA	Re: review and revise proposed stipulation and order re: defendant Johnson and to submit for decision by court.	240.00/hr		72.00
12/6/2016	- KMA				
12/11/2016	- KMA				



		Rate	Tax#	Amount
12/12/2016 - KMA	Exchange emails with Amy Hackett re: status of service, re:-submission of motions for decision by Judge Kacin; email to Zach Gerber re: Joint Request for Review, SAO [REDACTED] revise and finalize response to joinder.	[REDACTED]		[REDACTED]
12/14/2016 - KMA	Review and approve letters to court and opposing counsel re: response to joinder, stipulation to submit for decision.	240.00/hr		72.00
12/21/2016 - KMA	Review email from Gerber, and Reply to RLEHOA Response to Joinder.	240.00/hr		NO CHARGE
1/6/2017 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
1/31/2017 - KMA	Review and evaluate emails with [REDACTED] re: snow removal issues, [REDACTED] response [REDACTED] re: same.	240.00/hr		144.00
3/10/2017 - KMA	Telephone conference with Zach and Travis Gerber re: upcoming oral argument.	240.00/hr		72.00
3/13/2017 - KMA	Exchange additional emails with [REDACTED] re: status, upcoming hearing in Elko; exchange additional emails with [REDACTED] re: [REDACTED]	240.00/hr		<del>72.00</del> \$ 36.00
3/14/2017 - KMA	Review order from court setting oral argument for cross motions for summary judgment on remaining counterclaims, Artemis motion for leave to file supplement to motion for summary judgment and motion for reconsideration of prior order granting Association's motions for summary judgment; email to [REDACTED] and [REDACTED]	240.00/hr		<del>420.00</del> \$ 60.00
4/28/2017 - KMA	Review latest pleadings and organize to begin preparation for oral argument in Elko; review prior outlines; telephone call to Lee Perks re: upcoming hearing.	240.00/hr		<del>240.00</del> \$ 113.00
- KMA	Confer with [REDACTED] hearing [REDACTED]	240.00/hr		<del>240.00</del> \$ 48.00
4/30/2017 - KMA	Review prior [REDACTED] hearing, issues raised as to reconsideration, compare/contrast [REDACTED] in preparation for upcoming hearing; review overall [REDACTED] all owners joined, [REDACTED]	240.00/hr		<del>120.00</del> \$ 60.00

[REDACTED]

[REDACTED]

		Rate	Tax#	Amount
	[REDACTED] evaluate [REDACTED] for hearing, [REDACTED]			
5/1/2017 - KMA	Travel to Elko for hearing before Judge Kacin; further evaluate issues re: [REDACTED] [REDACTED] reconsideration of prior ruling.	240.00/hr		<del>1,200.00</del> \$600.00
5/2/2017 - KMA	Prepare for hearing before Judge Kacin on cross motions for summary judgment, motion for reconsideration, motion for leave to file supplemental briefs; attend hearing before Judge Kacin; confer with [REDACTED] [REDACTED] return travel from Elko.	240.00/hr		<del>2,040.00</del> \$1,320.00
5/3/2017 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
7/20/2017 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
8/9/2017 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
11/2/2017 - KMA	Review letter from Judge Kacin's law clerk re: status of decision; review [REDACTED] updated status email [REDACTED] [REDACTED]	240.00/hr		<del>440.00</del> \$70.00
12/12/2017 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
12/13/2017 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
- GAK	[REDACTED]	[REDACTED]		[REDACTED]
- KMA	[REDACTED]	[REDACTED]		[REDACTED]



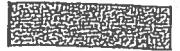
[REDACTED]

[REDACTED]

		Rate	Tax#	Amount
12/14/2017 - KMA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12/15/2017 - KMA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12/18/2017 - KMA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12/19/2017 - KMA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12/21/2017 - KMA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/4/2018 - KMA	Review email and proposed Stipulation and Order to dismiss and for entry of final judgment; initial revisions.	240.00/hr		72.00
1/5/2018 - KMA	Email to Gerbers re: stipulation.	240.00/hr		24.00
1/8/2018 - GAK	Conference with [REDACTED]	240.00/hr		288.00
- KMA	Telephone conference with Artemis counsel re: motion to dismiss, stipulation as to counterclaims, issues related thereto, no dismissal with prejudice, issues and claims reserved; review and re-evaluate [REDACTED] and evaluate [REDACTED]; begin revisions to stipulation; telephone conference with [REDACTED] case to final judgment [REDACTED]	240.00/hr		960.00
1/9/2018 - KMA	Follow up emails with Artemis counsel re: proposed stipulation, issues as to motion to dismiss.	240.00/hr		48.00
1/10/2018 - KMA	Revisions to proposed stipulation on dismissal of counterclaims; email to Artemis counsel re: same.	240.00/hr		288.00
1/11/2018 - KMA	Draft status update [REDACTED] proposed stipulation; revise and finalize.	240.00/hr		120.00



		Rate	Tax#	Amount
1/12/2018 - KMA	Email to counsel; review response, and evaluate proposed edits to stipulation.	240.00/hr		72.00
1/16/2018 - KMA	Review, reevaluate latest proposed stipulation to dismiss counterclaims from Artemis counsel, evaluate language [REDACTED]	240.00/hr		72.00
1/17/2018 - KMA	Confer re: [REDACTED] review [REDACTED]; revise version sent from Artemis counsel; draft response email; additional revisions [REDACTED]	240.00/hr		264.00
1/18/2018 - KMA	Emails with Artemis counsel re: phone conference; status email to [REDACTED] to get to final judgment; [REDACTED] revisions to email to Artemis counsel re: issues as to same, no entitlement to fees/costs by either side in connection with counterclaims and cross claim; finalized same and forward revised stipulation.	240.00/hr		384.00
- GAK	Review proposed Stipulation; conference with [REDACTED]	240.00/hr		144.00
1/22/2018 - KMA	Review email from Artemis counsel re: agreement to dismiss without prejudice, each party to bear its own fees and costs as to counterclaims and crossclaim.	240.00/hr		24.00
1/24/2018 - KMA	Review and evaluate revised Stipulation and Order; change language re: fees costs as to counterclaims and cross claim.	240.00/hr		72.00
1/26/2018 - KMA	Further revise Stipulation and Order; draft proposed judgment; evaluate whether dismissal of other owners and Wyatts required for final judgment; email to Artemis counsel re: same.	240.00/hr		384.00
2/5/2018 - KMA	Email to Artemis counsel re: status of stipulation.	240.00/hr		24.00
2/6/2018 - KMA	Email from [REDACTED]: response email [REDACTED] re: same, [REDACTED] review email from Artemis counsel.	240.00/hr		144.00
2/7/2018 - KMA	Response email from Artemis counsel re: proposed order and judgment, issue as to other named defendants and Wyatts as defendants, cross defendants who have answered; final judgment issue; evaluate pleadings, second amended complaint and procedural status as to	240.00/hr		264.00



		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
	final judgment with Wyatts remaining as parties; re-evaluate Rule 54(b); response email to Artemis counsel.			
2/8/2018 - KMA	Review and evaluate revised, proposed Judgment from Artemis counsel; telephone conference re: same with Travis Gerber, joinder of Wyatts, defaulted parties, 54(b) issues, Wyatts stipulating to be bound by prior Orders.	240.00/hr		192.00
2/9/2018 - KMA	Further evaluate possible resolution re: all claims as to all parties, stipulation as to Wyatts, 54(b) certification as to defaulted parties given only claim pending is claim for declaratory relief previously decided by court; evaluate proposed revisions to proposed judgment and begin edits to same.	240.00/hr		144.00
2/12/2018 - KMA	Additional revisions to propose stipulation and order for dismissal without prejudice, stipulation to bind Wyatts to prior orders, provisions as to non-appearing defaulted parties, second amended complaint claim for declaratory relief identical to original declaratory relief claim, provisions re: no just reason for delay as to defaulted parties per Rule 54(b); email to Artemis counsel re: same.	240.00/hr		432.00
2/13/2018 - KMA	Initial review of Artemis counsel's latest revisions to stipulation.	240.00/hr		48.00
2/14/2018 - KMA	Incorporate additional revisions into proposed Judgment based on language of stipulation and order for dismissal and entry of final judgment; email to Artemis counsel, and review response email re: same, and re: finalizing of stipulation and proposed judgment.	240.00/hr		216.00
2/16/2018 - KMA	Review finalized documents from counsel; revise Stipulation and Order to include language as to no argument re: motion to dismiss; finalize same; email to [REDACTED]; telephone conference [REDACTED]; approve letter to counsel re: Stipulation and Order for Dismissal Without Prejudice and Entry of Final Judgment, Final Judgment; follow up email to counsel re: same.	240.00/hr		456.00
2/23/2018 - KMA	Exchange emails with Artemis counsel re: status of submitted Stipulation and Order and proposed judgment.	240.00/hr		24.00
3/9/2018 - KMA	Initial review of entered judgment, notice of entry, dates for mailing; notice of appeal, case appeal statement; confirm date for motion for attorneys fees.	240.00/hr		144.00
3/13/2018 - KMA	Exchange additional emails re: appeal, review notice of referral to Supreme Court mediation program; review notice of appeal docketed with Supreme Court.	240.00/hr		96.00

[REDACTED]

[REDACTED]

3/14/2018 - KMA Review exemption from settlement program, pending deadlines; email updating as to same for briefing schedule; review case appeal statement submitted by Artemis..

Rate	Tax#	Amount
240.00/hr		120.00

[REDACTED]

[REDACTED]

[REDACTED]

Additional Charges :

Qty/Price

[REDACTED]

1  
[REDACTED]

[REDACTED]

[REDACTED]

1  
[REDACTED]

[REDACTED]

[REDACTED]

1  
[REDACTED]

[REDACTED]

[REDACTED]

1  
[REDACTED]

[REDACTED]

6/1/2014 - [REDACTED]

1  
[REDACTED]

[REDACTED]

1/31/2015 - TG Photocopy Charges

3  
0.20

0.60

4/30/2015 - TG Photocopy Charges

18  
0.20

3.60

5/31/2015 - TG Photocopy Charges

12  
0.20

2.40

6/30/2015 - TG Photocopy Charges

569  
0.20

113.80

[REDACTED]

1  
[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

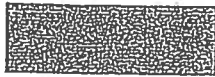
1  
48.93
















48.93

9/30/2015 - TG Photocopy Charges

20  
0.20

4.00



			<u>Qty/Price</u>	<u>Tax#</u>	<u>Amount</u>
1/31/2016	-	TG Postage Charges	1 1.29		1.29
3/31/2016	-	TG Photocopy Charges	2,904 0.20		580.80
4/5/2016	-	TG UPS Shipping Charges	1 29.03		29.03
4/30/2016	-	TG Photocopy Charges	283 0.20		56.60
	-	TG Postage Charges	1 280.14		280.14
8/8/2016	-	TG Reno/Carson Messenger Service - Service on Kris Cecchi	1 63.00		63.00
	-	TG Reno/Carson Messenger Service - Service on Mike Cecchi	1 25.00		25.00
10/31/2016	-	TG Photocopy Charges	47 0.20		9.40
12/31/2016	-	TG Photocopy Charges	57 0.20		11.40
	-	TG Postage Charges	1 4.45		4.45
5/1/2017	-		1 		
	-		1 		
5/2/2017	-		1 		
5/22/2017	-		1 		
12/31/2017	-	TG Photocopy Charges	58 0.20		11.60
	-		1 		
2/16/2018	-	TG UPS Shipping Charges	1 32.83		32.83

[REDACTED]

[REDACTED]

2/28/2018 - TG Photocopy Charges

<u>Qty/Price</u>	<u>Tax/</u>	<u>Amount</u>
47		9.40
0.20		

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2 AA000166

Additional Charges :

		Qty/Price	Tax#	Amount
6/30/2013 -	GAK Photocopy Charges	333		66.60
		0.20		
	- GAK Postage Charges	1		1.78
		1.78		
7/1/2013 -	TG LexisNexis - Online Legal Research	1		10.39
		10.39		
7/31/2013 -	TG Photocopy Charges	93		18.60
		0.20		
	- TG Postage Charges	1		5.42
		5.42		
12/31/2013 -	TG Photocopy Charges	29		5.80
		0.20		
1/9/2014 -	TG Fourth Judicial District Court - Filing Fee for Opposition to Motion for Summary Judgment	1		25.00
		25.00		
	- TG UPS Shipping Charges	1		41.14
		41.14		
1/22/2014 -	TG Fourth Judicial District Court - Filing Fee for Motion for Summary Judgment	1		200.00
		200.00		
	- TG UPS Shipping Charges	1		38.01
		38.01		

1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

FILED

2013 MAR -1 PM 2:51

ELKO CO DISTRICT COURT

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

7 ARTEMIS EXPLORATION COMPANY, a  
8 Nevada Corporation,

9 Plaintiffs,

10 vs.

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

13 Defendants.

14 RUBY LAKE ESTATES HOMEOWNER'S  
15 ASSOCIATION,

16 Counterclaimant,

17 vs.

18 ARTEMIS EXPLORATION COMPANY, a  
19 Nevada Corporation,

20 Counterdefendant.

21 STATE OF NEVADA )  
22 : ss.  
23 COUNTY OF WASHOE )

24 I, Gayle A. Kern, being first duly sworn do hereby swear under penalty of perjury as follows:

25 1. I am the attorney representing Ruby Lake Estates Architectural Committee, Ruby  
26 Lake Estates Homeowner's Association, in the above-referenced matter.

27 2. I make this affidavit of my own personal knowledge except as to those matters stated  
28 on information and belief.

3. Total fees in this matter through February 20, 2013, are \$51,288.00, and costs  
through February 20, 2013, in the amount of \$1,475.90, for a total of \$52,763.90. A compilation

2 AA000168

1 of all fees and costs is attached as Exhibit 1.

2 4. Redaction has been made of any privileged communications.

3 5. I have been in practice for over 28 years. I have a general civil practice with an  
4 emphasis on all types of housing associations including condominiums, town homes, landscape  
5 maintenance, single family, master and sub associations and mobile home parks, as well as  
6 litigation, bankruptcy and real property law. I currently serve as counsel to over two hundred  
7 associations throughout Northern Nevada. I provide all aspects of legal services upon request to  
8 my associations including interpretation of governing documents and applicable local, state and  
9 federal laws; guidance and training to Boards of Directors in connection with running a non-profit  
10 common-interest community; developer transition; collection of delinquent assessments; filing and  
11 responding to Intervention Affidavits with the Nevada Real Estate Division; all forms of litigation  
12 including Alternative Dispute Resolution, complaints in front of the Fair Housing Division of HUD,  
13 Small Claims Court, Justice Court, District Court, and the Nevada Supreme Court; and assistance  
14 in collections, liens and foreclosures.

15 6. I lecture regularly for the Ombudsman's office, the Nevada Real Estate Division, and  
16 teach seminars on common-interest community law. I serve on the Community Association  
17 Institute's Legislative Action Committee, which participates in review and comment on legislation  
18 affecting common-interest communities and regulations promulgated by the Ombudsman and  
19 Nevada Real Estate Division. I worked with the Real Estate Division in the development of the first  
20 community manager exam and I am approved by the Real Estate Division to teach classes to  
21 community managers and Board members. I regularly attend CAI's National Law Seminars to keep  
22 appraised of new developments in the industry, not only in Nevada, but throughout the country. I  
23 also serve on the subcommittee for the Common Interest Communities for the Nevada State Bar  
24 Real Estate section.

25 7. The fees and costs billed in this matter are reasonable and appropriate. The total  
26 time billed from March 2, 2012 through February 20, 2013 was 216.6 hours, with an hourly rate of  
27 \$240.00, totaling \$51,288.00. Costs through February 20, 2013, are itemized in the amount of  
28 \$1,475.90 for a total due and owing of \$52,763.90.



1 8. My hourly rate is reasonable given my experience practicing law in general and my  
2 experience in practicing in the specialized area of common interest communities, in particular.  
3 Despite my experience and expertise, my hourly rate is lower than rates routinely charged by other  
4 attorneys who practice in this area and/or who do not have the same amount of experience that I  
5 have.

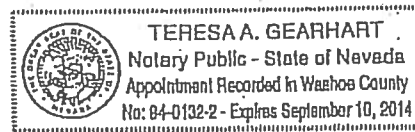
6 9. Based upon all of the above factors, these fees and costs are reasonable and  
7 appropriate and should be awarded.

8 DATED this 25<sup>th</sup> day of February, 2013.

9  
10 Gayle A. Kern  
11 GAYLE A. KERN

12 SUBSCRIBED AND SWORN to before me  
13 this 25<sup>th</sup> day of February, 2013.

14 Teresa A. Gearhart  
15 NOTARY PUBLIC



16 AFFIRMATION

17 Pursuant to NRS 239B.030

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

20 DATED this 25<sup>th</sup> day of February, 2013.

21 KERN & ASSOCIATES, LTD.

22 Gayle A. Kern  
23 GAYLE A. KERN, ESQ.  
24 NEVADA BAR #1620  
25 5421 Kietzke Lane, Suite 200  
26 RENO, NEVADA 89511  
27 Telephone: 775-324-5930  
28 Fax: 775-324-6173  
Email: [gaylekern@kernltd.com](mailto:gaylekern@kernltd.com)  
Attorneys for Ruby Lake Estates

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern & Associates, Ltd., and that on this day I served the foregoing document described as follows:

**AFFIDAVIT OF GAYLE A. KERN  
IN SUPPORT OF ATTORNEY'S FEES AND COSTS**

on the parties set forth below, at the addresses listed below by:

X Placing an original or true copy thereof in a sealed envelope place for collection and mailing in the United States Mail, at Reno, Nevada, first class mail, postage paid, following ordinary business practices, addressed to:

           Via facsimile transmission

           Via e-mail.

           Personal delivery, upon:

           United Parcel Service, Next Day Air, addressed to:

Travis Gerber, Esq.  
Gerber Law Offices, LLP  
491 4<sup>th</sup> Street  
Elko, NV 89801.

DATED this 20<sup>th</sup> day of February, 2013.

*Teresa A. Gearhart*  
TERESA A. GEARHART

EXHIBIT "1"

EXHIBIT "1"

Gayle A. Kern, Ltd.  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
EIN No. 20-0097566

Invoice submitted to:  
Amy B. Hackett  
Philadelphia Insurance Companies

February 22, 2013

In Reference To: Ruby Lake Estates HOA adv. Artemis Exploration Company

Professional Services

	<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
3/2/2012 - GAK Review e-mail and complaint from Travis Gerber; draft e-mail to Amy Hackett re: [REDACTED]	240.00/hr		96.00
3/6/2012 - GAK Review e-mail from Mr. Perks; draft response; review complaint; draft updated notice of pending litigation.	240.00/hr		336.00
3/9/2012 - GAK Review and respond to e-mail from Amy Hackett.	240.00/hr		48.00
3/19/2012 - GAK Execute acceptance of Service; draft letter to Mr. Gerber.	240.00/hr		72.00
* 3/23/2012 - GAK Prepare draft answer to complaint and counterclaim to have award confirmed and attorney's fees awarded.	240.00/hr		288.00
3/28/2012 - GAK Finalize Answer to Complaint and Counterclaim.	240.00/hr		504.00
4/20/2012 - GAK Review Answer to Counterclaim and provide same to client.	240.00/hr		120.00
4/27/2012 - GAK Draft Notice of Early Case Conference as to Counterclaim.	240.00/hr		72.00
5/4/2012 - GAK Draft letter to Mr. Gerber re: extension of time to respond to motion for summary judgment.	240.00/hr		48.00
5/7/2012 - GAK Telephone call from Mr. Gerber re: conflict of interest with assigned judge having previously represented Artemis; provide authority to draft and send letter to court re: same.	240.00/hr		48.00

		Rate	Tax#	Amount
5/11/2012	GAK Review Complaint, Answer and Counterclaim filed in District Court action; review Ruby Lakes Arbitration Brief and Motion for Summary Judgment filed by Artemis with supporting exhibits; conference with [REDACTED]	240.00/hr		NO CHARGE
5/14/2012	GAK Work on Opposition to Motion for Summary Judgment filed by Artemis; work on statement of facts as supported by admissible evidence.	240.00/hr		2,088.00
5/15/2012	GAK Continue work on Opposition pleading, statement of facts with exhibit references; analysis of documents produced; requests for admissions; begin draft of legal arguments, points and authorities in opposition.	240.00/hr		1,896.00
5/16/2012	GAK Prepare for early case conference; participate in case conference.	240.00/hr		192.00
	GAK Continue work on Exhibits supporting statement of facts for opposition; review again Plaintiff's Motion for Summary Judgment and outline legal arguments made; review and analysis of various provisions of NRS Chapter 116; outline legal arguments in opposition.	240.00/hr		1,248.00
5/17/2012	GAK Review deposition transcripts for Mel and Elizabeth Essington and identify statements and admissions to be used in support of opposition arguments; continue review and make note of relevant provisions of Minutes and other documents produced in NRED action.	240.00/hr		912.00
5/18/2012	GAK Continue work on opposition to Plaintiffs Motion for Summary Judgment; continue review of documents produced in Nevada Real Estate Division action; edit and expand draft statement of facts in support of arguments in opposition.	240.00/hr		1,656.00
5/19/2012	GAK Continue work on legal arguments for Opposition pleading.	240.00/hr		840.00
5/20/2012	GAK Work on legal arguments and points and authorities in opposition.	240.00/hr		1,944.00
5/21/2012	GAK Legal Research on issues pertinent to our Opposition to Motion for Summary Judgment.	240.00/hr		96.00
5/22/2012	GAK Review and respond to e-mail from Lee Perks re: [REDACTED]	240.00/hr		48.00

		Rate	Tax#	Amount
5/22/2012	- GAK Draft additional arguments for opposition pleading, melding with references to Exhibits and statements of fact.	240.00/hr		1,320.00
5/23/2012	- GAK Revise opposition to motion for summary judgment.	240.00/hr		NO CHARGE
	- GAK Continue work on legal arguments and points and authorities, melding with references to statements of fact and exhibits.	240.00/hr		1,680.00
	- GAK Complete first draft of Opposition pleading and edit same; prepare Index of Exhibits; check exhibit references, confirming correct Bates Stamp numbers for Plaintiff and RLE documents previously produced; telephone conference with Robert Wines re: [REDACTED] draft Affidavit of Robert Wines.	240.00/hr		2,040.00
5/24/2012	- GAK Continue revisions to Opposition to Motion for Summary Judgment, including further research; supervise and coordinate affidavits and exhibits.	240.00/hr		1,440.00
	- GAK Telephone conference with Lee Perks, Association President; draft Affidavit of Lee Perks; analysis of additional documents sent by Perks; arrange supplemental production of documents; edit Perks Affidavit; edit and add additional facts and arguments to Opposition pleading.	240.00/hr		2,064.00
5/25/2012	- GAK Review additional documents sent by client and arrange for additional supplemental production to Artemis; review and edit Opposition pleading and add more facts and arguments re: additional documents produced by client; draft argument regarding insufficiency of Essington affidavit per NRCP 56(e); revise and complete first draft of affidavit of attorney Robert Wines; check all Exhibits referenced and to be authenticated by Wines; revise Index of Exhibits; finalize draft of Perks Affidavit based on new evidence; read Opposition pleading and edit exhibit references; proof changes made by legal assistant to Affidavits and Index of Exhibits.	240.00/hr		2,040.00
5/26/2012	- GAK Begin work on cross motion for summary judgment; prepare introduction and background statement; analyze statement of facts in opposition re: what to be necessarily included in statement of facts for cross motion for summary judgment; work on statement of facts in support of arguments for statute of limitations, declaratory relief, and liability founded upon statute.	240.00/hr		1,464.00
5/27/2012	- GAK Continue work on cross Motion for Summary Judgment, abstracting and summarizing relevant facts from opposition pleading with appropriate exhibit references; draft affirmative arguments and points and authorities re:	240.00/hr		2,304.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
	expiration of statute of limitations; failure to state a claim for fraud; failure to state a claim for declaratory relief; failure to state a claim for damages; read through first draft of Motion for Summary Judgment and edit same.			
5/28/2012 - GAK	Review and edit arguments and points and authorities in Motion for Summary Judgment; analysis re: [REDACTED]	240.00/hr		1,824.00
5/29/2012 - GAK	Review and revise motion for summary judgment; conference with Mr. Perks re: [REDACTED] [REDACTED], supervise communication with court about filing a composite of exhibits; review and revise opposition to motion for summary judgment.	240.00/hr		1,440.00
- GAK	Oversee preparation of all exhibits; add additional document references to Index of Exhibits; make revisions to Perks affidavit and submit via e-mail to Lee Perks; make changes to Wines affidavit and submit via e-mail to Robert Wines; edit Opposition pleading and conform argument headings to argument headings in Motion for Summary Judgment; meet with Lee Perks; discuss [REDACTED] [REDACTED] proof all edits made by legal assistant in Opposition pleading and Motion for Summary Judgment.	240.00/hr		1,224.00
5/31/2012 - GAK	Prepare Request for Production of Documents to Artemis Exploration Company; revise joint case conference report.	240.00/hr		192.00
6/6/2012 - GAK	Review and respond to request for extension of time to reply to Opposition.	240.00/hr		48.00
- GAK	Review requested changes to the joint case conference report.	240.00/hr		96.00
6/7/2012 - GAK	Travel to office of Lee Perks and review HOA records.	240.00/hr		600.00
6/11/2012 - GAK	Organize documents for supplemental production of documents.	240.00/hr		192.00
6/13/2012 - GAK	Review and finalize the identification of the exhibits.	240.00/hr		144.00
6/14/2012 - GAK	Draft RLEHOA's Second Supplemental Production of Documents Pursuant to NRCP 16.1.	240.00/hr		48.00

		Rate	Tax#	Amount
6/16/2012	- GAK Review Artemis Reply to RLEHOA's Opposition to Motion for Summary Judgment.	240.00/hr		192.00
6/26/2012	- GAK Conference regarding [REDACTED] send e-mail to Mr. Wines.	240.00/hr		120.00
	- GAK Review and analysis of Artemis Opposition to RLEHOA's Motion for Summary Judgment; begin draft of arguments for Reply Brief; telephone call to Lee Perks re: [REDACTED] telephone call to Robert Wines re: [REDACTED]	240.00/hr		1,872.00
6/27/2012	- GAK Communicate with Mr. Wines [REDACTED] communicate with Travis Gerber to obtain extension of time for Reply to Opposition to Motion for Summary Judgment.	240.00/hr		240.00
	- GAK Review e-mail from Robert Wines; prepare Affidavit of Stephen Wright; prepare e-mail correspondence to Bob Wines; finalize Affidavit; continue work on arguments and points and authorities for Reply brief to Plaintiffs Opposition.	240.00/hr		2,064.00
6/28/2012	- GAK Continue work on Reply brief and complete first draft, including response to Mrs. Essingtons Affidavit submitted in support of Reply and Opposition; review revised Affidavit of Stephen Wright.	240.00/hr		1,896.00
6/29/2012	- GAK Review Supplemental production of documents; formulate new exhibits; edit Reply brief to incorporate new exhibits and arguments re: same; edit Reply brief.	240.00/hr		1,704.00
7/2/2012	- GAK Revisions to Reply Brief for motion for summary judgment; review of exhibits regarding additional information to provide to court; review of comments in Uniform Common Interest Community Act to incorporate into brief supporting the position of the Association.	240.00/hr		552.00
	- KMA Legal research evidence code and pattern jury instructions re: [REDACTED]	240.00/hr		72.00
	- GAK Review Reply brief filed by Artemis; review and make edits to RLEHOA's Reply to Artemis Opposition to RLEHOA's Motion for Summary Judgment.	240.00/hr		192.00
	- GAK Interoffice conference re: [REDACTED] review changes made to RLEHOA's Reply brief; review documents produced by Artemis.	240.00/hr		360.00



		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
7/3/2012	- GAK Finalize brief and all exhibits; prepare request for review and send all to the court for filing and serve all on opposing counsel.	240.00/hr		288.00
	- GAK Locate documents re: [REDACTED] arrange for supplemental production of documents and new exhibit in support of RLEHOA's MSJ; confirm and proof edits made to brief; draft changes to statute of limitations argument re: claims being time barred by NRS 11.190(3)(a).	240.00/hr		600.00
7/6/2012	- GAK Draft Request for Oral Argument; letter to court clerk enclosing same for filing.	240.00/hr		48.00
	- GAK Telephone conference with Bill Harmon re: [REDACTED]	240.00/hr		144.00
7/12/2012	- GAK Review Request for Review and provide same to client.	240.00/hr		48.00
7/17/2012	- GAK Telephone conference with Lee Perks re: [REDACTED]	240.00/hr		48.00
7/26/2012	- GAK Review email with information about additional road work that will be done this summer; follow up on judge's failure to recuse herself; prepare supplement to reply with additional information; provide supplement to 16.1 production of documents.	240.00/hr		144.00
	- GAK Telephone call with Judge's law clerk to schedule conference call re: Judge's former representation of Artemis; relay available dates and times to counsel.	240.00/hr		48.00
	- GAK Draft Fourth Supplemental Production of Documents; and Supplement to RLEHOA's Motion for Summary Judgment.	240.00/hr		72.00
7/30/2012	- GAK Review email from Travis Gerber and the proposed letter to Judge Porter; supervise sending response; Return telephone call to Mike Cecchi [REDACTED]	240.00/hr		72.00
8/2/2012	- GAK Telephone call to Lee Perks, HOA President, re: [REDACTED]	240.00/hr		48.00
	- GAK Attempt call to [REDACTED] prepare e-mail to Lee Perks.	240.00/hr		48.00
8/7/2012	- GAK Prepare Affidavits of Michael Wayne Mason and Shelly Renee Mason; prepare Second Supplement to Exhibits to Motion for Summary Judgment.	240.00/hr		216.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
8/7/2012	- GAK Prepare Affidavit In Support of request for attorneys fees and costs.	240.00/hr		72.00
8/20/2012	- GAK Return telephone call to Court clerk; draft letter to client.	240.00/hr		96.00
	- GAK Prepare cover sheet for filing original Affidavits of Michael Wayne Mason and Shelly Renee Mason that were filed as RLEHOA's Second Supplement to Exhibits to Motion for Summary Judgment; finalize and send to Court for filing; serve same.	240.00/hr		72.00
	- GAK Prepare letter to clients informing [REDACTED]	240.00/hr		48.00
9/13/2012	- GAK Review order setting hearing on motions for summary judgment.	240.00/hr		48.00
9/21/2012	- GAK Review file stamped order setting hearing on motions for summary judgment; provide same to client.	240.00/hr		48.00
10/5/2012	- GAK Telephone call Mr. Perks; prepare for oral argument on motions for summary judgment.	240.00/hr		840.00
10/9/2012	- GAK Prepare for oral argument; travel to Elko for hearing; meeting with Mr. Perks [REDACTED]	240.00/hr		2,400.00
10/10/2012	- GAK Participate in oral argument; travel to Reno from hearing.	240.00/hr		2,400.00
2/14/2013	- GAK Draft Notice of Entry of Order Denying Plaintiff's Motion for Summary Judgment.	240.00/hr		24.00
	- GAK Review order denying plaintiff's motion for summary judgment; Telephone call client and counsel Bob Wines [REDACTED] draft notice of entry of order; review Chapter 38 provisions for timing of filing a motion for attorney's fees and costs.	240.00/hr		240.00
2/15/2013	- GAK Provide order to Ms. Hackett with [REDACTED] review and respond to email from Mr. Perks, president of the Board.	240.00/hr		96.00
2/19/2013	- GAK Review Order Granting our Motion for Summary Judgment.	240.00/hr		144.00
2/20/2013	- GAK Prepare Notice of Entry of Order Granting Motion for Summary Judgment; draft Motion to Confirm Judgment on Arbitration and Motion for Attorney's Fees and Costs.	240.00/hr		960.00
For professional services rendered		216.60		\$51,288.00

## Additional Charges :

		Qty/Price	Tax#	Amount
3/29/2012	- TG Fourth Judicial District Court - Filing Fee for Answer and Counterclaim	1 198.00		198.00
	- TG UPS Shipping Charges	1 15.42		15.42
3/31/2012	- TG Photocopy Charges	115 0.20		23.00
	- TG Postage Charges	1 3.40		3.40
4/2/2012	- TG UPS Shipping Charges	1 11.00		11.00
4/9/2012	- TG UPS Shipping Charges (1/24/12)	1 15.08		15.08
4/30/2012	- TG Photocopy Charges	47 0.20		9.40
	- TG Postage Charges	1 2.00		2.00
5/29/2012	- TG UPS Shipping Charges (Opposition & Motion to Elko)	1 18.71		18.71
	- TG UPS Shipping Charges (Return of File-Stamped Copies)	1 13.84		13.84
5/30/2012	- TG Fourth Judicial District Court - Filing Fee for Motion for Summary Judgment	1 200.00		200.00
5/31/2012	- TG Photocopy Charges	1,179 0.20		235.80
	- TG Fax Charges	2 0.30		0.60
	- TG Postage Charges	1 9.80		9.80
6/1/2012	- TG LexisNexis - Online Legal Research	1 71.77		71.77
6/14/2012	- TG UPS Shipping Charges (JCCR to Court)	1 15.63		15.63
6/30/2012	- TG Photocopy Charges	1,092 0.20		218.40

Amy B. Hackett

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		<u>Qty/Price</u>	<u>Tax#</u>	<u>Amount</u>
6/30/2012 - TG	Postage Charges	1 8.41		8.41
7/1/2012 - TG	LexisNexis - Online Legal Research	1 4.27		4.27
7/3/2012 - TG	UPS Shipping Charges	1 16.74		16.74
7/6/2012 - TG	UPS Shipping Charges	1 15.29		15.29
7/27/2012 - TG	UPS Shipping Charges - Filing with Court	1 15.29		15.29
7/31/2012 - TG	Photocopy Charges	196 0.20		39.20
- TG	Postage Charges	1 11.75		11.75
8/13/2012 - TG	UPS Shipping Charges	1 15.02		15.02
8/31/2012 - TG	Photocopy Charges	83 0.20		16.60
- TG	Postage Charges	1 5.00		5.00
9/30/2012 - TG	Photocopy Charges	2 0.20		0.40
10/10/2012 - TG	Best Western - 10/10/12 Hearing	1 212.79		212.79
11/19/2012 - TG	Pilot - Fuel for Travel to 10/10/12 Hearing	1 48.89		48.89
2/20/2013 - TG	Photocopy Charges	22 0.20		4.40
Total costs				<u>\$1,475.90</u>

2 AA000181

ORIGINAL

FILED

1 CASE NO. CV-C-12-175

2 DEPT. NO. 2

2018 AUG -3 AM 10:50

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

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY DE

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

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,

10 Plaintiff,

11 vs.

12 RUBY LAKE ESTATES HOMEOWNER'S  
13 ASSOCIATION, et al., and DOES I-X,

14 Defendants.

15 \_\_\_\_\_/  
16 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY, a  
20 Nevada corporation,

21 Counterdefendant.

22 \_\_\_\_\_/

RUBY LAKE ESTATES  
HOMEOWNER'S ASSOCIATION'S  
REPLY POINTS & AUTHORITIES  
IN SUPPORT OF MOTION FOR  
ATTORNEY'S FEES AND COSTS

23  
24 Defendant Ruby Lake Estates Homeowner's Association ("the Association" or  
25 "RLEHOA"), a Nevada non-profit corporation, by and through its counsel, Kern & Associates,  
26 Ltd., hereby submits its Reply Points & Authorities ("Reply") in Support of Motion for Attorney's  
27 Fees and Costs ("Motion"). This Reply and the Association's Motion are made and based upon  
28

1 the Final Judgment entered in favor the Association on February 26, 2018, NRS 116.4117, NRS  
2 116.3115(6), NRS 18.010(2), the Association's Declaration of Covenants, Conditions, and  
3 Restrictions ("CC&Rs"), the accompanying memorandum of points and authorities, the Affidavits  
4 of Gayle A. Kern, Esq. submitted to the Court, and all papers, pleadings and exhibits on file herein.  
5

## 6 MEMORANDUM OF POINTS & AUTHORITIES

### 7 I. 8 INTRODUCTION

9 The Opposition of Artemis Exploration Company ("Artemis") clearly fails to provide any  
10 controlling authority or basis for denial of the Association's Motion. The key fact which Artemis  
11 simply cannot overcome is the Association is the prevailing party in this matter by virtue of this  
12 Court's February 14, 2013 Order granting summary judgment in favor of the Association on  
13 Artemis's declaratory relief claim (and corresponding February 12, 2013 Order denying Artemis's  
14 summary judgment). In the Final Judgment, the Court stated that its February 12, 2013 and  
15 February 14, 2013 "...*Orders have not been reconsidered or reversed*, and therefore as *standing*  
16 *Orders* this Court finds that *Artemis's claim for declaratory relief* has been *resolved as a matter*  
17 *of law in accordance with the Court's Orders* ....." See Final Judgment, p. 3, ll. 2-6. (*Emphasis*  
18 *added*.)  
19  
20

21 Artemis also cannot overcome that in June 2013 this Court granted the Association's  
22 request for its fees and costs incurred in the arbitration and district court proceeding in the amount  
23 of \$82,250.81, that this Court has already made specific findings concerning the conduct of the  
24 Essingtons, that the fees and costs were reasonably and necessarily incurred, and that the factors of  
25 *Brunzell* have been met. See *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31  
26 (1969). (*And see* May 15, 2013 Order granting award of attorney's fees and costs, and the Court's  
27 June 2013 Attorney's Fees Award.) Instead, Artemis flatly mischaracterizes the Nevada Supreme  
28 Court's statements regarding fees and costs following Artemis's premature appeal in 2013.

1 (Opposition p., 2, ll. 1-3.) The Supreme Court did *not* determine the award was in error. Indeed,  
2 the Supreme Court did not even reach the issue of the attorney's fees and cost award, as no final  
3 judgment was entered, and fees and costs are separately appealable. As such, all arguments in  
4 Artemis's Opposition that the Supreme Court has considered the issues raised herein and ruled  
5 against the Association on fees and costs are disingenuous and/or a tortured misinterpretation.  
6 Significantly, just as this Court has already done, the Supreme Court has recognized the  
7 Association as the "prevailing party".<sup>1</sup>

8  
9 Consequently, it remains within this Court's sound discretion to consider the prevailing  
10 party Association's instant Motion for fees and costs under the following statutory and contractual  
11 bases, separate and apart from NRS Chapter 38 and/or the counterclaims which have been  
12 dismissed *without prejudice*. See *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382,  
13 (1998); *County of Clark v. Blanchard Contr. Co.*, 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982).  
14 See *Davidsohn v. Steffens*, 112 Nev. 136, 911 P.2d 855 (1996); *University of Nevada v. Tarkanian*,  
15 110 Nev. 581, 590, 879 P.2d 1180, 1187 (1994); *County of Clark v. Blanchard Constr. Co.*, *supra*.  
16  
17

18 The Association respectfully requests, therefore, that the Court award fees and costs to the  
19 Association as the prevailing party in this matter in the total amount of \$115,688.14 as of March  
20 18, 2018.

21 ///

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26 <sup>1</sup> The Nevada Supreme Court stated that award confirmation based upon NRS 38 did not apply  
27 because "an action was commenced within the applicable time frame..." The Supreme Court also  
28 recognized the district court "...resolved the issues on their merits..." See Order to Show Cause ("OSC"),  
dated October 7, 2013, p. 2. As to attorney's fees and costs, the Supreme Court simply stated "...it does not  
appear that this court *could reach the subdivision and homeowner's association issues* in the context of  
this appeal from that order, since it confirms only the attorney fees and costs awarded and awards additional  
fees and costs to the *prevailing party*." *Id.*, p. 3. (*Emphasis added.*)

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## II. LEGAL ARGUMENT

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*A. Attorney's Fees May be Properly Awarded to the Association as the Prevailing Party under NRS 116.4117.*

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This Court determined in its February 2013 Orders that the Association is a valid NRS Chapter 116 common interest community, valid at its inception. As already established for the Court in 2013, and again here, it is well within this Court's discretion to award the Association the \$82,250.81 in fees and costs incurred by the Association in both the arbitration and district court proceedings. It is also with the Court's sound discretion to award the Association the additional, total amount of \$32,101.00 in fees and \$1,336.33 in costs incurred since June 2013, for total fees and costs of \$115,688.14, as of March 18, 2018.<sup>2</sup>

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Artemis argues in its Opposition that NRS 116.4117 does not apply herein because the claim decided by this Court was a declaratory relief claim. This argument is wrong and ignores the specific language of this enabling statute which provides in "a civil action for damages *or other appropriate relief* for a failure or refusal to comply with any provisions of this chapter or the governing documents of an association...", "...the court may *award reasonable attorney's fees to the prevailing party.*" NRS 116.4117(2) and (4). (*Emphasis added.*)<sup>3</sup>

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Artemis does not, and cannot, dispute that since the beginning of this case before arbitrator Judge Gang, and then before this Court, its claims concern the interpretation and enforcement of the CC&Rs, the applicability of NRS Chapter 116, the levying and collection of assessments by the Board pursuant to that chapter, and Artemis's failure and refusal to pay those assessments. Though ultimately abandoned by Artemis as a claim, Artemis alleged intentional misconduct by the Association in holding itself out as a validly formed community association subject to the

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<sup>2</sup> Please note this amount does not include any fees and/or costs incurred in connection with Artemis's appeal of this Court's summary judgment in favor of the Association.

<sup>3</sup> Significantly, the statute does not limit awards of fees to prevailing parties to actions for damages, but also includes actions for "other appropriate relief", such as the declaratory relief action in the case at bar.



1 provisions of Chapter 116. Artemis's unsuccessful declaratory relief claim and assertions that the  
2 Association's governing documents do not impose assessment obligations on property owners  
3 *unequivocally* put the enforcement and interpretation of the CC&Rs at issue. This was  
4 underscored by this Court's well-reasoned decision granting summary judgment in favor of the  
5 Association and in its initial award of attorney's fees and costs. Though the statutory basis for an  
6 award of fees and costs does not derive from Chapter 38, the analysis made, and conclusion  
7 already reached by this Court is equally appropriate and justified under NRS 116.4117(2) and (4).  
8

9 Artemis cites two cases, one of which is unpublished, involving declaratory relief claims  
10 and NRS 116.4117. Artemis attempts to argue the statute does not support an award of the  
11 Association's fees because Artemis's claims were for declaratory relief. This argument fails  
12 outright.  
13

14 Both *R Ventures I, LLC v. Wells Fargo Bank, N.A.*, 2017 Nev. Unpub. LEXIS 237 (Nev.  
15 April 17, 2017), and *Bank of Am., N.A. v. Treasure Landscape Maint. Ass'n*, 2017 U.S. Dist.  
16 LEXIS 113893 (D. Nev. July 21, 2017), are distinguishable and, therefore, inapposite here. Both  
17 cases involved quiet title and declaratory relief litigation concerning the super-priority lien  
18 provision of NRS Chapter 116. The disputes in those lawsuits were between lenders and either a  
19 third-party purchaser or an association, all of whom were litigating whether the lenders' deeds of  
20 trust survived an association's NRS Chapter 116 assessment lien foreclosure sales or were  
21 extinguished under the super-priority lien provision of NRS 116.3116(2)(c).  
22

23 In stark contrast to the case at bar, therefore, the cases cited by Artemis were *not* between  
24 associations and unit/property owners concerning disputed assessments, liens, compliance with  
25 Chapter 116, and/or the governing documents, as authorized by NRS 116.3116 and/or NRS  
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1 116.4117.<sup>4</sup> As such, the determinations in those cases that NRS 116.4117 did not allow for an  
2 award of fees to the prevailing parties rested on fact that neither NRS 116.3116 nor NRS 116.4117  
3 authorized such claims in the first place. Fees to a prevailing party under these Chapter 116  
4 provisions, therefore, were also not authorized, or even applicable. *See Bank of Am., N.A.*, 2017  
5 U.S. Dist. LEXIS at \*6-7, *citing R Ventures*,  
6

7 “Although appellant’s quiet title and declaratory relief action may  
8 have relied on NRS 116.3116’s superpriority lien provision, *NRS*  
9 *116.3116 did not authorize appellant’s action, meaning the*  
10 *action necessarily was not brought [or authorized] under that*  
11 *statute...*” *Therefore, the HOA is not entitled to attorney’s fees*  
12 *under NRS 116.3116 [against the lender] under NRS 116.3116...*  
13 *Therefore, the court will deny the HOA’s motion for attorney’s*  
14 *fees [against the Lender] as it relates to NRS 116.4117 because*  
15 *the same reasoning applies as above.*

16 *(Emphasis added.)*

17 These rulings were not made, as Artemis suggests, simply because the claims brought were  
18 for declaratory relief under NRS Chapter 30. Such a conclusion is contrary to the clear language  
19 of the statutes and analysis in the cases themselves and, if accepted, would render the statute  
20 meaningless.

21 <sup>4</sup> NRS 116.4117(2) specifically provides that a civil action for damages or other appropriate relief,  
22 i.e. declaratory relief, for failure or refusal to comply with Chapter 116 or an association’s governing  
23 documents may be brought

24 (a) *By the association against:*

- 25 (1) A declarant;  
26 (2) A community manager; or  
27 (3) *A unit’s owner.*

28 (b) *By the unit’s owner against:*

- (1) *The association;*  
(2) A declarant; or  
(3) Another unit’s owner of the association.

*(Emphasis added.)*

NRS 116.3116(1) provides for an association’s statutory lien for delinquent assessments and  
other applicable charges. NRS 116.3116(11) provides that actions “...to recover sums for which subsection 1  
creates a lien” are not prohibited nor are deeds in lieu of foreclosure. NRS 116.3116(12) further provides that  
“[a] judgment or decree in any action brought under this section [to recover sums constituting the lien] must  
include costs and reasonable attorney’s fees for the prevailing party.” These statutes clearly pertain to actions  
between an association and unit owners, not the super priority lien litigation cases relied upon by Artemis.

1 In short, the statute is clear; NRS 116.4117(2) and (4) clearly authorize an award of  
2 attorney's fees to the Association as the prevailing party in both the arbitration before Judge Gang  
3 and the proceedings before this Court.  
4

5 ***B. NRS 116.3115(6) Also Provides a Specific Statutory Basis for an Award of Fees***  
6 ***and Costs to the Association as the Prevailing Party in this Case.***

7 Just as Artemis's arguments relative to NRS 116.4117 fail, so do the arguments made  
8 against NRS 116.3115(6) as a statutory basis for an award of fees and cost to the Association. To  
9 the extent Artemis again relies on the *Bank of Am., N.A. and R Ventures* cases, such reliance has  
10 already been dispatched as established above, and the same analysis applies to defeat the latest  
11 arguments raised by Artemis in their Opposition concerning NRS 116.3115(6). That Artemis's  
12 claim is for declaratory relief "brought pursuant to NRS 30.010 et seq." is not relevant to any  
13 analysis as to the propriety of an award of fees and costs under NRS 116.3115(6). What triggers  
14 this statute, like NRS 116.4117, is the dispute between Artemis as a unit/property owner and the  
15 Association concerning the delinquent assessments, Artemis's conduct, and the enforcement of the  
16 Association's governing documents and NRS Chapter 116.  
17

18 What is also relevant is that, once again, this enabling statute provides for an association's  
19 attorney's fees and costs, i.e. common expenses, incurred as a direct result of the misconduct of a  
20 homeowner to be assessed exclusively against the homeowner pursuant to NRS 116.3115(6).  
21 Specifically, NRS 116.3115(6) states: "If damage to a unit ...*or if any other common expense* is  
22 caused by the willful misconduct or gross negligence of any unit's owner...the association may  
23 assess that expense exclusively against his or her unit, even if the association maintains insurance  
24 with respect to that damage or common expense..." (*Emphasis added.*)<sup>5</sup> The ultimate result is that  
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27

28 <sup>5</sup> NRS 116.109 defines "Common expenses" as "...expenditures made by, or financial liabilities of, the association, together with any allocations to reserves." Attorney's fees and costs incurred by the Association are expenditures and financial liabilities which fit squarely within this definition – irrespective of whether insurance exists to cover those common expenses.

1 the expenses incurred by an association, such as attorney's fees and costs, as a result of the  
2 misconduct of one owner should not potentially and unfairly be passed on to the other owners.

3 In its Opposition, Artemis suggests that the Association's citation to NRS 116.3115(6) was  
4 intentionally misleading. The use of quotation marks was mistaken, but nothing else. More  
5 significantly, the quotation marks do not substantively change the statute's plain meaning or  
6 application herein. Artemis's arguments otherwise are a red herring, and the bottom line is that  
7 fees and costs incurred by an association because of an owner's willful misconduct, *including* the  
8 intentional and willful failure to pay assessments, may be assessed as a "common expense" to be  
9 borne exclusively by that owner- and no one else. Accordingly, NRS 116.3115(6) unequivocally  
10 authorizes the Court, in its sound discretion, to award the Association's fees and costs in this  
11 matter.  
12

13  
14 Artemis argues that this Court never made any finding of "damages" or "willful  
15 misconduct". This is nonsense. As a preliminary point, the Association has not argued the Court  
16 made a finding of "damages to a unit". As set forth in the Association's Motion, however, the  
17 Court has made specific findings regarding the misconduct perpetrated against the Association in  
18 this case, which cannot be characterized as anything but "willful". (*See, e.g.*, the Court's factual  
19 findings in its February 14, 2013 Order granting summary judgment in favor of the Association,  
20 pp. 4-6.) Amongst those findings, the Court recognized the conduct of Mr. Essington as holding  
21 himself out as and acting with apparent, if not actual, authority on behalf of Artemis. Those  
22 findings bear repeating:  
23

24  
25 For over seventeen years (1994-2011) Mr. and Mrs. Essington  
26 represented that Lot G-6 was owned by one or both of them.

27 Mr. Essington represented to members of the Association that he  
28 had the capacity and authority to act on behalf of Artemis and/or  
Mrs. Essington...

1 Mr. Essington served on the HOA's Board of Directors  
2 (hereinafter "the Board") from 2007 until he resigned in January,  
3 2011...

4 Following his election to the Board, Mr. Essington signed a  
5 Declaration of Certification as a Common Interest Community  
6 Board Member, as required by NRS 116.31034(9)...

7 Representing himself to be a lot owner, Mr. Essington seconded a  
8 motion to approve the Bylaws...

9 Mr. Essington violated this provision, when for sixteen years, he  
10 held himself out as an owner of a lot...

11 After becoming a member of the Board, Mr. Essington voted to  
12 levy assessments against all HOA members for roadway  
13 maintenance, weed abatement and the repair of signs and  
14 culverts...

15 ...The [July 14, 2009] Reserve Study identified the reserve items  
16 of the Association as cattle guards, dirt road maintenance, fencing,  
17 gates, entrance signs, and street signs. Mr. Essington voted to  
18 approve the Reserve Study...[and] to levy assessments in in  
19 accordance with the Reserve Study and the 2010 budge, which he  
20 also approved.

21 ...Mr. Essington approved these budgets and assessments [for road  
22 and real property maintenance and fire protection] ...Mr. and Mrs.  
23 Essington regularly paid assessments from their personal bank  
24 account...

25 Artemis stopped paying its HOA assessments, all of which had  
26 been approved by Mr. Essington as a Board member...

27 *See Id.*<sup>6</sup>

28 Artemis does not dispute, nor can it dispute, these facts. All Artemis can do is argue that  
Mr. Essington is not a party to this lawsuit. He does not have to be. These *undisputed* facts  
establish, at a minimum, the apparent if not actual authority of Mr. Essington as an agent for  
Artemis. Consequently, Artemis is estopped from denying Mr. Essington's agency as a matter of

---

<sup>6</sup> In addition to these facts already enumerated by the Court, the record contains numerous other examples of willful misconduct of Artemis through its actual and/or apparent agent Mr. Essington. *See, e.g.*, the Association's Motion at pp. 8-9, incorporated herein by reference, with references to the exhibits filed in support of the Association's May 30, 2012 Motion for Summary Judgment.

1 law, is bound by his misconduct and, therefore, is subject to the consequences. *See Dixon v.*  
2 *Thatcher*, 103 Nev. 414, 417, 742 P.2d. 1029, 1030 (1987) (“Apparent authority is ‘that authority  
3 which a principal holds his agent out as possessing or permits him to exercise or to represent  
4 himself as possessing, under such circumstances as to estop the principal from denying its  
5 existence.’”) (Citations omitted.)  
6

7 The condoned acts of Mr. Essington coupled with Mrs. Essington’s (as Artemis’s sole  
8 shareholder and director/officer) failure to disavow or stop her husband’s misconduct, along with  
9 Artemis’s ongoing willful failure to pay assessments, all evidence the willful misconduct of  
10 Artemis. The Association has incurred legal expenses from the underlying arbitration and the  
11 proceedings and, but for Artemis’s willful misconduct, would not have incurred such expenses  
12 herein. Consistent with NRS 116.3115(6), it is Artemis which should bear the consequences of its  
13 conduct, and not potentially other owners. All the Association’s fees and costs incurred as the  
14 prevailing party in both the arbitration and district court proceedings. Therefore, should be  
15 properly awarded under NRS 116.3115(6), as well as NRS 4117.<sup>7</sup>  
16  
17

18 ***C. The CC&Rs Provide a Contractual Basis for the Award of Attorney’s Fees.***

19 Artemis argues that the CC&Rs do not include a provision for fees and costs to the  
20 *Association* as a prevailing party, but only an “...owner...DECLARANT, or any representative of  
21 the Architectural Review Committee” (“ARC”) is entitled to fees and costs. *See* CC&Rs, Article  
22 V, attached as Exhibit “2” to the Association’s Motion.  
23

24 This argument is nonsensical for the simple reason that it was Artemis, a property *owner*,  
25 which initiated both the arbitration and then this action before this Court, and lost in both  
26 proceedings. The Association is the prevailing party by virtue of Judge Gang’s arbitration decision  
27 *and* this Court’s February 2013 Orders and the Final Judgment. Accordingly, the Association is  
28

---

<sup>7</sup> With respect to the propriety of an award of fees and costs against the Wyatts as well as Artemis, jointly and severally, please refer to the Association’s separate Reply to the Wyatts’ Opposition, filed contemporaneously herewith.

1 entitled to its fees and costs pursuant to the CC&Rs which provide that the "...prevailing party [in  
2 an action brought by a lot owner] shall be entitled to recover its *court costs and attorney's fees.*"

3 *Id.* (*Emphasis added.*) It was, and still is, that simple.

4  
5 **D. Attorneys' Fees Should be awarded in accord with NRS 18.010(2)(b).**

6 NRS 18.010(2)(b) specifically directs the finder of fact to, "*liberally construe the*  
7 *provisions of this paragraph in favor of awarding attorney's fees in all appropriate*  
8 *circumstances . . . to punish for and deter frivolous or vexatious claims* and defenses because  
9 such claims and defenses *overburden limited judicial resources, hinder the timely resolution of*  
10 *meritorious claims and increase the costs* of engaging in business and providing professional  
11 services to the public." (*Emphasis added.*)

12  
13 In this case, both Judge Gang and this Court have weighed in on the grounds, or lack  
14 thereof, for Artemis's claims and arguments in this case. See Judge Gang's decision, Exhibit "1" to  
15 the Association's Motion at pp. 2-3:

16  
17 *...It is difficult to understand why, faced with overwhelming*  
18 *evidence that [the Association] is a valid HOA, anyone would*  
19 *continue to maintain that it is not...* I have *carefully considered*  
20 *all of the many allegations and arguments* of the Claimant and  
21 find them *unpersuasive*. Indeed, *I find the interpretation of*  
*counsel that the Real Estate Ombudsman* took no action when it  
opined that [the Association] had to comply with the laws of the  
State of Nevada pertaining to homeowners associations *illogical...*

22 (*Emphasis added.*) Similarly, this Court stated in its February 2013 Orders in favor the  
23 Association that "*Artemis makes nonsensical substantive arguments*". (See February 2013  
24 Orders, p. 6, at l. 5; *emphasis added.*)

25  
26 Artemis argues this is a matter of first impression, and subject of controversy among  
27 "leading agencies". What Artemis continues to ignore, however, is its wholesale failure to provide  
28 evidence of any wrongful conduct by the Association in enforcing, levying, and collecting  
assessments and providing for the maintenance of the common area, common elements, and roads

1 as expressly agreed to and approved by Mr. Essington as a member of the Board of Directors of  
2 the Association, with apparent and/or actual authority to act on behalf of Artemis. Artemis has no  
3 answer for the knowledge and repeated ratification of those actions from 1994-2011 by Artemis  
4 and Mrs. Essington. Mrs. Essington simply did not like the decision of the ARC, and then  
5 undertook a course of action which continues to this day to undermine the entire Association.  
6

7 Again, the relevant and *only* inquiry under NRS 18.010(2)(b) is whether the action itself  
8 was initiated for harassment *or* without reasonable basis. The evidence herein supports a finding of  
9 both, although only one is required under the statute. *See also* the decision of the Ombudsman's  
10 Office, Exhibit "49", RLE 127-128.  
11

12 ***E. The Brunzell Factors are Met in this Case.***

13 This Court has already determined that the *Brunzell* factors were met to award the  
14 Association's fees and costs in May 2013. Nothing has occurred to change that determination:  
15

16 ...Here, the HOA's attorney, Gayle Kern, submitted an affidavit in  
17 support of the request for attorney's fees...*Given Ms. Kern's*  
18 *experience and having reviewed the pleadings filed in this case,*  
19 *the Court finds that Ms. Kern is highly qualified in this area of*  
20 *law...The actual work performed by Ms. Kern is outlined in her*  
21 *affidavit and the Court adopts that affidavit as a record of her*  
22 *work in this case. Finally, the Court notes that this case resolved*  
23 *in the HOA's favor. Therefore, the Court finds that Ms. Kern's*  
24 *request for attorney's fees satisfies the Brunzell* reasonableness  
25 factors...<sup>8</sup>

---

26 <sup>8</sup> The *Brunzell* factors are:

27 (1) the qualities of the advocate: his ability, training, education,  
28 experience, professional standing and skill; (2) the character of the work  
to be done: its difficulty, intricacy, importance, the time and skill  
required, the responsibility imposed and the prominence and character of  
the parties when they affect the importance of the litigation; (3) the work  
actually performed by the lawyer: the skill, time and attention given to  
the work; and (4) the result: whether the attorney was successful and  
what benefits were derived. *Schouweiler v. Yancey Co.*, 101 Nev. 827,  
834, 712 P.2d 786 (1985), citing *Brunzell v. Golden Gate Nat'l Bank*, 85  
Nev. 345, 349, 455 P.2d 31 (1969).



1 See May 15, 2013 Order Granting Defendant's Motion for Confirmation and Judgment on an  
2 Arbitration Award and Award of Attorneys' Fees and Costs, pp. 2-3; *emphasis added*. See also  
3 June 2013 Attorney's Fees Award entered by the Court and awarding the Association in fees and  
4 costs in the total amount of \$82,250.81 as of that time.  
5

6 As established to the Court before, all the factors enunciated in *Schouweiler*, citing  
7 *Brunzell*, are present in this case, thus warranting an award of attorney's fees to the Association.  
8 The superior qualities and abilities of counsel in this matter, known expertise in the law governing  
9 community associations, the difficulty and intricacy of the issues litigated herein which pertained  
10 to analysis and interpretation of the governing documents and statutory provisions applicable to a  
11 specialized area of law, the amount of time, work, and skill expended by counsel in all aspects of  
12 this litigation, justify an award of attorney's fees and costs. In support of its request, the prior  
13 Affidavits of Gayle A. Kern, Esq. attached as Exhibit "3" to the Association's Motion are  
14 respectfully, and once again, submitted as to the services rendered to the Association and fees  
15 incurred in connection with the declaratory relief claim and entry of summary judgment in the  
16 Association's favor. See also Exhibit "4" attached to the Association's Motion, which is Ms.  
17 Kern's March 19, 2018 Affidavit in Support of Motion for Attorney's Fees and Costs ("Ms. Kern's  
18 March 19, 2018 Affidavit").  
19  
20

21 Nothing has changed to require a different conclusion. Ms. Kern's March 19, 2018  
22 Affidavit establishes the propriety and reasonableness of fees under *Brunzell* incurred since the  
23 June 2013 Attorney's Fees and Costs Award on the declaratory relief claim, and in obtaining  
24 ultimate entry of Final Judgment in favor of the Association. As set forth in Ms. Kern's March 19,  
25 2018 Affidavit, the additional amounts in relation to the declaratory relief claim, not the  
26 counterclaims and cross-claim, and entry of Final Judgment are \$32,101.00 in fees and \$1,336.33  
27 in costs. Combined with the \$82,250.81 which had been previously approved and awarded by the  
28

1 Court, the total amount of fees and costs to be awarded to the Association as the prevailing party is  
2 **\$115,688.14.**

3 ***F. Artemis's other Arguments are Meritless and Should be Rejected by the Court.***

4  
5 ***1. The Nevada Supreme Court's Order to Show Cause Does Not Preclude an Award of Fees and Costs to the Association as the Prevailing Party.***

6 Artemis has asserted that the Association's request for fees and costs is improper due to  
7 the Supreme Court's October 7, 2013 OSC. As addressed above, however, the Supreme Court's  
8 OSC does not state this.

9  
10 The Supreme Court simply noted that confirmation of the arbitration award and fees under  
11 NRS Chapter 38 was improper because Artemis had filed a district court action within the 30-day  
12 time frame referenced in the statute. Nothing in the Supreme Court's Order precludes the  
13 Association from filing its Motion, this Court from considering the Motion, and/or this Court from  
14 awarding the Association's fees and costs as a prevailing party pursuant to other statutory and  
15 contractual bases under Nevada law. To read the Supreme Court's OSC any other way is  
16 disingenuous, tortured, and blatantly wrong.

17  
18 ***2. Statutory and Contractual Authority Exists Under Nevada Law for an Award of Fees and Costs to the Association.***

19  
20 Similarly, the argument that no Nevada authority exists for an award of the Association's  
21 fees and costs in the arbitration is meritless. Recovery and fees and costs is not limited to the  
22 provisions of NRS Chapter 38. If such were the case, then other statutory, rule, or contractual  
23 bases for fees would be rendered meaningless. Accordingly, NRS 116.4117 and NRS 116.3115(6)  
24 also provide statutory bases for award of the attorney's fees and costs to prevailing parties in both  
25 the arbitration and district court proceedings. Like the CC&Rs, the statutes do not limit recovery of  
26 fees and costs to prevailing parties to district court actions. And as to the district court action,  
27  
28

1 NRS 18.010(2)(b) provides an additional statutory basis, to be “liberally construed”, for a Court to  
2 award fees to prevailing parties defending against frivolous claims.

3 Artemis takes issue at several junctures with the Association’s dismissal of the  
4 counterclaims for damages and the declaratory relief cross claim against the joined defendants, *all*  
5 *without prejudice*. Dismissal of those claims without prejudice has no legal or factual bearing on  
6 the Association’s instant Motion, nor does such dismissal preclude the Association as the  
7 prevailing party from an award of fees and costs as *litigation expenses* under Nevada statutory  
8 authority and contract law. Artemis’s Opposition clearly misapprehends this point.  
9  
10

11 Artemis also misapprehends the fact the Association’s Motion does limit its requests for  
12 fees and costs to those incurred in connection with the declaratory relief claim - but *not* the  
13 dismissed counterclaims and cross-claims. Moreover, Artemis’s assertion that Mr. Essington’s  
14 conduct relates only to the dismissed counterclaims is untenable, and desperate. As established  
15 throughout this case, Mr. Essington’s conduct, Mrs. Essington’s conduct in failing to curtail or  
16 disavow the actions of her husband, and the protracted failure to pay assessments are all at the  
17 heart of this Court’s findings and the law of the case as set forth in the Court’s summary judgment  
18 in favor of the Association.  
19

### 20 3. *The Redacted Invoices*

21 As established by the Association’s invoices submitted in support of its Motion, the fees  
22 incurred in connection with the counterclaims and cross-claim have not been included in the  
23 requested amount. The fees for briefing on the cross-motions for summary judgment on the  
24 counterclaims are not included, and all the time and costs for the Association’s travel to Elko and  
25 attendance at hearings have not been included as well. Review of the submitted invoices reveals  
26 that some of that time was related to the counterclaims and some of that time was related to  
27 Artemis’s various motions for relief from judgment, reconsideration and to submit supplemental  
28

1 briefing. *See, e.g.*, Ms. Kern's March 19, 2018 Affidavit, Exhibit "4" to the Association's Motion,  
2 and Bate Stamp Nos. 00002-000010; 000021-000023, wherein certain entries and fees have been  
3 either wholly omitted or reduced to take into account time spent on both the counterclaims and  
4 Artemis's motions for relief, reconsideration and/or for leave to file supplemental briefing on the  
5 first summary judgment granted in favor of the Association.  
6

7 The Association's omitting fees altogether or reducing them is wholly consistent with the  
8 February 26, 2018 Stipulation and Order for Dismissal of Counterclaims and Cross-claim Without  
9 Prejudice, Withdrawal of Pending Motions, and for Final Judgment ("SAO for Final Judgment").  
10 In its Opposition, Artemis completely ignores this, complains about redactions, or assumes that  
11 entries made were for "staff time". That Artemis counsel may leave the evaluation, compilation,  
12 and organization of exhibits to their staff is up to them. The Association's documents and exhibits,  
13 however, were not left to staff to decipher, organize and finalize.  
14

15 In short, the fees and costs sought herein are specifically in connection with the arbitration  
16 in which the Association prevailed, the Association's successful defense of the declaratory relief  
17 claim in this action, and in bringing the Court's summary judgment in favor of the Association to  
18 final judgment.<sup>9</sup>  
19

20 ***4. The Fees for Confirmation of the Arbitration Award are Proper.***  
21

22 Artemis argues that \$2,676.24 in fees and costs incurred in obtaining confirmation of the  
23 arbitration award should not be allowed, apparently because of the Supreme Court's OSC and this  
24 Court's subsequent order for relief.  
25  
26

27 <sup>9</sup> Regarding the redactions in the invoices, such redactions have been made to protect attorney client  
28 and/or work product privilege or, as to some entries, complete redactions were made simply because those  
amounts were related to the counterclaims and cross-claim. *See, e.g.*, Bate Stamp Nos. 000002-  
000005; 000007-000010; 000020-000021-000027. Should the Court wish to review unredacted invoices in  
making its decision on the Association's instant Motion, they will be provided for *in camera* inspection to  
preserve the attorney client and work product privileges.

1 This argument should be rejected as well. Artemis made no objection at the time the  
2 confirmation request was made that it was "improper" and/or outside the parameters of the statute.  
3 Indeed, it was not until the Supreme Court pointed this out in its OSC that the issue was raised. As  
4 such, Artemis has waived and/or should be estopped from objecting to these fees now.  
5

6 Moreover, it was not the Association which "caused delay in this case and burdened  
7 judicial resources..." (See Opposition at p. 8, ll. 7-8.) It was Artemis which filed an untimely  
8 appeal over which the Supreme Court had no jurisdiction because final judgment had not been  
9 entered. Again, Artemis could have, but did not, object to the requested award confirmation. To  
10 blame the Association for Artemis's own failures in the district court proceedings is not a proper  
11 legal or factual basis to warrant denial of any of the fees and costs requested.  
12

13 ***5. Artemis's Failure to Move to Retax Costs Precludes it From Now Objecting to the***  
14 ***Association's Costs.***

15 Finally, Artemis argues the Association is not entitled to \$7,591.14 in costs because no  
16 authority has been cited. To the contrary, NRS 116.3115(6), the CC&Rs, and the Memoranda of  
17 Costs filed by the Association on March 1, 2013 in the amount of \$1,475.00 and March 20, 2018  
18 in the amount of \$1,336.00 pursuant to NRS 18.005 are the authority under Nevada law for an  
19 award of the Association's costs in both the arbitration and district court proceedings. Costs in the  
20 amount of \$4,718.67 were incurred in the arbitration, awarded by Judge Gang, and are properly  
21 awarded by this court per NRS 116.3115(6) and the CC&Rs, i.e." ...prevailing party [in an action  
22 brought by a lot owner] shall be entitled to recover its *court costs and attorney's fees.*"  
23 *(Emphasis added.)*  
24

25 NRS 18.110(4) provides that "Within 3 days after service a of a copy of the memorandum,  
26 the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of  
27 which motion shall be filed and served on the prevailing party claiming costs." Artemis failed to  
28

1 move to retax. As such, the fees incurred in the district court in the amount of \$2,811.00 may also  
2 be properly awarded pursuant to statute.

3  
4 **III.**  
**CONCLUSION**

5 After nearly nine years of dispute with Artemis, the facts of this case, statutory authority,  
6 the CC&Rs, and Nevada law provide clear basis and authority for the Court to award the  
7 Association its attorney's fees and costs as the prevailing party. As previously determined by this  
8 Court, the *Brunzell* factors are met. It is respectfully requested, therefore, that the Court enter its  
9 order awarding the Association attorney's fees and costs in the amount of *\$115,688.14* through  
10 March 18, 2018.

11  
12 DATED this 2<sup>nd</sup> day of August 2018.

13  
14 **KERN & ASSOCIATES, LTD.**

15 

16 KAREN M. AYARBE, ESQ.

17 Nevada Bar #3358

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19 Reno, Nevada 89511

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21 Fax: (775) 324-6173

22 Email: kareyayarbe@kernltd.com

23 Attorneys for Defendant/Counterclaimant

24 Ruby Lake Estates Homeowner's Association

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern &  
3 Associates, Ltd., and that on this day I served the foregoing document described as *RUBY LAKE*  
4 *ESTATES HOMEOWNER'S ASSOCIATION'S REPLY POINTS & AUTHORITIES IN*  
5 *SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS* on the parties set forth  
6 below, at the address listed below by:  
7

8 

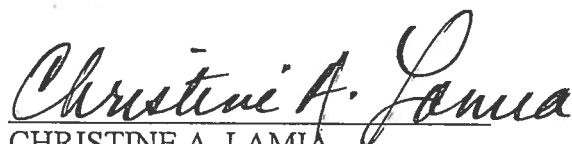
9 Placing an original or true copy thereof in a sealed envelope place for  
10 collection and mailing in the United States Mail, at Reno, Nevada,  
11 first-class mail, postage paid, following ordinary business practices,  
12 addressed to:

11 Travis W. Gerber, Esq.  
12 Zachary A. Gerber, Esq.  
13 Gerber Law Offices, LLP  
14 491 4th Street  
15 Elko, NV 89801

16 Via Email addressed to:

17 Travis W. Gerber, Esq. twg@gerberlegal.com  
18 Zachary A. Gerber, Esq. zag@gerberlegal.com

19 DATED this 2<sup>nd</sup> day of August 2018.

20   
21 CHRISTINE A. LAMIA  
22  
23  
24  
25  
26  
27  
28

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ARTEMIS EXPLORATION COMPANY,  
A NEVADA CORPORATION,

Appellant,

vs.

RUBY LAKE ESTATES  
HOMEOWNERS ASSOCIATION,

Respondent.

No. 77721

APPELLANT'S APPENDIX

VOLUME 2

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Case No. CV-C-12-175

**APPELLANT'S APPENDIX - VOLUME 2 - Pgs. 1 - 110**

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APPENDIX SUMMARY  
Alphabetical Order

<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Appellant's Appendix "AA" Pg. Nos.</b>
Acceptance of Service	March 21, 2012	1	50
Answer to Complaint and Counterclaim	April 2, 2012	1	51-72
Answer to Counterclaim	April 16, 2012	1	73-80
Answer to First Amended Complaint; Counterclaim and Cross-Claim	March 11, 2016	1	146-166
Answer to Second Amended Complaint; Counterclaim and Cross-Claim	April 14, 2016	1	192-212
Answer to Second Amended Counterclaim	May 4, 2016	1	213-222
Arbitration Order (Exhibit)	February 7, 2012	3	195-198
Complaint	March 2, 2012	1	24-49
Complaint for Declaratory Judgment, Restitution and Damages	February 15, 2011	1	1-20
Deed Lot 4 Block F - Stephen G. Wright & Mavis S. Wright to Van Der Meer 1983 Trust (Exhibit)	February 15, 1990	3	187-188
Deed Lot 6 Block G - Cattlemen's Title Guarantee Company to Artemis Exploration Company (Exhibit)	June 16, 1994	3	189-190

Final Judgment	February 26, 2018	2	1-11
First Amended Complaint	February 17, 2016	1	121-145
Grant, Bargain and Sale Deed 49 Lots - Stephen G. Wright & Mavis S. Wright to Cattlemen's Title Guarantee Company (Exhibit)	December 15, 1989	3	185
Grant, Bargain and Sale Deed Lot 1 Block A - Stephen G. Wright & Mavis S. Wright to Robert E. Morley, Deborah L. Morley, Duane V. Merrill, & Sally E. Merrill (Exhibit)	February 12, 1990	3	186
Grant, Bargain & Sale Deed Lot 2 Block H - Adrian P. Preader & Jackie R. Preader to Artemis Exploration Company (Exhibit)	February 18, 2010	3	193-194
Harold Wyatt and Mary Wyatt's Answer to Second Amended Complaint and Cross-Claim	May 12, 2016	1	223-235
Judgment for Attorney's Fees and Costs in Favor of Ruby Lake Estates Homeowner's Association	December 3, 2018	3	167-168
Motion for Attorney's Fees and Costs	March 20, 2018	2	15-110
Notice of Appeal	March 6, 2018	2	12-14
Notice of Appeal	December 14, 2018	3	173-175

Notice of Entry of Judgment for Attorney's Fees and Costs in Favor of Ruby Lake Estates Homeowner's Association	December 11, 2018	3	169-172
Notice of Entry of Order Awarding Attorney's Fees and Costs	November 19, 2018	3	83-166
Official Plat of Ruby Lake Estates	September 15, 1989	3	176-178
Order Awarding Attorney's Fees and Costs	November 1, 2018	3	1-82
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Order Granting Motion for Relief from Judgment	April 14, 2015	1	106-112
Order: Joinder of Necessary Parties	September 11, 2015	1	113-120
Order to Show Cause	October 7, 2013	1	103-105
Plaintiff's Opposition to Motion for Attorney's Fees and Costs	April 26, 2018	2	111-181
Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions (Exhibit)	October 25, 1989	3	179-184

Ruby Lake Estates Homeowner's Association's Articles of Incorporation (Exhibit)	January 18, 2006	3	191-192
Ruby Lake Estates Homeowner's Association's Reply Points & Authorities in Support of Motion for Attorney's Fees and Costs	August 3, 2018	2	182-200
Second Amended Complaint	April 14, 2016	1	167-191
Stipulation and Order for Dismissal of Counterclaims and Cross-Claim Without Prejudice, Withdrawal of Pending Motions, and for Final Judgment	February 26, 2018	1	236-244
Stipulation and Order to Dismiss Complaint without Prejudice	April 1, 2011	1	21-23

APPENDIX SUMMARY  
Chronological Order

<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Appellant's Appendix "AA" Pg. Nos.</b>
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Stipulation and Order to Dismiss Complaint without Prejudice	April 1, 2011	1	21-23
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Motion for Attorney's Fees and Costs	March 20, 2018	2	15-110
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Notice of Entry of Judgment for Attorney's Fees and Costs in Favor of Ruby Lake Estates Homeowner's Association	December 11, 2018	3	169-172
Notice of Appeal	December 14, 2018	3	173-175
<b>EXHIBITS</b>			
Official Plat of Ruby Lake Estates	September 15, 1989	3	176-178
Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions	October 25, 1989	3	179-184
Grant, Bargain and Sale Deed 49 Lots - Stephen G. Wright & Mavis S. Wright to Cattlemen's Title Guarantee Company	December 15, 1989	3	185
Grant, Bargain and Sale Deed Lot 1 Block A - Stephen G. Wright & Mavis S. Wright to Robert E. Morley, Deborah L. Morley, Duane V. Merrill, & Sally E. Merrill	February 12, 1990	3	186

Deed Lot 4 Block F - Stephen G. Wright & Mavis S. Wright to Van Der Meer 1983 Trust	February 15, 1990	3	187-188
Deed Lot 6 Block G - Cattlemen's Title Guarantee Company to Artemis Exploration Company	June 16, 1994	3	189-190
Ruby Lake Estates Homeowner's Association's Articles of Incorporation	January 18, 2006	3	191-192
Grant, Bargain & Sale Deed Lot 2 Block H - Adrian P. Preader & Jackie R. Preader to Artemis Exploration Company	February 18, 2010	3	193-194
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1 CASE NO. CV-C-12-175

2 DEPT. NO. 12

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

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2018 FEB 26 AM 9:29

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY *JA*

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

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,

10 Plaintiff,

11 FINAL JUDGMENT

12 vs.

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

15 Defendants.  
16 \_\_\_\_\_ /

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

25  
26 The Court finds that a Complaint was filed by Artemis on March 2, 2012, which contained  
27 a cause of action for Declaratory Relief, and other causes of action that were subsequently,  
28 voluntarily dismissed by Artemis. On April 2, 2012, RLEHOA answered the Complaint and filed  
counterclaims against Artemis. After competing Motions for Summary Judgment were filed by

2 AA000001

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

7 Pursuant to this Court's Order: Joinder of Necessary Parties, filed September 11, 2015,  
8 Artemis filed its Second Amended Complaint on April 14, 2016, against RLEHOA and all property  
9 owners within Ruby Lake Estates subdivision. RLEHOA filed its Answer to Second Amended  
10 Complaint, Counterclaim and Cross-Claim on April 14, 2016, which asserted Counterclaims against  
11 Artemis and a Cross-Claim against all property owners within Ruby Lake Estates subdivision  
12 seeking a determination that RLEHOA is a common interest community pursuant to NRS Chapter  
13 116. All property owners within Ruby Lake Estates subdivision were properly served in accord with  
14 the Nevada Rules of Civil Procedure with Artemis's Second Amended Complaint and RLEHOA's  
15 Cross-claim. Except for Harold and Mary Wyatt and Artemis, all other property  
16 owners/defendants/cross-defendants failed to respond or appear, and defaults for each of them have  
17 been entered. Pursuant to the afore-mentioned Stipulation and Order, RLEHOA's counterclaims  
18 and cross-claim have now been dismissed without prejudice, and all pending Motions have been  
19 withdrawn. Furthermore, the Wyatts as party defendants to Artemis's Second Amended Complaint  
20 have stipulated and agreed to be bound by this Court's Order Granting RLEHOA's Motion for  
21 Summary Judgment entered February 14, 2013, and the Court's Order Denying Artemis's Motion  
22 for Summary Judgment entered February 12, 2013, and any subsequent appeal related thereto.  
23  
24  
25

26 Thus, the Court finds that the only claim not dismissed is Artemis's declaratory judgment  
27 claim, which was filed as part of Artemis's original Complaint and re-filed in identical form in  
28 Artemis's Second Amended Complaint. Artemis's claim was resolved by the Court's Order Granting

1 RLEHOA's Motion for Summary Judgment entered February 14, 2013, and the Court's Order  
2 Denying Artemis's Motion for Summary Judgment entered February 12, 2013. These Orders have  
3 not been reconsidered or reversed, and therefore as standing Orders this Court finds that Artemis's  
4 claim for declaratory relief has been resolved as a matter of law in accordance with the Court's  
5 Orders as to all active litigants which have appeared in this matter, Artemis, RLEHOA, Harold  
6 Wyatt, and Mary Wyatt.  
7

8 **IT IS THEREFORE ORDERED** that **JUDGMENT** is entered in favor of RLEHOA in  
9 accord with the Court's Order Granting RLEHOA's Motion for Summary Judgment entered  
10 February 14, 2013, and the Court's Order Denying Artemis's Motion for Summary Judgment  
11 entered February 12, 2013, and that RLEHOA is a common interest community pursuant to NRS  
12 Chapter 116, valid at its inception, and it continues to be so today.  
13

14 **IT IS FURTHER ORDERED** that, as to the properly served and defaulted property owner  
15 defendants to Artemis's Second Amended Complaint, there is no just reason for delay, Artemis's  
16 identical claim for declaratory relief has been resolved as to all appearing parties, and that this  
17 **JUDGMENT** shall be entered as a **FINAL JUDGMENT** in accord with NRCP 54(b).  
18

19 DATED this 26 day of February, 2018.  
20  
21

22 /S/ ALVIN R KACIN  
23

24 \_\_\_\_\_  
25 DISTRICT COURT JUDGE  
26  
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1 CASE NO. CV-C-12-175

2 DEPT. 1 2

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

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2018 FEB 26 AM 9: 29

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY WA

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

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

12 vs.

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

15 Defendants.

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

19 vs.

20 ARTEMIS EXPLORATION COMPANY,  
21 a Nevada Corporation,

22 Counterdefendant.

23 RUBY LAKE ESTATES HOMEOWNER'S  
24 ASSOCIATION,

25 Cross-Claimant,

26 vs.

27 STEPHEN WEST; *et. al.*,

28 Cross-Defendants.

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

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

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

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

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

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

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

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

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

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

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

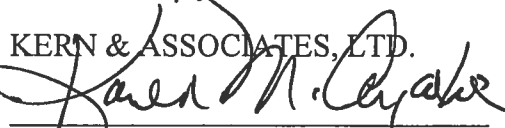
28 ///

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

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

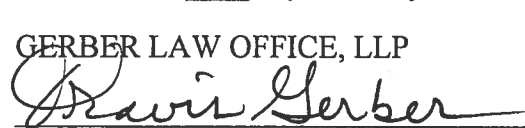
10 DATED this 16<sup>th</sup> day of February, 2018.

11 KERN & ASSOCIATES, LTD.

12   
13 GAYLE A. KERN, ESQ.  
14 NEVADA BAR #1620  
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Email: karenayarbe@kernltd.com  
Attorneys for Defendant Ruby Lake  
Estates Homeowner's Association

DATED this 20<sup>th</sup> day of February, 2018.

GERBER LAW OFFICE, LLP

  
13 TRAVIS GERBER, ESQ.  
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Email: zag@gerberlegal.com  
Attorneys for Plaintiff Artemis Exploration  
Company and Defendants Harold and Mary  
Wyatt

**ORDER**

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

  
DISTRICT COURT JUDGE

# EXHIBIT “A”



1 CASE NO. CV-C-12-175

2 DEPT. NO. I

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

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

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,

10 Plaintiff,

FINAL JUDGMENT

11 vs.

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

14 Defendants.  
15 \_\_\_\_\_/

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

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

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

7 Pursuant to this Court's Order: Joinder of Necessary Parties, filed September 11, 2015,  
8 Artemis filed its Second Amended Complaint on April 14, 2016, against RLEHOA and all property  
9 owners within Ruby Lake Estates subdivision. RLEHOA filed its Answer to Second Amended  
10 Complaint, Counterclaim and Cross-Claim on April 14, 2016, which asserted Counterclaims against  
11 Artemis and a Cross-Claim against all property owners within Ruby Lake Estates subdivision  
12 seeking a determination that RLEHOA is a common interest community pursuant to NRS Chapter  
13 116. All property owners within Ruby Lake Estates subdivision were properly served in accord with  
14 the Nevada Rules of Civil Procedure with Artemis's Second Amended Complaint and RLEHOA's  
15 Cross-claim. Except for Harold and Mary Wyatt and Artemis, all other property  
16 owners/defendants/cross-defendants failed to respond or appear, and defaults for each of them have  
17 been entered. Pursuant to the afore-mentioned Stipulation and Order, RLEHOA's counterclaims  
18 and cross-claim have now been dismissed without prejudice, and all pending Motions have been  
19 withdrawn. Furthermore, the Wyatts as party defendants to Artemis's Second Amended Complaint  
20 have stipulated and agreed to be bound by this Court's Order Granting RLEHOA's Motion for  
21 Summary Judgment entered February 14, 2013, and the Court's Order Denying Artemis's Motion  
22 for Summary Judgment entered February 12, 2013, and any subsequent appeal related thereto.  
23  
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26 Thus, the Court finds that the only claim not dismissed is Artemis's declaratory judgment  
27 claim, which was filed as part of Artemis's original Complaint and re-filed in identical form in  
28 Artemis's Second Amended Complaint. Artemis's claim was resolved by the Court's Order Granting

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

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

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

19 DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

23 \_\_\_\_\_  
DISTRICT COURT JUDGE

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2018 MAR -6 PM 4:06

4th DISTRICT COURT

1 CASE NO. CV-C-12-175

2 DEPT. 2

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

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

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

10 vs.

11 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION, STEPHEN WEST;  
12 DOMINIC DIBONA; EVELYN DIBONA;  
MICHAEL BRENNAN AND MARNIE  
BRENNAN; RICHARD BECKERDITE;  
13 BILL NOBLE AND CHERYL NOBLE;  
AARON MOTES; BILL HARMON AND  
14 TERI HARMON; LEROY PERKS AND  
NORA PERKS; JUAN LA CHICA AND  
15 VICTORIA LA CHICA; BRAD KEIFE;  
SEVEN K PROPERTIES; MIKE CECCHI  
16 AND KRIS CECCHI; WAYNE CIRONE  
AND ILA CIRONE; CONNIE STAFFORD;  
17 AARON YOHEY; PAUL LUCAS; DAVE  
MILLER; JAMES TAYLOR; MIKE MASON  
18 AND SHELLY MASON; JIMMY SARGENT  
AND ELLEN SARGENT; JACK HEALY  
19 AND YVETTE HEALY; BO HARMON;  
MICHAEL GOWAN; PHIL FRANK AND  
20 DOROTHY FRANK; JOE HERNANDEZ  
AND PAULA HERNANDEZ; DENNIS  
21 MCINTYRE AND VALERI MCINTYRE;  
ROBERT HECKMAN AND NATHAN  
22 HECKMAN; JAMES VANDER MEER;  
HAROLD WYATT AND MARY WYATT;  
23 ROBERT CLARK; BETH TEITLEBAUM;  
DANIEL SPILSBURY AND DELAINE  
24 SPILSBURY; TERRY HUBERT AND  
BONNIE HUBERT; RUSSELL ROGERS  
25 AND SUSAN ROGERS; ROCKY ROA;  
BEVERLY PATTERSON; DENNIS  
26 CUNNINGHAM; RILEY MANZONIE;  
DAVID NORWOOD; DAVID JOHNSON;  
27 and DOES I-X,

Defendants.

**NOTICE OF APPEAL**


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NOTICE OF APPEAL

Notice is hereby given that ARTEMIS EXPLORATION COMPANY, a Nevada corporation, Plaintiff, and MARY WYATT and HAROLD WYATT, Defendants, above named, hereby join in an appeal to the Supreme Court of Nevada from the District Court's Final Judgment entered in this action on the 26<sup>th</sup> day of February, 2018.

Dated this 6<sup>th</sup> day of March, 2018.

GERBER LAW OFFICES, LLP

By:   
TRAVIS W. GERBER, ESQ.  
Nevada State Bar No. 8083  
ZACHARY A. GERBER, ESQ.  
Nevada State Bar No. 13128  
491 4<sup>th</sup> Street  
Elko, Nevada 89801  
(775) 738-9258  
ATTORNEYS FOR PLAINTIFF, and  
DEFENDANTS HAROLD AND  
MARY WYATT

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES,  
3 LLP, and that on the 6<sup>th</sup> day of March, 2018, I deposited for mailing, postage prepaid, at Elko,  
4 Nevada, a true and correct copy of the foregoing *Notice of Appeal* addressed as follows:

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

8 Maxim Waller  
Employee of Gerber Law Offices, LLP

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2018 MAR 20 PM 12:06  
ELKO CO DISTRICT COURT

CLERK DEPUTY *um*

1 CASE NO. CV-C-12-175

2 DEPT. NO. 2

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

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

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,

10 Plaintiff,

11 vs.

MOTION FOR ATTORNEY'S  
FEES AND COSTS

12 RUBY LAKE ESTATES HOMEOWNER'S  
13 ASSOCIATION, et al., and DOES I-X,

14 Defendants.  
15 \_\_\_\_\_/

16 Defendant Ruby Lake Estates Homeowner's Association ("the Association" or  
17 "RLEHOA"), a Nevada non-profit corporation, by and through its counsel, Kern & Associates, Ltd.,  
18 hereby submits its Motion for Attorney's Fees and Costs ("Motion"). This Motion is made and  
19 based upon the Final Judgment entered in favor the Association on February 26, 2018, NRS  
20 116.4117, NRS 116.3115(6), NRS 18.010(2), the Association's Declaration of Covenants,  
21 Conditions, and Restrictions ("CC&Rs"), the accompanying memorandum of points and authorities,  
22 the Affidavits of Gayle A. Kern, Esq. submitted herewith, and all papers, pleadings and  
23

24 ///

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26 ///

1 exhibits on file herein.<sup>1</sup>

## 2 MEMORANDUM OF POINTS & AUTHORITIES

### 3 I.

#### 4 INTRODUCTION

5 The Court is well versed in the background facts of this matter. For the Court's convenience,  
6 however, a brief synopsis is provided.

7 This matter was submitted for dispute resolution through the Nevada Real Estate Division  
8 pursuant to NRS 38.300 - NRS 38.360. An arbitration hearing was conducted before Arbitrator  
9 Leonard Gang, presiding, and after the taking of testimony and the issues having been duly heard,  
10 Arbitrator Gang entered his Arbitration Award on February 7, 2012, served on both parties on the  
11 same day. Judge Gang's decision in favor the Association determined that it is a validly existing  
12 common interest association pursuant to NRS Chapter 116. A true and correct copy of the  
13 Arbitration Award is attached hereto as Exhibit "1". The Arbitration Award also included an award  
14 of the Association's attorney's fees and costs in the amount of \$26,810.67.  
15

16 Plaintiff, Artemis Exploration Company ("Artemis"), filed a Complaint for Trial de Novo  
17 against the Association on March 12, 2012. The Complaint asserts a cause of action for declaratory  
18 relief, alleging that the Association lacks authority to impose assessments, fees, or penalties because  
19 it is not a valid common interest community subject to NRS Chapter 116. A second cause of action  
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25 <sup>1</sup> Final Judgment was entered in favor of the Association on February 26, 2018 pursuant to the Stipulation and  
26 Order for Dismissal of Counterclaims and Cross-Claim Without Prejudice, Withdrawal of Pending Motions, and for Final  
27 Judgment ("SAO to Dismiss Without Prejudice"). According to the court docket, Notice of Entry of Final Judgment  
28 ("NOE") was filed on March 1, 2018, and served by mail by Artemis's counsel on February 28, 2018, based upon the  
attached certificate of service. For the record, however, counsel for the Association has never received by mail or  
otherwise been served with the NOE, a file stamped copy of the Final Judgment, or a file stamped copy of the SAO to  
Dismiss Without Prejudice. Counsel received the Notice of Appeal of the Final Judgment, on or about March 9, 2018,  
which according to the certificate of service was served by mail only three days earlier on March 6, 2018. It was at that  
time Association counsel's office called the Court Clerk and was informed the Final Judgment had been filed and the  
NOE filed and served. Though the NOE has never been received, in an abundance of caution, the Association files the  
instant Motion in accord with NRCP 54(d).



1 for fraud and damages was also asserted by Artemis, but subsequently dropped.<sup>2</sup> Following  
2 discovery, briefing to the Court on cross motions for summary judgment on the declaratory relief  
3 claim, oral argument, and thorough analysis, on February 12 and 14, 2013, the Court entered its  
4 Orders granting summary judgment in favor of the Association and denying Artemis's cross motion.  
5 In its ruling which is ultimately consistent with Judge Gang's prior decision, this Court determined  
6 as a matter of law that Artemis's declaratory relief claim was without merit, and that the Association  
7 was "... entitled to exercise all powers vested in it by NRS Chapter 116, including the collection of  
8 assessments for common expenses... *Valid at its inception, the HOA continues to be so today.*" See  
9 Order Granting Defendant's Motion for Summary Judgment, p. 6, ll. 17-22; Order Denying  
10 Plaintiff's Motion for Summary Judgment, p. 6, ll. 13-18. (*Emphasis added.*)

13 On June 6, 2013, the Court entered an award of attorney's fees and costs to the Association  
14 in the amount of \$82,250.81 for both the arbitration and the district court proceedings. See Judgment  
15 on Arbitration Award and Award of Attorney's Fees and Costs entered June 6, 2013 ("June 2013  
16 Attorney's Fees Award"). An appeal by Artemis ensued, which resulted in an October 7, 2013 Order  
17 to Show Cause relative to the Nevada Supreme Court's jurisdiction, i.e. whether this Court's Order  
18 was a final judgment for appeal, or improper confirmation of a non-binding arbitration award under  
19 NRS Chapter 38, including the attorney's fees. Artemis withdrew its appeal because a final judgment  
20 had not been entered, as the Association's counterclaims had not been resolved.

22 After the appeal was withdrawn, cross motions for summary judgment were filed on the  
23 Association's remaining counterclaims. After briefing to the Court and oral argument was heard on  
24 separate occasions, the Court entered its Order: Joinder of Necessary Parties on September 11, 2015  
25 ("Joinder Order"). In accord therewith, Artemis filed its Second Amended Complaint naming all  
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<sup>2</sup> In its Opposition to the Association's May 30, 2012 Motion for Summary Judgment, Artemis abandoned its claim for fraud and damages, leaving only the declaratory relief claim. Artemis's Opposition to the Association's Motion for Summary Judgment, p. 3, ll. 3-5.

1 additional property owners within the Association to its single declaratory relief claim, identical to  
2 that in the original Complaint, and the Association filed its Answer, Counterclaims, and single  
3 Cross-Claim for declaratory relief. Following service on all joined parties of the Second Amended  
4 Complaint and the Association's Cross-claim, additional argument before the Court, and further  
5 procedural motions, the parties ultimately reached an agreement to dismiss the Counterclaims and  
6 Cross-Claim without prejudice and request entry of final judgment (as set forth in SAO to Dismiss  
7 Without Prejudice). The additional, joined property owners remain as defendants to Artemis's  
8 claim, all of whom defaulted except for Harold and Mary Wyatt (the "Wyatts") who have aligned  
9 themselves with Artemis. Final Judgment was entered on February 26, 2018 pursuant to the Court's  
10 February 14, 2013 Order granting summary judgment in favor of the Association on Artemis's  
11 declaratory relief claim (and corresponding February 12, 2013 Order denying Artemis's summary  
12 judgment). In the Final Judgment, the Court stated that its February 12, 2013 and February 14,  
13 2013 "...*Orders have not been reconsidered or reversed*, and therefore as *standing Orders* this  
14 Court finds that *Artemis's claim for declaratory relief* has been *resolved as a matter of law in*  
15 *accordance with the Court's Orders* as to all active litigants..." See Final Judgment, page 3, ll. 2-  
16 6. (*Emphasis added.*)

17  
18 It is against this background that the Association now moves for its attorney's fees and costs  
19 as the prevailing party on Artemis's declaratory relief claim.<sup>3</sup>

## 20 II.

### 21 LEGAL ARGUMENT

#### 22 A. *An Award of Attorney's Fees and Costs to the Association as the Prevailing Party is within 23 the Broad Discretion of the Court.*

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27 <sup>3</sup> Consistent with the SAO to Dismiss Without Prejudice, the Association is not seeking fees or costs specific  
28 to the prosecution of its now dismissed Counterclaims and Cross-Claim, but as to Artemis's original declaratory relief  
claim upon which the Court has now entered Final Judgment in the Association's favor. Fees and costs incurred by the  
Association for briefings on the cross motions for summary judgment on the Counterclaims and Crossclaims are not  
included in this request. Also, not all of the Association's time and costs for travel to Elko for various hearings, and/or  
preparation for and attendance at those hearings, have been included.

1  
2 The Court has already determined that the attorney's fees and costs incurred by the  
3 Association in the arbitration and the district court proceedings on Artemis's declaratory relief claim  
4 were reasonably and necessarily incurred. *See* June 2013 Attorney's Fees Award. The Court has  
5 also acknowledged in the Final Judgment that its February 2013 summary judgment Orders entered  
6 in favor of the Association stand. Consequently, the Association now seeks its fees and costs as the  
7 prevailing party in accord with Nevada law under several statutory and/or contractual bases.  
8

9 The Nevada Supreme Court has consistently held an award of attorney's fees is available  
10 when authorized by a "rule, statute, or contract." *See e.g. Ace Truck v. Kahn*, 103 Nev. 503, 512 n.4,  
11 746 P.2d 132, 138 (1987). Moreover, the decision to award attorney's fees is within the sound  
12 discretion of the district court. *See Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382,  
13 (1998); *County of Clark v. Blanchard Contr. Co.*, 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982).  
14 An award of attorneys' fees will not be overturned absent a manifest abuse of discretion. *See*  
15 *Davidsohn v. Steffens*, 112 Nev. 136, 911 P.2d 855 (1996); *University of Nevada v. Tarkanian*, 110  
16 Nev. 581, 590, 879 P.2d 1180, 1187 (1994); *County of Clark v. Blanchard Constr. Co., supra*.  
17

18 As already established for the Court in 2013, it is well within this Court' discretion to award  
19 the Association the \$82,250.81 in fees and costs incurred by the Association in both the arbitration  
20 and district court proceedings. It is also with the Court's sound discretion to award the Association  
21 the additional, total amount of \$32,101.00 in fees and \$1,336.33 in costs incurred since June 2013,  
22 for total fees and costs of \$115,688.14, as of March 18, 2018.  
23

24 ***B. NRS 116.4117, NRS 116.3115(6), NRS 18.010(2), the CC&Rs, and Nevada Case Law***  
25 ***Support the Award of Attorneys' Fees and Costs.***

26 No party disputes that by virtue of its ownership of property within the Association, Artemis  
27 and joined parties the Wyatts are subject to the provisions of the CC&Rs.<sup>4</sup> As determined by this  
28

<sup>4</sup> The Wyatts have stipulated to be bound by this Court's February 2013 Orders in favor of the Association, and any appeal related thereto. For purposes of simplicity, Artemis and the Wyatts will be jointly be referred to as "Artemis".

1 Court in its February 2013 Orders, the Association is a valid NRS Chapter 116 common interest  
2 community with recorded CC&Rs and, therefore, Artemis is subject to the provisions of NRS  
3 Chapter 116.  
4

5 As the prevailing party, an award of attorney's fees to the Association in this contested  
6 judicial proceeding is appropriate in accord with the following statutory and contractual bases, which  
7 have already been asserted, considered, and recognized in this case, along with the application of the  
8 factors in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d. 31 (1969). (See  
9 further discussion below.)  
10

11 *a. NRS 116.4117 Forms the Basis for An Award of Fees*

12 The Nevada legislature has provided in NRS 116.4117 that attorney's fees may be awarded  
13 to the prevailing party where an action has been brought to enforce or interpret the governing  
14 documents of the association, in this case, the CC&Rs. Specifically, NRS 116.4117(2), provides in  
15 relevant part, "a civil action for damages or other appropriate relief for a failure or refusal to comply  
16 with any provisions of this chapter or the governing documents of an association" may be brought  
17 by either the homeowner or the association. Pursuant to NRS 116.4117(4), "the *court may award*  
18 *reasonable attorney's fees to the prevailing party.*" (Emphasis added.) NRS 116.4117 is clearly the  
19 underlying enabling statute, as NRS 116.4117(2) authorizes a civil action for damages or other relief,  
20 to enforce or interpret the governing documents of the Association.  
21  
22

23 Again, as already established for the Court, the entirety of Artemis's declaratory relief claim  
24 concerns the interpretation and enforcement of the CC&Rs, the applicability of NRS Chapter 116,  
25 the levying and collection of assessments by the Board pursuant to that chapter, and Artemis's failure  
26 and refusal to pay those assessments. Though ultimately abandoned by Artemis as a claim, Artemis  
27 alleged intentional misconduct by the Association in holding itself out as a validly formed  
28 community association subject to the provisions of Chapter 116. Artemis's unsuccessful declaratory

1 relief claim and assertions that the Association's governing documents do not impose assessment  
2 obligations on property owners *unequivocally* put the enforcement and interpretation of the CC&Rs  
3 at issue.  
4

5 The applicability of the CC&Rs and Chapter 116 have been at issue since the inception of  
6 the arbitration until now, and there can be no doubt that the facts of this case fall within NRS  
7 116.4117 and provide a specific statutory basis for an award of fees and costs to the Association as  
8 the prevailing party. It also cannot be emphasized enough the significant amount of time and analysis  
9 this Court spent in reaching its well-considered decisions, including the reasonableness factors of  
10 *Brunzell* which the Court has also already determined were met.  
11

12 ***b. NRS 116.3115(6) Provides an Alternative or Additional Basis for the Award of Fees***

13 NRS 116.3115(6) provides an alternative/additional statutory basis for an award of fees and  
14 costs to the Association. The Court may recall in the earlier briefing and arguments concerning  
15 imposition of attorney's fees and costs that Artemis argued against application of this statutory  
16 provisions. Artemis was wrong then, and it is wrong now.  
17

18 When an Association incurs attorney's fees as a direct result of the misconduct of a  
19 homeowner, attorney's fees may be awarded to the Association and assessed against the  
20 homeowners pursuant to NRS 116.3115(6). NRS 116.3115(6) provides: "If any common expense is  
21 caused by the misconduct of any unit's owner, the association may assess that expense exclusively  
22 against his unit." In this case, the Association's fees could and should appropriately be awarded  
23 based upon NRS 116.3115(6). But for Plaintiff's conduct, the legal expenses associated with this  
24 matter would never have been incurred by the Association.  
25

26 To this point, the Court made specific findings in its February 2013 Orders regarding the  
27 willful misconduct perpetrated against the Association in this case. (See, e.g., the Court's factual  
28 findings in its February 14, 2013 Order granting summary judgment in favor of the Association, pp.

1 4-6.) Amongst those findings, the Court recognized the conduct of Mr. Essington as holding himself  
2 out as and acting with apparent if not actual authority on behalf of Artemis, for example:

3 Mr. Essington represented to members of the Association that he had the  
4 capacity and authority to act on behalf of Artemis and/or Mrs. Essington...

5 Representing himself to be a lot owner, Mr. Essington seconded a motion  
6 to approve the Bylaws...

7 Mr. Essington violated this provision, when for sixteen years, he held  
8 himself out as an owner of a lot...

9 *See Id.*

10 In addition to these facts already enumerated by the Court, the record contains numerous  
11 other examples of willful misconduct of Artemis through its actual and/or apparent agent Mr.  
12 Essington:

13 Mr. Essington signed into member meetings as the owner of Lot G-6. *See* Exhibit "12" at  
14 RLE 026 and Exhibit "13" at RLE 051.<sup>5</sup>

15 The Essingtons completed an owner survey as owners of Lot G-6 in July 2006, and identified  
16 themselves as "Artemis Exploration-Mel/Beth Essington". *See* Exhibit "48", RLE021F-021H.

17 Mr. Essington sent multiple communications to the Architectural Review Committee  
18 ("ARC"), Board members, and Association members, identifying himself as an owner of Lot G-6.  
19 *See* Exhibits "11", "24"- "26"; "31"- "33", "36", and "45".

20 Both before and during his tenure on the Board, Mr. Essington wrote to members of the  
21 Association verifying its existence and necessity, application of NRS Chapter 116, the ability and  
22 responsibility of the Association to levy and collect assessments for maintenance of common  
23 elements. *See* Exhibit "11", RLE 021A-21C. *See also* Exhibits "16", "24"- "27", "29"- "33".  
24  
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<sup>5</sup> These particular exhibit references are to exhibits filed in support of the Association's May 30, 2012 Motion for Summary Judgment.

1 The Essingtons not only acknowledged the existence and authority of the Association, but  
2 they insisted that it be formed. "See Exhibit "4", Wines Affidavit; "11", RLE 021A-021D; "16",  
3 RLE 143.

4  
5 Mr. Essington wanted everyone to think he was a landowner, but he knew any such  
6 statements were false. See Exhibit "22" at 27:10-15, and 28:1-6. Mrs. Essington, knew of the  
7 misrepresentations and actions of her husband, but made no attempt to disavow or stop his actions  
8 as either an alleged owner of Lot G-6, or as an apparent and/or actual representative of Artemis.  
9 This is clear in her deposition. See Exhibit "8", at 69:19-25; 78:11-14.

10  
11 In short, the Court has already recognized the misconduct by virtue of its specific factual  
12 findings. Despite any past, present, or future protests of Artemis to the contrary, the *facts* are not in  
13 dispute which establish, at a minimum, the apparent authority of Mr. Essington as Artemis's agent.  
14 Under these facts, Artemis is estopped from denying Mr. Essington's agency as a matter of law, is  
15 bound by his misconduct and, therefore, is subject to the consequences. See *Dixon v. Thatcher*, 103  
16 Nev. 414, 417, 742 P.2d. 1029, 1030 (1987) ("Apparent authority is 'that authority which a principal  
17 holds his agent out as possessing or permits him to exercise or to represent himself as possessing,  
18 under such circumstances as to estop the principal from denying its existence.'") (Citations omitted.)

19  
20 The evidence of willful misconduct by Artemis through the condoned acts of Mr. Essington  
21 is unequivocal. Upon careful consideration of the evidence before it, this Court has already  
22 recognized this willful misconduct. But for the willful and deceptive actions of Artemis, including  
23 Mrs. Essington as the admitted sole shareholder, director and officer of Artemis, the legal expenses  
24 of this matter in the underlying arbitration and the district court proceedings would not have been  
25 incurred. These are common expenses borne by other innocent homeowners. And despite any  
26 arguments to the contrary, Nevada law is clear that attorney's fees incurred as a result of an owner's  
27 misconduct may be awarded to the association and assessed against that homeowner. NRS  
28

1 116.3115(6). This is precisely the type of situation contemplated by the statute, and it well within  
2 this Court's discretion and authority to award the Association its fees and costs incurred.

3  
4 *c. The CC&Rs Provide a Contractual Basis for the Award of Attorney's Fees.*

5 An award of attorney's fees and other reasonable expenses of litigation may be made not  
6 only when authorized by statute, but when such fees are authorized by agreement between the  
7 parties. Such agreement exists in the form of the CC&Rs of the Association to which Artemis is  
8 subject by virtue of its ownership of the Lots. Artemis has not disputed, and cannot dispute, that it  
9 is subject to the CC&Rs, and any arguments it has made or may make in contradiction of those terms  
10 are meritless.  
11

12 Article V of the CC&Rs provides this contractual basis for the award of attorneys' fees and  
13 costs:

14 In the event of any existing violation of any of the conditions set forth  
15 herein, any owner of any lot, DECLARANT, or any representative of the  
16 Architectural Review Committee, may bring an action at law or in equity  
17 for an injunction, action for damages, or for any additional remedy available  
18 under Nevada law and all such remedies shall be cumulative and not limited  
19 by an election and shall not affect the right of another to avail himself or  
itself of any available remedy for such violation. *The prevailing party shall  
be entitled to recover its court costs and attorney's fees.*

20 See Exhibit "2" attached hereto, which is a true and correct copy of the CC&Rs.

21 The Association is the prevailing party by virtue of this Court's February 2013 Orders and  
22 the Final Judgment. It is entitled to its fees and costs pursuant to the CC&Rs. It is that simple.

23 *d. NRS 18.010 Supports an Award of Attorneys' Fees.*

24 In addition to cases where attorneys' fees are authorized by other statute or contractual  
25 agreement, in the circumstances presented by this case NRS 18.010(2)(a) and (b) both provide an  
26 additional statutory basis for an award of fees. Fees are appropriately awarded when the prevailing  
27 party has not recovered more than \$20,000, (NRS 18.010(2)(a),) or when the Court determines that  
28 claims of the opposing party were brought without reasonable grounds *or* to harass the prevailing



1 party. (NRS 18.010(2)(b).) The statute specifically directs the finder of fact to, "*liberally construe*  
2 *the provisions of this paragraph in favor of awarding attorney's fees in all appropriate*  
3 *circumstances* . . . to punish for and deter frivolous or vexatious claims and defenses because such  
4 claims and defenses overburden limited judicial resources, hinder the timely resolution of  
5 meritorious claims and increase the costs of engaging in business and providing professional services  
6 to the public." (*Emphasis added.*)  
7

8       Clearly, Artemis's claims have been brought for the purposes of harassment and intimidation.  
9 It has failed to state any claim upon which relief could be validly granted against the Association. It  
10 has failed to provide, nor can it provide, evidence of any wrongful conduct by the Association in  
11 enforcing, levying, and collecting assessments and providing for the maintenance of the common  
12 area and common elements. Given the express actions of Mr. Essington as a member of the Board  
13 of Directors of the Association, with apparent and/or actual authority to act on behalf of Artemis,  
14 and Artemis's repeated knowledge and ratification of those actions from 1994-2011, Artemis's  
15 subsequent repudiation of Mr. Essington's actions seventeen years later was without legal or factual  
16 basis. Artemis, i.e. Mrs. Essington, simply did not like the decision of the ARC, and then sought to  
17 undermine the entire Association. Artemis's repeated claims in both the NRED action and before  
18 this Court against the Association were made in bad faith and brought without reasonable grounds.  
19  
20

21       Artemis has asserted, and likely will continue to assert, that it had the legal right to challenge  
22 the imposition of assessments by the Association. As pointed out to the Court before, however, such  
23 is not the litmus test for NRS 18.010(2)(b). The relevant and only inquiry is whether the action itself  
24 was initiated for the purpose of harassment *or* without reasonable basis. The evidence herein  
25 supports a finding of both, although only one is required under the statute. *See also* the decision of  
26  
27  
28

1 the Ombudsman's Office, Exhibit "49", RLE 127-128; and Judge Gang's decision, Exhibit "1" at  
2 pp. 2-3.<sup>6</sup>

3  
4 In addition to the other bases Attorney's fees should be awarded to the Association pursuant  
5 to both NRS 18.010(2)(a) and (b).

6 A. *The Brunzell Factors are Met in this Case.*

7 The Nevada Supreme Court has established that the determination of the amount and award  
8 of fees may be decided by the trier of fact based on the parties' documentary evidence and on  
9 "personal observations of the attorney's time spent in hearings and quantity and quality of filings."  
10 *Sandy Valley Associates vs. Sky Ranch Estates*, 117 Nev. 948, 956, 35 P.3d 964, 969. The award of  
11 attorney's fees may be based upon the Court's familiarity with the proceedings and the scope and  
12 complexity of the legal services rendered. *See e.g. Summa Corp. v. Greenspun*, 96 Nev. 247, 255-  
13 56, 607 P.2d 569 (1980) modified on other grounds, 98 Nev. 528, 655 P.2d 513 (1982).  
14

15 In determining the amount of an award of fees, the Court should consider the following  
16 factors:  
17

- 18 (1) the qualities of the advocate: his ability, training, education,  
19 experience, professional standing and skill; (2) the character  
20 of the work to be done: its difficulty, intricacy, importance, the  
21 time and skill required, the responsibility imposed and the  
22 prominence and character of the parties when they affect the  
23 importance of the litigation; (3) the work actually performed  
24 by the lawyer: the skill, time and attention given to the work;  
25 and (4) the result: whether the attorney was successful and  
26 what benefits were derived. *Schouweiler v. Yancey Co.*, 101  
27 Nev. 827, 834, 712 P.2d 786 (1985), citing *Brunzell v. Golden*  
28 *Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969).

6 "...It is difficult to understand why, faced with overwhelming evidence that [the Association] is a valid HOA, anyone would continue to maintain that it is not... I have carefully considered all of the many allegations and arguments of the Claimant and find them unpersuasive. Indeed, I find the interpretation of counsel and that the Real Estate Ombudsman took no action when it opined that [the Association] had to comply with the laws of the State of Nevada pertaining to homeowners associations illogical..." *Id.*

1 As established to the Court before, all of the factors enunciated in *Schouweiler*, citing  
2 *Brunzell*, are present in this case, thus warranting an award of attorney's fees to the Association.  
3 The superior qualities and abilities of counsel in this matter, known expertise in the law governing  
4 community associations, the difficulty and intricacy of the issues litigated herein which pertained to  
5 analysis and interpretation of the governing documents and statutory provisions applicable to a  
6 specialized area of law, the amount of time, work, and skill expended by counsel in all aspects of  
7 this litigation, justify an award of attorney's fees and costs. In support of its request, the prior  
8 Affidavits of Gayle A. Kern, Esq. attached hereto as Exhibit "3" are respectfully, and once again,  
9 submitted as to the services rendered to the Association and fees incurred in connection with  
10 Artemis's declaratory relief claim and entry of summary judgment in the Association's favor. *See*  
11 *also* Exhibit "4" attached hereto, which is Ms. Kern's March 19, 2018 Affidavit in Support of Motion  
12 for Attorney's Fees and Costs ("Ms. Kern's March 19, 2018 Affidavit").  
13  
14

15 Indeed, the Court has already determined the propriety of an attorney's fees award based on  
16 Ms. Kern's Affidavits and satisfaction of the *Brunzell* factors:  
17

18 ...Here, the HOA's attorney, Gayle Kern, submitted an affidavit in support  
19 of the request for attorney's fees...*Given Ms. Kern's experience and*  
20 *having reviewed the pleadings filed in this case, the Court finds that Ms.*  
21 *Kern is highly qualified in this area of law...The actual work performed*  
22 *by Ms. Kern is outlined in her affidavit and the Court adopts that affidavit*  
23 *as a record of her work in this case. Finally, the Court notes that this case*  
24 *resolved in the HOA's favor. Therefore, the Court finds that Ms. Kern's*  
25 *request for attorney's fees satisfies the Brunzell reasonableness factors...*

26 *See* May 15, 2013 Order Granting Defendant's Motion for Confirmation and Judgment on an  
27 Arbitration Award and Award of Attorneys' Fees and Costs, pp. 2-3. *See also* June 2013 Attorney's  
28 Fees Award entered by the Court and awarding the Association in fees and costs in the total amount  
of \$82,250.81 as of that time.

Nothing has changed to require a different conclusion. Ms. Kern's March 19, 2018 Affidavit  
establishes the propriety and reasonableness of fees under *Brunzell* incurred since the June 2013

1 Attorney's Fees Award in connection with Artemis's declaratory relief claim, and ultimate entry of  
2 Final Judgment in favor of the Association. As set forth in Ms. Kern's March 19, 2018 Affidavit,  
3 the additional amounts in relation to the declaratory relief claim and entry of Final Judgment are  
4 \$32,101.00 in fees and \$1,336.33 in costs. Combined with the \$82,250.81 previously approved and  
5 awarded by the Court, the total amount of fees and costs to be awarded to the Association as the  
6 prevailing party is **\$115,688.14**.

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III.


CONCLUSION

It is clear under the facts of this case, statutory authority, the CC&Rs, and Nevada law that the Association is entitled to its attorney's fees and costs as the prevailing party. As previously determined by this Court, the *Brunzell* factors are met. It is respectfully requested, therefore, that the Court enter its order awarding the Association attorney's fees and costs in the total in the amount of **\$115,688.14**.

Pursuant to NRS 239B.030, the undersigned does hereby affirm that this document, filed in the above-entitled case CV-C-12-175, does not contain the social security number of any person.

DATED: March 19, 2018.

KERN & ASSOCIATES, LTD.



KAREN M. AYARBE, ESQ.

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*Attorneys for Ruby Lake Estates*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern & Associates, Ltd., and that on this day I served the foregoing document described as follows:

***MOTION FOR ATTORNEYS' FEES AND COSTS***

on the parties set forth below, at the address listed below by:

✓

Placing an original or true copy thereof in a sealed envelope place for collection and mailing in the United States Mail, at Reno, Nevada, first-class mail, postage paid, following ordinary business practices, addressed to:

Travis W. Gerber, Esq.  
Zachary A. Gerber, Esq.  
Gerber Law Offices, LLP  
491 4th Street  
Elko, NV 89801

✓

Via Email addressed to:

Travis W. Gerber, Esq.	twg@gerberlegal.com
Zachary A. Gerber, Esq.	zag@gerberlegal.com

DATED this 19<sup>th</sup> day of March 2018.

  
CHRISTINE A. LAMIA

# EXHIBIT “1”

LEONARD I. GANG  
ATTORNEY AT LAW  
ARTIBRATION \* MEDIATION

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FEB - 9 2012  
GAYLE A. KERN, LTD

February 7, 2012

Travis W. Gerber, Esq.  
491 Fourth Street  
Elko, NV 89801

Gayle A. Kern, Esq.  
5421 Kietzke Lane, #200  
Reno, NV 89511

Re: Artemis Exploration Company v. Ruby Lake Estates Architectural Review  
Committee & Ruby Lake Estates Homeowner's Association & Leroy Perks &  
Valerie McIntyre & Dennis McIntyre & Michael Cecchi  
ADR Control No. 11-82

The salient facts in this case are not in dispute. The legal effect of certain provisions of the Uniform Common-Interest Ownership Act (Chapter 116 of NRS) as applied to lots located in Ruby Lakes Estates, a subdivision located in Elko County, forms the essence of this complaint. Only the facts necessary to understanding this decision will be set forth.

FACTS

Artemis Exploration Company, the Complainant (hereinafter Artemis), owns two lots in Ruby Lakes Estates. The first was purchased in June 1994 and the second in March 2010. CC&Rs applicable to Ruby Lake Estates were recorded on October 25, 1989. The deeds clearly reflect that the property is subject to CC&Rs.

NRS 116.3101(1) entitled, "Organization of Unit-Owners Association" provides in part as follows:

"1. A unit-owners association must be organized no later than the date the first unit in the common-interest community is conveyed."

This act was passed by the Nevada legislature in 1991. The Ruby Lakes Homeowner's Association (hereinafter RLHOA or Association) filed its Articles of Incorporation on January 18, 2006. This action was taken after consulting counsel. The RLHOA assessed dues. Artemis paid dues for a period of time but now claims that the Association lacks the authority to "impose any fee, penalty, or assessment for any reason." It basis its argument on the fact that the Association was not formed prior to the conveyance of the first lot as required in NRS 116.3101(1) quoted above..

Artemis filed an "Intervention Affidavit" with the Real Estate Division on December 18, 2009, claiming that Ruby Lakes Estates Homeowner's Association was an invalid homeowner's association. After reviewing the complaint, the Ombudsman's Office of the Real Estate Division opined as follows:

"\*\*\*For these reasons, we are not, as you requested, going to declare that Ruby Lakes Estates Homeowner's Association is invalid. In other words, it is our view that the Association is required to comply with the laws pertaining to homeowner's associations, specifically NRS 116 and related laws and regulations." Emphasis added.

RLHOA filed Articles of Association Cooperative Association with the Secretary of State approximately October 27, 2005. Acting on advice of counsel, RLHOA filed its ~~initial Association Registration Form with the Real Estate Division~~ approximately March 31, 2006. It adopted By Laws on August 12, 2006.

### DISCUSSION

Artemis interprets the Ombudsman's Office decision as, "The Ombudsman took no action," in regard to their Intervention Affidavit. It asserts a myriad of reasons why, in its opinion, the RLHOA is not valid. RLHOA continues to comply with the laws and regulations pertaining to homeowner's associations as the Real Estate Ombudsman's office opined it should, including assessing dues to pay for insurance, having a reserve study conducted, leveeing assessments in accordance with the requirements of the reserve study and, in the case of Artemis, referring it to a collection agency due to its refusal to pay its assessments.

Artemis appears to argue that since the RLHOA was not formed until after the first lot was sold, it could never thereafter be brought into compliance with the law. It takes the position even though the law, requiring it to be formed no later than the date the first lot was sold, was not passed until two years after the first lot in the Association was sold.

### DECISION

It is difficult to understand why, faced with the overwhelming evidence that RLHOA is a valid HOA, any one would continue to maintain that it is not. The HOA owns property within the subdivision, it maintains roads, signs, gates, culverts and fencing. It is incorporated as required by law. Indeed, Mr. Essington was at one time on the board of directors of RLHOA and was a moving force in its formation and incorporation. He signed and filed a "Declaration of Certification Common -Interest Community Board Member" with the Real Estate Division certifying that he read and understood the governing documents of the Association and the provisions of Chapter 116 of Nevada Revised Statutes and the Administrative Code. His wife, Elizabeth Essington, apparently owns all of the stock in Artemis.

Artemis has filed a complaint against each of the members of the board alleging misrepresentation, fraud and oppression and seeks punitive damages. I have carefully considered all of the many allegations and arguments of the Claimant and find them unpersuasive. Indeed, I find the interpretation of counsel that the Real Estate Ombudsman took no action when it opined that RLHOA had to comply with the laws of Nevada pertaining to homeowner's associations



illogical. The Ombudsman clearly opined that the HOA was subject to the laws of Nevada that applied to HOA's. The Ombudsman took no action on the complaint of Artemis because the HOA was validly formed and obliged to comply with the law relating to HOA's.

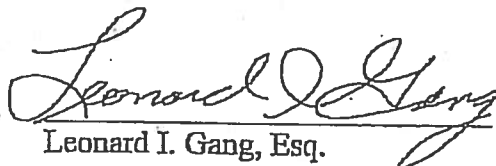
ORDER

1. Ruby Lake Estates is a Common -Interest Community and is subject to NRS Chapter 116. It was lawfully formed and is a validly existing non-profit common interest association.
2. The complaint against the individual board members is dismissed since no evidence was presented that they acted with willful or wanton misfeasance or gross negligence or were guilty of intentional misrepresentation or negligence.
3. Claimant is not entitled to punitive damages as a matter of law and no evidence was presented that would warrant such an award.
4. Respondent is entitled to an award of attorney's fees in the amount of \$22,092.00 and costs in the amount of \$4,718.67. I make this award taking into consideration the Brunzell factors. These factors were clearly articulated in the affidavit of Mrs. Kerns in support of her request for attorney's fees and costs and I find them to be accurate based upon my personal observations of Mrs. Kern's performance as an attorney representing homeowner's associations in these types of matters.

IT IS SO ORDERED.

Dated this 7<sup>th</sup> day of February, 2012.

ARBITRATOR,

  
Leonard I. Gang, Esq.

LIG:rg

CERTIFICATE OF MAILING

I hereby certify that on the 8<sup>th</sup> day of February, 2012 I mailed a copy of the foregoing DECISION AND AWARD in a sealed envelope to the following counsel of record and the Office of the Ombudsman, Nevada Real Estate Division and that postage was fully prepaid thereon.

Travis W. Gerber, Esq.  
~~491 Fourth Street~~  
Elko, NV 89801

Gayle Kern, Esq.  
5421 Kietzke Lane, Ste. 200  
Reno NV 89511

  
ROBERTA GANG

# EXHIBIT “2”

RUBY LAKE ESTATES

DECLARATION OF RESERVATIONS, CONDITIONS AND RESTRICTIONS

This Declaration of Restrictions, made effective this 6 day of Sept, 1989, by Stephen G. Wright and Mavis S. Wright, hereinafter collectively referred to as "DECLARANT".

WHEREAS, DECLARANT is the owner of a parcel of real property situate in the County of Elko, State of Nevada, more particularly described as follows:

WHEREAS, DECLARANT intends to sell, convey, or dispose of, all or a portion of said real property, from time to time, and desires to protect said property by subjecting the same to reservations, covenants, conditions and restrictions as herein set forth, pursuant to a general plan specified herein, binding the future owners of any interest in said property thereto,

NOW, THEREFORE, it is hereby declared that all of the parcels of the above-described real property are hereby fixed with the protective conditions, restrictions, covenants and reservations herein set forth, and the same shall apply to and upon each and every lot, parcel, or division of said property howsoever the same may be held or titled, all to the mutual benefit of the parcels of said real property and of each owner or user thereof, and said covenants, restrictions, conditions and reservations shall run with the land and inure to and pass with the land and apply to and bind respective successors in interest thereto and shall be uniformly imposed and impressed upon each and every lot, parcel, or portion of said land as a mutually enforceable equitable servitude in favor of each and every other parcel included within said land and shall inure to the owners and users thereof and to the DECLARANT herein.

ARTICLE I

GENERAL PURPOSE OF  
RESERVATIONS AND RESTRICTIONS

The real property affected hereby is subjected to the imposition of the covenants, conditions, restrictions and reservations specified herein to provide for the development and maintenance of an aesthetically pleasing and harmonious community of residential dwellings for the purpose of preserving a high quality of use and appearance and maintaining the value of each and every lot and parcel of said property. All divisions of said real property are hereafter referred to as "lots".

## ARTICLE II

### ARCHITECTURAL REVIEW COMMITTEE

There shall be an Architectural Review Committee which shall consist of Stephen G. Wright, or his nominee, until such time as 30% of the lots are transferred, at which time DECLARANT shall appoint a committee consisting of DECLARANT and not less than two other owners of lots for the general purpose of providing for the maintenance of a high standard of architectural design, color and landscaping harmony and to preserve and enhance aesthetic qualities and high standards of construction in the development and maintenance of the subdivision.

The DECLARANT shall have the power to fill any vacancies in the Architectural Review Committee, as they may occur from time to time, and may appoint his own successor or temporary nominee.

The Committee shall determine whether or not the reservations, restrictions, covenants, and conditions, are being complied with and may promulgate and adopt reasonable rules and regulations in order to carry out its purpose. The Committee shall, in all respects, except when, in its sound discretion, good planning would otherwise dictate, be controlled by the conditions set forth herein.

The Committee shall be guided by the general purpose of maintaining an aesthetically pleasing development of a residential or vacation community in the aforesaid subdivision in conformity with these conditions.

## ARTICLE III

### CONDITIONS

The following conditions are imposed upon and apply to each and every lot contained within the aforesaid real property:

A. Commercial lot: One lot shall be designated as a Commercial lot and shall be intended for all reasonable commercial uses consistent with a convenience store, gasoline sales, laundromat, etc., which shall be:

B. Prohibition against re-division: None of the lots contained within the Subdivision as finally authorized by the County of Elko shall be redivided in any manner whatsoever.

C. Single dwellings: All of the lots shall contain a single dwelling in conformity with these conditions, with the exception of temporarily parked recreational vehicles belonging to owners of lots or guests of lot owners. No such temporary guest vehicle may remain on any lot, except for purposes of storage, for longer than six weeks.

D. Building authorization: No construction of any name or nature, including alteration of a structure already built, or original construction, or fence construction, shall be commenced until and unless the plans therefore, including designation of floor areas, external design, structural

details, materials list, elevations, and ground location and plot plan, as may apply, have been first delivered to and approved in writing by the Architectural Review Committee. All construction shall be in conformance with the requirements of the Uniform Building Code, Uniform Plumbing Code, National Electrical Code, and Uniform Fire Code as currently published. All premanufactured, modular or other housing which is not built or constructed on-site must be approved by the Nevada Division of Manufactured Housing or such other Nevada agency or division having jurisdiction over the same. All mobile or modular housing shall be first approved by the Architectural Review Committee and age and external condition shall be factors in the Committee's decision as to whether or not the same may be placed upon any lot. The proposed plans shall be submitted in duplicate to the Architectural Review Committee at the address specified below, or as may be changed from time to time, which amended address will be recorded with the Elko County Recorder.

Steve and Mavis Wright  
Ruby Valley, NV 89833

The Committee shall then either accept or reject the plan, or give a conditional acceptance thereof, indicating the conditions, in writing, within thirty (30) days of submission. Any approved plan shall be adhered to by the lot owner. The Committee shall retain one set of plans.

*E. Setbacks:* No structure shall be erected, altered, placed or permitted to remain on any building plot in this subdivision nearer than 50 feet to the front lot line, nor nearer than 20 feet to any side street line, nor nearer than 20 feet to any side lot line, and no nearer than 30 feet to any rear line of said plot.

*F. Materials and Components:* All residential dwellings constructed on the lots shall be subject to the following material restrictions:

(1) Exterior material shall be either block or brick veneer or horizontal or vertical siding and no unfinished plywood siding shall be used and no roof may be constructed of plywood or shake shingles;

(2) Manufactured housing with painted metal exteriors, provided the same are in reasonably good condition and appearance, shall be acceptable subject to the Committee's review.

*G. Advertising:* Except as the same pertains to the Commercial lot provided herein, no advertising sign, billboard, or other advertising media or structure of any name or nature shall be erected on or allowed within the boundary of any lot, save and except temporary signs for political candidates and neat and attractive notices offering the property for sale or indicating the contractor's name.

H. Animals and pets: No livestock of any name or nature will be permitted within the subdivision save and except domestic animals such as dogs, cats, or other household pets and up to four head of livestock (except during hunting and fishing season, at which time there may be more than two horses which may not be kept longer than a 45-day period), which animals may only be kept provided that they are not bred or maintained for any commercial purposes and any kennels or fences constructed for the same must be constructed of substantial materials which will prevent escape of such animals from the lot of their owner. All dogs must be kept on their owners' lot except when attended.

I. Temporary buildings: Except as provided above, temporary buildings of any name or nature shall not be erected or placed upon any lot to be used for human habitation, including but not limited to tents, shacks, or metal buildings.

J. Occupancy of residential dwellings: No residential dwelling shall be occupied or used for the purpose for which it is built as a residence until the same shall have been substantially completed and a certificate of occupancy has been issued by the Architectural Review Committee.

K. Use of premises: No person or entity shall make any use of any premises on any lot except as a single family residential or vacation dwelling and in conformity with these conditions and in compliance with all County ordinances, if any. No commercial enterprises shall be conducted within or upon any lot in the subdivision.

L. Garbage and refuse: No garbage, trash, refuse, junk, weeds or other obnoxious or offensive items or materials shall be permitted to accumulate on any of the lots and the owner of each lot shall cause all such materials and items to be disposed of by and in accordance with accepted sanitary and safety practices.

M. Nuisances: No obnoxious or offensive activity shall be carried on upon any lot nor shall anything be done upon any lot which shall be or may become an annoyance or a nuisance to the general neighborhood, including but not limited to fireworks displays, storage of disabled vehicles, machinery or machinery parts, boxes, bags, trash, dead animals or empty or filled containers. All trash must be taken to a County or City dump. No vehicles may be stored on any streets and no unsightly objects or items may be open to public view.

N. Due Diligence in Construction: Upon commencement of construction of any structure upon any lot, the owner thereof shall prosecute said construction in a continual and diligent manner and any structure left partially constructed for a period in excess of two years shall constitute a violation of these restrictions and may be abated as a nuisance.

O. Maintenance of Lot Grade: No construction shall materially alter any existing lot grade.

P. Compliance with Codes, etc. Any lot owner shall comply with all codes, rules and regulations applicable to their lot enforceable by the County of Elko, including but not limited to the clearance of all brush, flammable vegetation and debris within a minimum of 50 feet from all buildings.

## ARTICLE IV VARIANCES

The Architectural Review Committee shall be empowered to grant limited variances to the owner of a lot on a lot-by-lot basis in the case of good cause shown but always considering the general purpose of these conditions. A request for a variance shall be made in writing and state with specificity the nature and extent of the variance requested and the reason for the request. No variance may be granted which, in the opinion of the Architectural Review Committee, causes a material change to the high standards of development and maintenance of the subdivision.

The Architectural review committee shall act upon the request within thirty (30) days and shall give its decision in writing, with said decision being final and unappealable. In the event no action is taken on the request, the request shall be deemed to be denied.

## ARTICLE V VIOLATION AND ENFORCEMENT

In the event of any existing violation of any of the conditions set forth herein, any owner of any lot, DECLARANT, or any representative of the Architectural Review Committee, may bring an action at law or in equity for an injunction, action for damages, or for any additional remedy available under Nevada law and all such remedies shall be cumulative and not limited by election and shall not affect the right of another to avail himself or itself of any available remedy for such violation. The prevailing party shall be entitled to recover its court costs and attorney's fees. Any injunction sought to abate a nuisance under these conditions and restrictions shall not required a bond as security.

The failure or election of any person having standing to bring any action for violation of any condition herein shall not constitute a waiver of such condition for any purpose and each and every condition hereunder shall continue in full force and effect notwithstanding the length of time of any violation, the person or entity committing the violation, or any change in the nature and character of the violation, and each day such violation continues, shall constitute a new violation of such condition so violated.



DECLARANT:

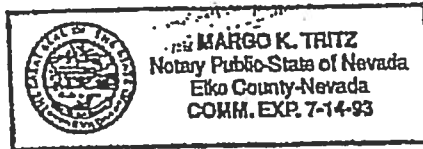
Stephen G. Wright  
STEPHEN G. WRIGHT

Mavis S. Wright  
MAVIS S. WRIGHT

STATE OF Nevada )  
COUNTY OF Elko )SS.

On Sept. 10, 1989, personally appeared before me, a Notary Public,  
Stephen G. Wright and Mavis S. Wright, who acknowledged that they executed the  
above instrument.

Margo K. Tritz  
NOTARY PUBLIC



# EXHIBIT “3”

1 KERN & ASSOCIATES, LTD.  
2 GAYLE A. KERN, ESQ.  
3 Nevada Bar # 1620  
4 5421 Kietzke Lane, Suite 200  
5 Reno, Nevada 89511  
6 Telephone: (775) 324-5930  
7 Facsimile: (775) 324-6173  
8 E-mail: gaylekern@kernltd.com

9 Attorneys for Respondents and Counter Claimants

10  
11 STATE OF NEVADA  
12 IN THE DEPARTMENT OF BUSINESS AND INDUSTRY  
13 REAL ESTATE DIVISION  
14

15 ARTEMIS EXPLORATION  
16 COMPANY, on behalf of itself and all  
17 others similarly situated,

18 Claimants,

19 vs.

20 RUBY LAKE ESTATES  
21 ARCHITECTURAL COMMITTEE,  
22 RUBY LAKE ESTATES  
23 HOMEOWNER'S ASSOCIATION,  
24 LEROY PERKS, VALERIE MCINTYRE,  
25 DENNIS MCINTYRE, MICHAEL  
26 CECCHI,

27 Respondents.

28 RUBY LAKE ESTATES  
ARCHITECTURAL COMMITTEE,  
RUBY LAKE ESTATES  
HOMEOWNER'S ASSOCIATION,  
LEROY PERKS, VALERIE MCINTYRE,  
DENNIS MCINTYRE, MICHAEL  
CECCHI,

Counter Claimants,

vs.

ARTEMIS EXPLORATION  
COMPANY,

Counter Respondents.

NRED Control No. 11-82

AFFIDAVIT OF GAYLE A. KERN  
IN SUPPORT OF ATTORNEY'S  
FEES AND COSTS

1 STATE OF NEVADA           )  
2 COUNTY OF WASHOE       ): ss.

3 I, Gayle A. Kern, being first duly sworn do hereby swear under penalty of perjury as follows:

4 1. I am the attorney representing Ruby Lake Estates Architectural Committee, Ruby Lake  
5 Estates Homeowner's Association, Leroy Perks, Valeri McIntyre, Dennis McIntyre, Michael Cecchi in the  
6 above-referenced matter.

7 2. I make this affidavit of my own personal knowledge except as to those matters stated on  
8 information and belief.

9 3. Total fees in this matter through December 20, 2011, are \$22,092.00, and costs through  
10 December 14, 2011, in the amount of \$4,718.67, for a total of \$26,810.67. A compilation of all fees and  
11 costs is attached as Exhibit 1.

12 4. Redaction has been made of any privileged communications.

13 5. I have been in practice for over 25 years. I have a general civil practice with an emphasis  
14 on all types of housing associations including condominiums, town homes, landscape maintenance, single  
15 family, master and sub associations and mobile home parks, as well as litigation, bankruptcy and real  
16 property law. I currently serve as counsel to over two hundred associations throughout Northern Nevada.  
17 I provide all aspects of legal services upon request to my associations including interpretation of governing  
18 documents and applicable local, state and federal laws; guidance and training to Boards of Directors in  
19 connection with running a non-profit common-interest community; developer transition; collection of  
20 delinquent assessments; filing and responding to Intervention Affidavits with the Nevada Real Estate  
21 Division; all forms of litigation including Alternative Dispute Resolution, complaints in front of the Fair  
22 Housing Division of HUD, Small Claims Court, Justice Court, District Court, and the Nevada Supreme  
23 Court; and assistance in collections, liens and foreclosures.

24 6. I lecture regularly for the Ombudsman's office, the Nevada Real Estate Division, and teach  
25 seminars on common-interest community law. I serve on the Community Association Institute's  
26 Legislative Action Committee, which participates in review and comment on legislation affecting common-  
27 interest communities and regulations promulgated by the Ombudsman and Nevada Real Estate Division.  
28 I worked with the Real Estate Division in the development of the first community manager exam and I am

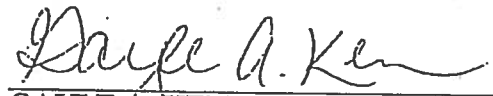
1 approved by the Real Estate Division to teach classes to community managers and Board members. I  
2 regularly attend CAI's National Law Seminars to keep apprised of new developments in the industry, not  
3 only in Nevada, but throughout the country. I also serve on the subcommittee for the Common Interest  
4 Communities for the Nevada State Bar Real Estate section.

5 7. The fees and costs billed in this matter are reasonable and appropriate. The total time billed  
6 from February 25, 2011 through December 20, 2011 was 92.05 hours, with an hourly rate of \$240.00.  
7 Costs through December 14, 2011, are itemized in the amount of \$4,718.67 for a total due and owing of  
8 \$26,810.67.

9 8. My hourly rate is reasonable given my experience practicing law in general and my  
10 experience in practicing in the specialized area of common interest communities, in particular. Despite my  
11 experience and expertise, my hourly rate is lower than rates routinely charged by other attorneys who  
12 practice in this area and/or who do not have the same amount of experience that I have.

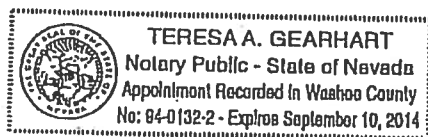
13 9. Based upon all of the above factors, these fees and costs are reasonable and appropriate and  
14 should be awarded.

15 DATED this 20<sup>th</sup> day of December, 2011.

16  
17   
18 GAYLE A. KERN

19 SUBSCRIBED AND SWORN to before me  
20 this 20<sup>th</sup> day of December, 2011.

21   
22 NOTARY PUBLIC



1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern & Associates, Ltd.,  
3 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and this day I served the foregoing document described  
4 as follows:

5 AFFIDAVIT OF GAYLE A. KERN  
6 IN SUPPORT OF ATTORNEY'S FEES AND COSTS

on the parties set forth below, at the addresses listed below by:

7 X Placing an original or true copy thereof in a sealed envelope place for collection and mailing  
8 in the United States Mail, at Reno, Nevada, first class mail, postage paid, following ordinary  
9 business practices, addressed to:

10 X Via e-mail transmission

11 \_\_\_\_\_ Personal delivery, upon:

12 \_\_\_\_\_ United Parcel Service, 2<sup>nd</sup> Day Air, addressed to: Travis W. Gerber Only

13 *Via U.S. Mail &*  
14 *E-mail to: twg@gerberlegal.com*

15 Travis W. Gerber  
16 Gerber Law Offices, LLP  
491 4<sup>th</sup> Street  
Elko, NV 89801

*Via U.S. Mail &*  
*E-mail to: leonardgang@gmail.com*

Leonard L. Gang, Esq., Arbitrator  
P.O. Box 4394  
Incline Village, NV 89450

17 DATED this 20<sup>th</sup> day of December, 2011.

18 *Teresa A. Gearhart*  
19 TERESA A. GEARHART

EXHIBIT “1”

EXHIBIT “1”

Gayle A. Kern, Ltd.  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
EIN No. 20-0097566

Invoice submitted to:  
[REDACTED]

December 20, 2011

In Reference To: Ruby Lake Estates HOA adv. Artemis Exploration Company

Professional Services

	<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
2/25/2011 - GAK review documents provided by client; meeting with board re: [REDACTED], telephone call to Mr. Wines re [REDACTED]	240.00/hr		840.00
3/2/2011 - GAK Review various emails; attempt telephone call to [REDACTED]	240.00/hr		120.00
3/3/2011 - GAK Draft motion to dismiss; prepare peremptory challenge.	240.00/hr		600.00
3/4/2011 - GAK Review e-mail from [REDACTED], respond with [REDACTED]; finalize all pleadings; supervise communication with Mr. Wines' office; provide for all to be sent for delivery on Monday.	240.00/hr		360.00
3/7/2011 - GAK Follow-up with Mr. Wines' office re: [REDACTED], prepare notice of pending litigation; review file-stamped pleadings.	240.00/hr		240.00
3/9/2011 - GAK Draft letter to the Board with litigation notebook.	240.00/hr		120.00
3/22/2011 - GAK Telephone call from Travis Gerber.	240.00/hr		48.00
3/23/2011 - GAK Review and respond to e-mails from Board president.	240.00/hr		48.00
3/24/2011 - GAK Review and respond to e-mail from Ms. McIntyre re: [REDACTED], review and respond to e-mail from [REDACTED]; Telephone call from [REDACTED], provide [REDACTED]	240.00/hr		240.00

2 AA000048



			Rate	Tax#	Amount
		[REDACTED] to client; review e-mail re [REDACTED], telephone call to Travis Gerber.			
3/29/2011	- GAK	Review proposed stipulation for dismissal; draft response regarding reservation of right to seek fees and costs.	240.00/hr		60.00
3/30/2011	- GAK	Review and respond to numerous e-mails from Mr. Gerber re: [REDACTED]; receive finalized stipulation, execute and return same to Mr. Gerber.	240.00/hr		120.00
5/17/2011	- GAK	Telephone call from [REDACTED].	240.00/hr		24.00
5/18/2011	- GAK	Review e-mail advising [REDACTED] provide notice to [REDACTED] and [REDACTED].	240.00/hr		48.00
6/1/2011	- GAK	Review [REDACTED] in order to prepare answer.	240.00/hr		48.00
6/15/2011	- GAK	Prepare responsive pleading to complaint.	240.00/hr		480.00
6/17/2011	- GAK	Supervise file organization; direct copies to be made of pertinent documents; review [REDACTED] and obtain [REDACTED].	240.00/hr		72.00
	- GAK	Supervise obtaining documents to [REDACTED].	240.00/hr		48.00
6/20/2011	- GAK	Telephone call from [REDACTED]; Prepare Notice of Pending Litigation; draft letter to client [REDACTED].	240.00/hr		192.00
6/29/2011	- GAK	Draft letter to Members of the Board [REDACTED].	240.00/hr		72.00
7/7/2011	- GAK	Review and respond to e-mail from Mr. Gerber re: appointment of Judge Gang.	240.00/hr		48.00
7/14/2011	- GAK	Telephone call from [REDACTED] discussion of [REDACTED].	240.00/hr		48.00
7/20/2011	- GAK	Review letter from Nevada Real Estate Division assigning arbitration to Mr. Gang; provide same to client.	240.00/hr		48.00
7/22/2011	- GAK	Review [REDACTED]; revise [REDACTED].	240.00/hr		168.00
8/1/2011	- GAK	Participate in conference call with Mr. Gerber and Judge Gang.	240.00/hr		96.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
8/4/2011 - GAK	Review letter and statement from Judge Gang; execute and return.	240.00/hr		60.00
8/23/2011 - GAK	Review e-mail from Mr. Gerber.	240.00/hr		24.00
8/24/2011 - GAK	Draft Notice of Taking Depositions of Mel and Elizabeth Essington.	240.00/hr		48.00
8/31/2011 - GAK	Revise Notice of Deposition.	240.00/hr		72.00
9/2/2011 - GAK	Review letter and enclosure from Travis Gerber to Leonard Gang; provide to client.	240.00/hr		48.00
9/6/2011 - GAK	Prepare draft of first set of interrogatories; prepare draft of first set of Requests for Admission; draft first set of request for Production of Documents.	240.00/hr		720.00
9/7/2011 - GAK	Meeting with [REDACTED]; finalize all discovery requests; review additional e-mails [REDACTED]; prepare supplemental production of documents; begin preparation of [REDACTED]	240.00/hr		720.00
9/9/2011 - GAK	Finalize notices of depositions.	240.00/hr		72.00
- GAK	Review additional e-mail with attachments and prepare third supplemental production of documents.	240.00/hr		120.00
9/12/2011 - GAK	Finalize Second Supplemental List of Documents.	240.00/hr		48.00
9/14/2011 - GAK	Review discovery requests from plaintiffs; prepare draft responses; send all to [REDACTED]	240.00/hr		288.00
10/3/2011 - GAK	Review and respond to e-mail re [REDACTED]; supervise obtaining court reporter for the depositions.	240.00/hr		72.00
- GAK	Finalize Response to Request for Admissions; finalize Answers to Interrogatories.	240.00/hr		60.00
10/4/2011 - GAK	Prepare amended notice of deposition for conducting depositions at Mr. Wines' office.	240.00/hr		48.00
10/11/2011 - GAK	Review [REDACTED] from clients; draft letter to Travis Gerber.	240.00/hr		48.00
10/12/2011 - GAK	Travel to and prepare for depositions.	240.00/hr		1,680.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
10/13/2011 - GAK	Conduct depositions and return to Reno.			
		240.00/hr		2,880.00
10/24/2011 - GAK	Prepare supplemental production.			
		240.00/hr		72.00
11/28/2011 - GAK	Draft letter to Arbitrator Gang and Mr. Gerber re: extension of time; strategize for preparing arbitration brief.			
		240.00/hr		216.00
- GAK	Review strategy re: [REDACTED]			
	[REDACTED] review [REDACTED]	240.00/hr		1,440.00
11/29/2011 - GAK	Prepare Third Supplemental List of Documents.			
		240.00/hr		48.00
- GAK	Review communication approving extension for briefs.			
		240.00/hr		48.00
- GAK	Continue work on Arbitration Brief; draft [REDACTED]			
	[REDACTED] analysis of [REDACTED]; begin draft of legal points and authorities.	240.00/hr		1,944.00
11/30/2011 - GAK	Continue preparation of legal arguments and points and authorities for Arbitration Brief.			
		240.00/hr		1,224.00
12/1/2011 - GAK	Draft arguments and points and authorities regarding affirmative defenses and counterclaims; review and edit first draft of Arbitration Brief.			
		240.00/hr		1,560.00
12/5/2011 - GAK	Finalize arbitration brief; draft letter to [REDACTED] begin [REDACTED] begin preparation of [REDACTED]			
		240.00/hr		624.00
12/9/2011 - GAK	Work on [REDACTED]			
		240.00/hr		360.00
12/12/2011 - GAK	Continue [REDACTED]			
		240.00/hr		672.00
12/13/2011 - GAK	Final preparation of [REDACTED]			
		240.00/hr		960.00
12/14/2011 - GAK	Final preparation for arbitration; provide letter to [REDACTED] participate in arbitration.			
		240.00/hr		1,560.00
12/20/2011 - GAK	Prepare affidavit in support of legal fees; review e-mail from Mr. Gerber.			
		240.00/hr		168.00

For professional services rendered

Hours

92.05

Amount

\$22,092.00

Additional Charges :

		<u>Qty/Price</u>	<u>Tax#</u>
3/4/2011 - TG	Fourth Judicial District Court - Filing Fee for First Appearance	1 318.00	318.00
- TG	Supreme Court of Nevada - Filing Fee for Peremptory Challenge of Judge	1 450.00	450.00
- TG	UPS Shipping Charges	1 24.04	24.04
3/8/2011 - TG	Binder for Litigation Notebook	1 14.00	14.00
3/31/2011 - TG	Photocopy Charges	61 0.20	12.20
- TG	Messenger Service Charges	1 3.00	3.00
5/31/2011 - TG	Photocopy Charges	7 0.20	1.40
6/15/2011 - TG	Nevada Real Estate Division - Fee to File ADR Response	1 50.00	50.00
- TG	UPS Shipping Charges	1 26.74	26.74
6/30/2011 - TG	Photocopy Charges	263 0.20	52.60
7/31/2011 - TG	Postage Charges	1 0.88	0.88
- TG	Photocopy Charges	8 0.20	1.60
8/5/2011 - TG	Leonard I. Gang - Arbitrator's Retainer	1 1,750.00	1,750.00
8/15/2011 - TG	UPS Shipping Charges	1 14.48	14.48
8/31/2011 - TG	Photocopy Charges	31 0.20	6.20

			<u>Qty/Price</u>	<u>Tax#</u>	<u>Amount</u>
8/31/2011 - TG	Postage Charges		1		0.44
			0.44		
9/1/2011 - TG	(8/1/11) - AT&T TeleConference Services		1		12.10
			12.10		
9/9/2011 - TG	UPS Shipping Charges		1		14.55
			14.55		
9/30/2011 - TG	Photocopy Charges		129		25.80
			0.20		
- TG	Postage Charges		1		1.28
			1.28		
10/12/2011 - TG	The Star Hotel - Dining Expense		1		36.66
			36.66		
- TG	Starbucks - Travel Expense		1		10.93
			10.93		
10/13/2011 - TG	Dos Amigos - Dining Expense		1		22.42
			22.42		
- TG	Towne Place Suites by Marriott - Travel Expense		1		189.28
			189.28		
- TG	Sunshine Reporting and Litigation Services, LLC - Deposition Reporting & Transcription		1		1,582.53
			1,582.53		
10/31/2011 - TG	Photocopy Charges		67		13.40
			0.20		
- TG	Postage Charges		1		2.36
			2.36		
11/30/2011 - TG	Photocopy Charges		10		2.00
			0.20		
- TG	Postage Charges		1		1.08
			1.08		
12/5/2011 - TG	UPS Shipping Charges		1		14.42
			14.42		
12/14/2011 - TG	Postage Charges		1		1.68
			1.68		
- TG	Photocopy Charges		313		62.60
			0.20		

Total costs

Amount

\$4,718.67

For professional services rendered

92.05

Amount

\$26,810.67

1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

FILED

2013 MAR -1 PM 2: 51

ELKO CO DISTRICT COURT

3  
4  
5 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA *KJ*  
6 IN AND FOR THE COUNTY OF ELKO

7 ARTEMIS EXPLORATION COMPANY, a  
8 Nevada Corporation,

9 Plaintiffs,

10 vs.

AFFIDAVIT OF GAYLE A. KERN IN  
SUPPORT OF ATTORNEY'S FEES AND  
COSTS

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

13 Defendants.

14 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

15 Counterclaimant,

16 vs.

17 ARTEMIS EXPLORATION COMPANY, a  
18 Nevada Corporation,

19 Counterdefendant.

20 STATE OF NEVADA )  
21 ) : ss.  
COUNTY OF WASHOE )

22 I, Gayle A. Kern, being first duly sworn do hereby swear under penalty of perjury as follows:

23 1. I am the attorney representing Ruby Lake Estates Architectural Committee, Ruby  
24 Lake Estates Homeowner's Association, in the above-referenced matter.

25 2. I make this affidavit of my own personal knowledge except as to those matters stated  
26 on information and belief.

27 3. Total fees in this matter through February 20, 2013, are \$51,288.00, and costs  
28 through February 20, 2013, in the amount of \$1,475.90, for a total of \$52,763.90. A compilation

2 AA000055

1 of all fees and costs is attached as Exhibit 1.

2 4. Redaction has been made of any privileged communications.

3 5. I have been in practice for over 28 years. I have a general civil practice with an  
4 emphasis on all types of housing associations including condominiums, town homes, landscape  
5 maintenance, single family, master and sub associations and mobile home parks, as well as  
6 litigation, bankruptcy and real property law. I currently serve as counsel to over two hundred  
7 associations throughout Northern Nevada. I provide all aspects of legal services upon request to  
8 my associations including interpretation of governing documents and applicable local, state and  
9 federal laws; guidance and training to Boards of Directors in connection with running a non-profit  
10 common-interest community; developer transition; collection of delinquent assessments; filing and  
11 responding to Intervention Affidavits with the Nevada Real Estate Division; all forms of litigation  
12 including Alternative Dispute Resolution, complaints in front of the Fair Housing Division of HUD,  
13 Small Claims Court, Justice Court, District Court, and the Nevada Supreme Court; and assistance  
14 in collections, liens and foreclosures.

15 6. I lecture regularly for the Ombudsman's office, the Nevada Real Estate Division, and  
16 teach seminars on common-interest community law. I serve on the Community Association  
17 Institute's Legislative Action Committee, which participates in review and comment on legislation  
18 affecting common-interest communities and regulations promulgated by the Ombudsman and  
19 Nevada Real Estate Division. I worked with the Real Estate Division in the development of the first  
20 community manager exam and I am approved by the Real Estate Division to teach classes to  
21 community managers and Board members. I regularly attend CAI's National Law Seminars to keep  
22 apprised of new developments in the industry, not only in Nevada, but throughout the country. I  
23 also serve on the subcommittee for the Common Interest Communities for the Nevada State Bar  
24 Real Estate section.

25 7. The fees and costs billed in this matter are reasonable and appropriate. The total  
26 time billed from March 2, 2012 through February 20, 2013 was 216.6 hours, with an hourly rate of  
27 \$240.00, totaling \$51,288.00. Costs through February 20, 2013, are itemized in the amount of  
28 \$1,475.90 for a total due and owing of \$52,763.90.



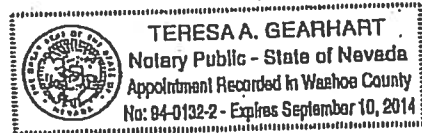
1 8. My hourly rate is reasonable given my experience practicing law in general and my  
2 experience in practicing in the specialized area of common interest communities, in particular.  
3 Despite my experience and expertise, my hourly rate is lower than rates routinely charged by other  
4 attorneys who practice in this area and/or who do not have the same amount of experience that I  
5 have.

6 9. Based upon all of the above factors, these fees and costs are reasonable and  
7 appropriate and should be awarded.

8 DATED this 25<sup>th</sup> day of February, 2013.

9  
10   
11 GAYLE A. KERN

12 SUBSCRIBED AND SWORN to before me  
13 this 25<sup>th</sup> day of February, 2013.



15 Teresa A. Gearhart  
16 NOTARY PUBLIC

17 AFFIRMATION

18 Pursuant to NRS 239B.030

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

21 DATED this 25<sup>th</sup> day of February, 2013.

22 KERN & ASSOCIATES, LTD.

23   
24 GAYLE A. KERN, ESQ.  
25 NEVADA BAR #1620  
26 5421 Kietzke Lane, Suite 200  
27 RENO, NEVADA 89511  
28 Telephone: 775-324-5930  
Fax: 775-324-6173  
Email: [gaylekern@kernltd.com](mailto:gaylekern@kernltd.com)  
Attorneys for Ruby Lake Estates

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern &  
3 Associates, Ltd., and that on this day I served the foregoing document described as follows:

4 **AFFIDAVIT OF GAYLE A. KERN**  
5 **IN SUPPORT OF ATTORNEY'S FEES AND COSTS**

6 on the parties set forth below, at the addresses listed below by:

7 X Placing an original or true copy thereof in a sealed envelope place for collection and  
8 mailing in the United States Mail, at Reno, Nevada, first class mail, postage paid,  
9 following ordinary business practices, addressed to:

10            Via facsimile transmission

11            Via e-mail.

12            Personal delivery, upon:

13            United Parcel Service, Next Day Air, addressed to:

14 Travis Gerber, Esq.  
15 Gerber Law Offices, LLP  
16 491 4<sup>th</sup> Street  
17 Elko, NV 89801.

18 DATED this 20<sup>th</sup> day of February, 2013.

19 *Teresa A. Gearhart*  
20 TERESA A. GEARHART  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT “1”

EXHIBIT “1”

Gayle A. Kern, Ltd.  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
EIN No. 20-0097566

Invoice submitted to:  
Amy B. Hackett  
Philadelphia Insurance Companies

February 22, 2013

In Reference To: Ruby Lake Estates HOA adv. Artemis Exploration Company

Professional Services

	<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
3/2/2012 - GAK Review e-mail and complaint from Travis Gerber; draft e-mail to Amy Hackett re: [REDACTED]	240.00/hr		96.00
3/6/2012 - GAK Review e-mail from Mr. Perks; draft response; review complaint; draft updated notice of pending litigation.	240.00/hr		336.00
3/9/2012 - GAK Review and respond to e-mail from Amy Hackett.	240.00/hr		48.00
3/19/2012 - GAK Execute acceptance of Service; draft letter to Mr. Gerber.	240.00/hr		72.00
3/23/2012 - GAK Prepare draft answer to complaint and counterclaim to have award confirmed and attorney's fees awarded.	240.00/hr		288.00
3/28/2012 - GAK Finalize Answer to Complaint and Counterclaim.	240.00/hr		504.00
4/20/2012 - GAK Review Answer to Counterclaim and provide same to client.	240.00/hr		120.00
4/27/2012 - GAK Draft Notice of Early Case Conference as to Counterclaim.	240.00/hr		72.00
5/4/2012 - GAK Draft letter to Mr. Gerber re: extension of time to respond to motion for summary judgment.	240.00/hr		48.00
5/7/2012 - GAK Telephone call from Mr. Gerber re: conflict of interest with assigned judge having previously represented Artemis; provide authority to draft and send letter to court re: same.	240.00/hr		48.00

		Rate	Tax#	Amount
5/11/2012 - GAK	Review Complaint, Answer and Counterclaim filed in District Court action; review Ruby Lakes Arbitration Brief and Motion for Summary Judgment filed by Artemis with supporting exhibits; conference with [REDACTED] [REDACTED]	240.00/hr		NO CHARGE
5/14/2012 - GAK	Work on Opposition to Motion for Summary Judgment filed by Artemis; work on statement of facts as supported by admissible evidence.	240.00/hr		2,088.00
5/15/2012 - GAK	Continue work on Opposition pleading, statement of facts with exhibit references; analysis of documents produced; requests for admissions; begin draft of legal arguments, points and authorities in opposition.	240.00/hr		1,896.00
5/16/2012 - GAK	Prepare for early case conference; participate in case conference.	240.00/hr		192.00
- GAK	Continue work on Exhibits supporting statement of facts for opposition; review again Plaintiff's Motion for Summary Judgment and outline legal arguments made; review and analysis of various provisions of NRS Chapter 116; outline legal arguments in opposition.	240.00/hr		1,248.00
5/17/2012 - GAK	Review deposition transcripts for Mel and Elizabeth Essington and identify statements and admissions to be used in support of opposition arguments; continue review and make note of relevant provisions of Minutes and other documents produced in NRED action.	240.00/hr		912.00
5/18/2012 - GAK	Continue work on opposition to Plaintiffs Motion for Summary Judgment; continue review of documents produced in Nevada Real Estate Division action; edit and expand draft statement of facts in support of arguments in opposition.	240.00/hr		1,656.00
5/19/2012 - GAK	Continue work on legal arguments for Opposition pleading.	240.00/hr		840.00
5/20/2012 - GAK	Work on legal arguments and points and authorities in opposition.	240.00/hr		1,944.00
5/21/2012 - GAK	Legal Research on issues pertinent to our Opposition to Motion for Summary Judgment.	240.00/hr		96.00
5/22/2012 - GAK	Review and respond to e-mail from Lee Perks re: [REDACTED]	240.00/hr		48.00

		Rate	Tax#	Amount
5/22/2012	- GAK Draft additional arguments for opposition pleading, melding with references to Exhibits and statements of fact.	240.00/hr		1,320.00
5/23/2012	- GAK Revise opposition to motion for summary judgment.	240.00/hr		NO CHARGE
	- GAK Continue work on legal arguments and points and authorities, melding with references to statements of fact and exhibits.	240.00/hr		1,680.00
	- GAK Complete first draft of Opposition pleading and edit same; prepare Index of Exhibits; check exhibit references, confirming correct Bates Stamp numbers for Plaintiff and RLE documents previously produced; telephone conference with Robert Wines re: [REDACTED] draft Affidavit of Robert Wines.	240.00/hr		2,040.00
5/24/2012	- GAK Continue revisions to Opposition to Motion for Summary Judgment, including further research; supervise and coordinate affidavits and exhibits.	240.00/hr		1,440.00
	- GAK Telephone conference with Lee Perks, Association President; draft Affidavit of Lee Perks; analysis of additional documents sent by Perks; arrange supplemental production of documents; edit Perks Affidavit; edit and add additional facts and arguments to Opposition pleading.	240.00/hr		2,064.00
5/25/2012	- GAK Review additional documents sent by client and arrange for additional supplemental production to Artemis; review and edit Opposition pleading and add more facts and arguments re: additional documents produced by client; draft argument regarding insufficiency of Essington affidavit per NRCP 56(e); revise and complete first draft of affidavit of attorney Robert Wines; check all Exhibits referenced and to be authenticated by Wines; revise Index of Exhibits; finalize draft of Perks Affidavit based on new evidence; read Opposition pleading and edit exhibit references; proof changes made by legal assistant to Affidavits and Index of Exhibits.	240.00/hr		2,040.00
5/26/2012	- GAK Begin work on cross motion for summary judgment; prepare introduction and background statement; analyze statement of facts in opposition re: what to be necessarily included in statement of facts for cross motion for summary judgment; work on statement of facts in support of arguments for statute of limitations, declaratory relief, and liability founded upon statute.	240.00/hr		1,464.00
5/27/2012	- GAK Continue work on cross Motion for Summary Judgment, abstracting and summarizing relevant facts from opposition pleading with appropriate exhibit references; draft affirmative arguments and points and authorities re:	240.00/hr		2,304.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
	expiration of statute of limitations; failure to state a claim for fraud; failure to state a claim for declaratory relief; failure to state a claim for damages; read through first draft of Motion for Summary Judgment and edit same.			
5/28/2012 - GAK	Review and edit arguments and points and authorities in Motion for Summary Judgment; analysis re: [REDACTED]	240.00/hr		1,824.00
5/29/2012 - GAK	Review and revise motion for summary judgment; conference with Mr. Perks re: [REDACTED]	240.00/hr		1,440.00
	[REDACTED], supervise communication with court about filing a composite of exhibits; review and revise opposition to motion for summary judgment.			
- GAK	Oversee preparation of all exhibits; add additional document references to Index of Exhibits; make revisions to Perks affidavit and submit via e-mail to Lee Perks; make changes to Wines affidavit and submit via e-mail to Robert Wines; edit Opposition pleading and conform argument headings to argument headings in Motion for Summary Judgment; meet with Lee Perks; discuss [REDACTED] proof all edits made by legal assistant in Opposition pleading and Motion for Summary Judgment.	240.00/hr		1,224.00
5/31/2012 - GAK	Prepare Request for Production of Documents to Artemis Exploration Company; revise joint case conference report.	240.00/hr		192.00
6/6/2012 - GAK	Review and respond to request for extension of time to reply to Opposition.	240.00/hr		48.00
- GAK	Review requested changes to the joint case conference report.	240.00/hr		96.00
6/7/2012 - GAK	Travel to office of Lee Perks and review HOA records.	240.00/hr		600.00
6/11/2012 - GAK	Organize documents for supplemental production of documents.	240.00/hr		192.00
6/13/2012 - GAK	Review and finalize the identification of the exhibits.	240.00/hr		144.00
6/14/2012 - GAK	Draft RLEHOA's Second Supplemental Production of Documents Pursuant to NRCP 16.1.	240.00/hr		48.00

		Rate	Tax#	Amount
6/16/2012	- GAK Review Artemis Reply to RLEHOA's Opposition to Motion for Summary Judgment.	240.00/hr		192.00
6/26/2012	- GAK Conference regarding [REDACTED] send e-mail to Mr. Wines.	240.00/hr		120.00
	- GAK Review and analysis of Artemis Opposition to RLEHOA's Motion for Summary Judgment; begin draft of arguments for Reply Brief; telephone call to Lee Perks re: [REDACTED]; telephone call to Robert Wines re: [REDACTED]	240.00/hr		1,872.00
6/27/2012	- GAK Communicate with Mr. Wines [REDACTED]; communicate with Travis Gerber to obtain extension of time for Reply to Opposition to Motion for Summary Judgment.	240.00/hr		240.00
	- GAK Review e-mail from Robert Wines; prepare Affidavit of Stephen Wright; prepare e-mail correspondence to Bob Wines; finalize Affidavit; continue work on arguments and points and authorities for Reply brief to Plaintiffs Opposition.	240.00/hr		2,064.00
6/28/2012	- GAK Continue work on Reply brief and complete first draft, including response to Mrs. Essingtons Affidavit submitted in support of Reply and Opposition; review revised Affidavit of Stephen Wright.	240.00/hr		1,896.00
6/29/2012	- GAK Review Supplemental production of documents; formulate new exhibits; edit Reply brief to incorporate new exhibits and arguments re: same; edit Reply brief.	240.00/hr		1,704.00
7/2/2012	- GAK Revisions to Reply Brief for motion for summary judgment; review of exhibits regarding additional information to provide to court; review of comments in Uniform Common Interest Community Act to incorporate into brief supporting the position of the Association.	240.00/hr		552.00
	- KMA Legal research evidence code and pattern jury instructions re: [REDACTED]	240.00/hr		72.00
	- GAK Review Reply brief filed by Artemis; review and make edits to RLEHOA's Reply to Artemis Opposition to RLEHOA's Motion for Summary Judgment.	240.00/hr		192.00
	- GAK Interoffice conference re: [REDACTED]; review changes made to RLEHOA's Reply brief; review documents produced by Artemis.	240.00/hr		360.00



		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
7/3/2012	- GAK	Finalize brief and all exhibits; prepare request for review and send all to the court for filing and serve all on opposing counsel.		288.00
	- GAK	Locate documents re: [REDACTED] arrange for supplemental production of documents and new exhibit in support of RLEHOA's MSJ; confirm and proof edits made to brief; draft changes to statute of limitations argument re: claims being time barred by NRS 11.190(3)(a).		600.00
7/6/2012	- GAK	Draft Request for Oral Argument; letter to court clerk enclosing same for filing.		48.00
	- GAK	Telephone conference with Bill Harmon re: [REDACTED]		144.00
7/12/2012	- GAK	Review Request for Review and provide same to client.		48.00
7/17/2012	- GAK	Telephone conference with Lee Perks re: [REDACTED]		48.00
7/26/2012	- GAK	Review email with information about additional road work that will be done this summer; follow up on judge's failure to recuse herself; prepare supplement to reply with additional information; provide supplement to 16.1 production of documents.		144.00
	- GAK	Telephone call with Judge's law clerk to schedule conference call re: Judge's former representation of Artemis; relay available dates and times to counsel.		48.00
	- GAK	Draft Fourth Supplemental Production of Documents; and Supplement to RLEHOA's Motion for Summary Judgment.		72.00
7/30/2012	- GAK	Review email from Travis Gerber and the proposed letter to Judge Porter; supervise sending response; Return telephone call to Mike Cecchi [REDACTED]		72.00
8/2/2012	- GAK	Telephone call to Lee Perks, HOA President, re: [REDACTED]		48.00
	- GAK	Attempt call to [REDACTED] prepare e-mail to Lee Perks.		48.00
8/7/2012	- GAK	Prepare Affidavits of Michael Wayne Mason and Shelly Renee Mason; prepare Second Supplement to Exhibits to Motion for Summary Judgment.		216.00

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
8/7/2012	- GAK Prepare Affidavit In Support of request for attorneys fees and costs.	240.00/hr		72.00
8/20/2012	- GAK Return telephone call to Court clerk; draft letter to client.	240.00/hr		96.00
	- GAK Prepare cover sheet for filing original Affidavits of Michael Wayne Mason and Shelly Renee Mason that were filed as RLEHOA's Second Supplement to Exhibits to Motion for Summary Judgment; finalize and send to Court for filing; serve same.	240.00/hr		72.00
	- GAK Prepare letter to clients informing [REDACTED]	240.00/hr		48.00
9/13/2012	- GAK Review order setting hearing on motions for summary judgment.	240.00/hr		48.00
9/21/2012	- GAK Review file stamped order setting hearing on motions for summary judgment; provide same to client.	240.00/hr		48.00
10/5/2012	- GAK Telephone call Mr. Perks; prepare for oral argument on motions for summary judgment.	240.00/hr		840.00
10/9/2012	- GAK Prepare for oral argument; travel to Elko for hearing; meeting with Mr. Perks [REDACTED]	240.00/hr		2,400.00
10/10/2012	- GAK Participate in oral argument; travel to Reno from hearing.	240.00/hr		2,400.00
2/14/2013	- GAK Draft Notice of Entry of Order Denying Plaintiff's Motion for Summary Judgment.	240.00/hr		24.00
	- GAK Review order denying plaintiff's motion for summary judgment; Telephone call client and counsel Bob Wines [REDACTED] draft notice of entry of order; review Chapter 38 provisions for timing of filing a motion for attorney's fees and costs.	240.00/hr		240.00
2/15/2013	- GAK Provide order to Ms. Hackett with [REDACTED] review and respond to email from Mr. Perks, president of the Board.	240.00/hr		96.00
2/19/2013	- GAK Review Order Granting our Motion for Summary Judgment.	240.00/hr		144.00
2/20/2013	- GAK Prepare Notice of Entry of Order Granting Motion for Summary Judgment; draft Motion to Confirm Judgment on Arbitration and Motion for Attorney's Fees and Costs.	240.00/hr		960.00
For professional services rendered		216.60		\$51,288.00

## Additional Charges :

		Qty/Price	Tax#	Amount
3/29/2012	- TG Fourth Judicial District Court - Filing Fee for Answer and Counterclaim	1 198.00		198.00
	- TG UPS Shipping Charges	1 15.42		15.42
3/31/2012	- TG Photocopy Charges	115 0.20		23.00
	- TG Postage Charges	1 3.40		3.40
4/2/2012	- TG UPS Shipping Charges	1 11.00		11.00
4/9/2012	- TG UPS Shipping Charges (1/24/12)	1 15.08		15.08
4/30/2012	- TG Photocopy Charges	47 0.20		9.40
	- TG Postage Charges	1 2.00		2.00
5/29/2012	- TG UPS Shipping Charges (Opposition & Motion to Elko)	1 18.71		18.71
	- TG UPS Shipping Charges (Return of File-Stamped Copies)	1 13.84		13.84
5/30/2012	- TG Fourth Judicial District Court - Filing Fee for Motion for Summary Judgment	1 200.00		200.00
5/31/2012	- TG Photocopy Charges	1,179 0.20		235.80
	- TG Fax Charges	2 0.30		0.60
	- TG Postage Charges	1 9.80		9.80
6/1/2012	- TG LexisNexis - Online Legal Research	1 71.77		71.77
6/14/2012	- TG UPS Shipping Charges (JCCR to Court)	1 15.63		15.63
6/30/2012	- TG Photocopy Charges	1,092 0.20		218.40

Amy B. Hackett

Page 9

		<u>Qty/Price</u>	<u>Tax#</u>	<u>Amount</u>
6/30/2012 - TG	Postage Charges	1 8.41		8.41
7/1/2012 - TG	LexisNexis - Online Legal Research	1 4.27		4.27
7/3/2012 - TG	UPS Shipping Charges	1 16.74		16.74
7/6/2012 - TG	UPS Shipping Charges	1 15.29		15.29
7/27/2012 - TG	UPS Shipping Charges - Filing with Court	1 15.29		15.29
7/31/2012 - TG	Photocopy Charges	196 0.20		39.20
- TG	Postage Charges	1 11.75		11.75
8/13/2012 - TG	UPS Shipping Charges	1 15.02		15.02
8/31/2012 - TG	Photocopy Charges	83 0.20		16.60
- TG	Postage Charges	1 5.00		5.00
9/30/2012 - TG	Photocopy Charges	2 0.20		0.40
10/10/2012 - TG	Best Western - 10/10/12 Hearing	1 212.79		212.79
11/19/2012 - TG	Pilot - Fuel for Travel to 10/10/12 Hearing	1 48.89		48.89
2/20/2013 - TG	Photocopy Charges	22 0.20		4.40
Total costs				<u>\$1,475.90</u>

2 AA000068

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

FILED

2013 MAR 29 PM 12:38  
ELKO CO DISTRICT COURT

3  
4  
5 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF ELKO

7 ARTEMIS EXPLORATION COMPANY, a  
8 Nevada Corporation,

9 Plaintiffs,

10 vs.

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

13 Defendants.

14 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

15 Counterclaimant,

16 vs.

17 ARTEMIS EXPLORATION COMPANY, a  
18 Nevada Corporation,

19 Counterdefendant.

20 STATE OF NEVADA )  
21 ) : ss.  
COUNTY OF WASHOE )

22 I, Gayle A. Kern, being first duly sworn do hereby swear under penalty of perjury as follows:

23 1. I am the attorney representing Ruby Lake Estates Architectural Committee, Ruby  
24 Lake Estates Homeowner's Association, in the above-referenced matter.

25 2. I make this supplemental affidavit of my own personal knowledge except as to those  
26 matters stated on information and belief.

27 3. Additional fees in this matter from February 21, 2013, through March 27, 2013, are  
28 \$2,616.00, and additional costs from February 21, 2013, through March 27, 2013, in the amount

2 AA000069

1 of \$60.24, for a total additional amount of \$2,676.24. A compilation of all supplemental fees and  
2 costs is attached as Exhibit "1".

3 4. Redaction has been made of any privileged communications.

4 5. I have been in practice for over 28 years. I have a general civil practice with an  
5 emphasis on all types of housing associations including condominiums, town homes, landscape  
6 maintenance, single family, master and sub associations and mobile home parks, as well as  
7 litigation, bankruptcy and real property law. I currently serve as counsel to over two hundred  
8 associations throughout Northern Nevada. I provide all aspects of legal services upon request to  
9 my associations including interpretation of governing documents and applicable local, state and  
10 federal laws; guidance and training to Boards of Directors in connection with running a non-profit  
11 common-interest community; developer transition; collection of delinquent assessments; filing and  
12 responding to Intervention Affidavits with the Nevada Real Estate Division; all forms of litigation  
13 including Alternative Dispute Resolution, complaints in front of the Fair Housing Division of HUD,  
14 Small Claims Court, Justice Court, District Court, and the Nevada Supreme Court; and assistance  
15 in collections, liens and foreclosures.

16 6. I lecture regularly for the Ombudsman's office, the Nevada Real Estate Division, and  
17 teach seminars on common-interest community law. I serve on the Community Association  
18 Institute's Legislative Action Committee, which participates in review and comment on legislation  
19 affecting common-interest communities and regulations promulgated by the Ombudsman and  
20 Nevada Real Estate Division. I worked with the Real Estate Division in the development of the first  
21 community manager exam and I am approved by the Real Estate Division to teach classes to  
22 community managers and Board members. I regularly attend CAI's National Law Seminars to keep  
23 apprised of new developments in the industry, not only in Nevada, but throughout the country. I  
24 also serve on the subcommittee for the Common Interest Communities for the Nevada State Bar  
25 Real Estate section.

26 7. The supplemental fees and costs billed in this matter are reasonable and appropriate.  
27 The additional time billed from February 21, 2013 through March 27, 2013, was 10.9 hours, with  
28 an hourly rate of \$240.00, totaling \$2,616.00. Costs from February 21, 2013 through March 27,

1 2013, are itemized in the amount of \$60.24 for an additional amount totaling \$2,676.24.

2 8. My hourly rate is reasonable given my experience practicing law in general and my  
3 experience in practicing in the specialized area of common interest communities, in particular.  
4 Despite my experience and expertise, my hourly rate is lower than rates routinely charged by other  
5 attorneys who practice in this area and/or who do not have the same amount of experience that I  
6 have.

7 9. Based upon all of the above factors, these fees and costs are reasonable and  
8 appropriate and should be awarded.

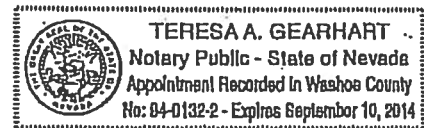
9 DATED this 28<sup>th</sup> day of March, 2013.

10  
11   
12 GAYLE A. KERN

13 SUBSCRIBED AND SWORN to before me

14 this 28<sup>th</sup> day of March, 2013.

15   
16 NOTARY PUBLIC



17 AFFIRMATION

18 Pursuant to NRS 239B.030

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

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

22 KERN & ASSOCIATES, LTD.

23   
24 GAYLE A. KERN, ESQ.  
25 NEVADA BAR #1620  
26 5421 Kietzke Lane, Suite 200  
27 RENO, NEVADA 89511  
28 Telephone: 775-324-5930  
Email: [gaylekern@kernltd.com](mailto:gaylekern@kernltd.com)  
Attorneys for Ruby Lake Estates

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern &  
3 Associates, Ltd., and that on this day I served the foregoing document described as follows:

4 **SUPPLEMENTAL AFFIDAVIT OF GAYLE A. KERN**  
5 **IN SUPPORT OF ATTORNEY'S FEES AND COSTS**

6 on the parties set forth below, at the addresses listed below by:

7   X   Placing an original or true copy thereof in a sealed envelope place for collection and  
8 mailing in the United States Mail, at Reno, Nevada, first class mail, postage paid,  
9 following ordinary business practices, addressed to:

10            Via facsimile transmission

11            Via e-mail.

12            Personal delivery, upon:

13            United Parcel Service, Next Day Air, addressed to:

14 Travis Gerber, Esq.  
15 Gerber Law Offices, LLP  
16 491 4<sup>th</sup> Street  
17 Elko, NV 89801

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

19 *Teresa A. Gearhart*  
20 TERESA A. GEARHART  
21  
22  
23  
24  
25  
26  
27  
28



EXHIBIT “1”

EXHIBIT “1”

Gayle A. Kern, Ltd.  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
[REDACTED]  
[REDACTED]

March 28, 2013

In Reference To: Ruby Lake Estates HOA adv. Artemis Exploration Company

Professional Services

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
2/25/2013	- GAK	Revise and finalize motion for attorney's fees and costs; review and redact privileged statements in the invoices and billing information.	240.00/hr	144.00
3/15/2013	- GAK	Review and respond to email from Mr. Gerber re: his opposition filing.	240.00/hr	48.00
3/20/2013	- GAK	Review opposition to motion for attorney's fees and costs; request extension of time to respond to April 2.	240.00/hr	72.00
3/21/2013	- GAK	Review email about [REDACTED]	240.00/hr	48.00
3/25/2013	- GAK	Work on Reply to Opposition to Motion for Confirmation of Award and Attorney's Fees and Costs.	240.00/hr	1,800.00
3/27/2013	- GAK	Review and revise Reply to Opposition.	240.00/hr	192.00
	- GAK	Revise Reply to Opposition to Motion for Summary Judgment; draft and finalize supplemental affidavit; draft and finalize Supplemental Memorandum of Costs.	240.00/hr	312.00
For professional services rendered			10.90	\$2,616.00

2 AA000074

Additional Charges :

		<u>Qty/Price</u>	<u>Tax#</u>	<u>Amount</u>
2/28/2013 - TG	Photocopy Charges	209 0.20		41.80
- TG	Postage Charges	1 5.44		5.44
3/27/2013 - TG	Photocopy Charges	65 0.20		13.00
Total costs				<u>\$60.24</u>

# EXHIBIT “4”

1 CASE NO. CV-C-12-175

2 DEPT. NO. 2

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

6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF ELKO  
8

9 ARTEMIS EXPLORATION COMPANY,  
10 a Nevada Corporation,

11 Plaintiff,

12 vs.

13 RUBY LAKE ESTATES HOMEOWNER'S  
14 ASSOCIATION, et al., and DOES I-X,

Defendants.

AFFIDAVIT OF GAYLE A. KERN, ESQ.  
IN SUPPORT OF MOTION FOR  
ATTORNEY'S FEES AND COSTS

15 STATE OF NEVADA )  
16 )ss.  
17 COUNTY OF WASHOE )

18 I, Gayle A. Kern, Esq., being first duly sworn do hereby swear under penalty of perjury as  
19 follows:

20 1. I am attorney licensed to practice before all courts of the State of Nevada, and one  
21 of the attorneys of record for Defendant Ruby Lake Estates Homeowner's Association (the  
22 "Association") in the above-referenced matter.

23 2. I make this affidavit of my own personal knowledge except as to those matters  
24 stated on information and belief. I am familiar with the Court's June 6, 2013 award of attorney's  
25 fees and costs to the Association in the total amount of \$82,250.81 and based upon my prior  
26 affidavits submitted in support thereof. I have also reviewed and approved the invoices in this  
27 matter since that date.  
28

1           3.       Since the June 6, 2013 award of attorney's fees and costs, additional fees and costs  
2 have been incurred by the Association in connection with Plaintiff Artemis Exploration  
3 Company's ("Artemis's") declaratory relief claim and the parties' efforts to obtain entry of Final  
4 Judgment consistent with the Court's orders throughout the litigation. The additional amount of  
5 fees through March 18, 2018 fees is calculated to be \$32,101.00 and costs through March 18, 2018  
6 in the amount of \$1,336.33, for a total, additional of amount of \$33,437.33. A compilation of these  
7 additional fees and costs is attached as Exhibit "A" to this affidavit. Substantial effort has been  
8 undertaken to exclude fees and costs specifically incurred to prosecute the Association's now  
9 dismissed Counterclaims and Cross-Claim, including any fees incurred for briefing on the  
10 Counterclaims and Crossclaims. Substantial effort has also been made to identify time spent  
11 preparing for, traveling to Elko, and attending hearings on the cross motions for summary  
12 judgment on the Counterclaims as well as on Artemis's motions for relief from judgment,  
13 reconsideration, and/or for leave to file supplement briefs with respect to the Court's February  
14 2013 Orders. As to those identified time entries, only 1/2 of the fees incurred was included in the  
15 calculation.  
16  
17

18           4.       Redaction has been made of any privileged communications.  
19

20           5.       I have been a practicing attorney in the State of Nevada for approximately thirty-  
21 two (32) years, and have been licensed to practice in the State of California for twenty-nine (29)  
22 years.  
23

24           6.       I have a civil practice with an emphasis on all types of housing associations  
25 including condominiums, town homes, landscape maintenance, single family, master and sub  
26 associations and mobile home parks, as well as litigation, bankruptcy and real property law.  
27

28           7.       I currently serve as counsel to over two hundred (200) associations throughout  
Northern Nevada. I provide all aspects of legal services upon request to my associations including

1 interpretation of governing documents and applicable local, state and federal laws; guidance and  
2 training to Boards of Directors in connection with running a non-profit common-interest  
3 community; developer transition; collection of delinquent assessments; filing and responding to  
4 Intervention Affidavits with the Nevada Real Estate Division; all forms of litigation including  
5 Alternative Dispute Resolution, complaints in front of the Fair Housing Division of HUD, Small  
6 Claims Court, Justice Court, District Court, and the Nevada Supreme Court; and assistance in  
7 collections, liens and foreclosures.  
8

9       8. I lecture regularly for the Ombudsman's office, the Nevada Real Estate Division,  
10 and teach seminars on common-interest community law.

11       9. I serve on the Community Association Institute's Legislative Action Committee,  
12 which participates in review and comment on legislation affecting common-interest communities  
13 and regulations promulgated by the Ombudsman and Nevada Real Estate Division.  
14

15       10. In September 2015 I was inducted as a fellow in the Community Association  
16 Institute's College of Community Association Lawyers.

17       11. I regularly attend CAI's National Law Seminars to keep apprised of new  
18 developments in the industry, not only in Nevada, but throughout the country, and I also serve on  
19 the subcommittee for the Common Interest Communities for the Nevada State Bar Real Estate  
20 section.  
21

22       12. I worked with the Real Estate Division in the development of the first community  
23 manager exam, and I am approved by the Real Estate Division to teach classes to community  
24 managers and Board members.

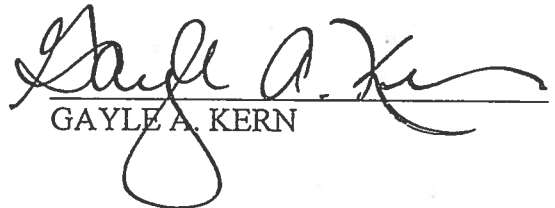
25       13. The fees and costs billed in this matter are reasonable and appropriate. The total  
26 additional time billed from June 6, 2013 through March 18, 2018 described above and as set forth  
27 herein and Exhibit "A" is calculated to be 133.75 hours, at an hourly rate of \$240.00, totaling  
28

1 \$32,101.00. Additional costs through March 18, 2018, itemized in the accompanying  
2 Memorandum of Costs, are in the amount of \$1,336.33, for additional fees and costs due and owing  
3 of \$33,437.33. This amount plus the \$82,250.81 originally awarded by the Court on June 6, 2013,  
4 and which award should also be reinstated, brings the total amount of fees and costs to  
5 \$115,688.14 as of March 18, 2018.  
6

7 14. The hourly rate of my firm is reasonable given my experience practicing law in  
8 general and my experience in practicing in the specialized area of common interest communities.  
9 Despite my experience and expertise, my firm's hourly rate is lower than rates routinely charged  
10 by other attorneys who practice in this area and/or who do not have the same amount of experience  
11 that I have.  
12

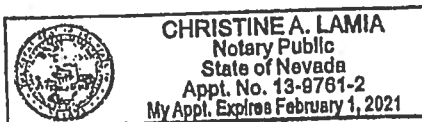
13 15. Based upon all of the above factors, these fees and costs are reasonable, appropriate  
14 and should be awarded.  
15

16 DATED this 19<sup>th</sup> day of March 2018.  
17

18   
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28

SUBSCRIBED AND SWORN to before me  
this 19<sup>th</sup> day of March 2018 by Gayle A. Kern.

  
NOTARY PUBLIC





# EXHIBIT “A”

[REDACTED]

[REDACTED]

[REDACTED]

In Reference To: Ruby Lake Estates, HOA adv. Artemis Exploration Company

Professional Services

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
6/25/2013 -	GAK	Review Notice of No Transcript; draft letter to Gerber pursuant to Rule 9; review Docketing Statement; obtain copy of amended order increasing award of attorney's fees and costs.	240.00/hr	240.00
6/27/2013 -	GAK	Prepare letter to Travis Gerber demanding increased Supersedeas Bond based on Judgment entered on June 6, 2013, and disappointment that he will not discuss settlement.	240.00/hr	96.00
6/28/2013 -	GAK	Prepare Notice of Entry of Order Granting Defendant's Motion for Confirmation of Judgment on an Arbitration Award and Award of Attorney's Fees and Costs; prepare Notice of Entry of Judgment on an Arbitration Award and Award of Attorney's Fees and Costs.	240.00/hr	48.00
7/2/2013 -	GAK	Review and respond to email from [REDACTED] re: [REDACTED]	240.00/hr	48.00
7/11/2013 -	GAK	Return telephone call to Travis Gerber re: settlement of litigation; drat status to [REDACTED]	240.00/hr	168.00
7/17/2013 -	GAK	Review and respond to [REDACTED] from [REDACTED] regarding communication from Travis Gerber.	240.00/hr	48.00
-	GAK	Review notice of filing supplemental supersedeas bond; review supplement to docketing statement; provide copies to client.	240.00/hr	96.00

			<u>Rate</u>	<u>Tax/</u>	<u>Amount</u>
7/23/2013	- GAK	Review and respond to email from client about [REDACTED]			
	- GAK	Draft Updated Notice of Pending Litigation as required by Nevada law.	240.00/hr		48.00
9/9/2013	- GAK	Review email from [REDACTED] regarding settlement; follow up with Mr. Gerber re: previous settlement discussions.	240.00/hr		72.00
			240.00/hr		NO CHARGE
10/7/2013	- GAK	Review order of court regarding appeal; supervise sending to [REDACTED]	240.00/hr		120.00
10/9/2013	- GAK	Telephone call from Travis Gerber re: status of matter; discussion of order by the Supreme Court and appendix; raised issue of settlement.	240.00/hr		72.00
10/11/2013	- GAK	Review email from Travis Gerber as to his view of the Supreme Court order and begin analysis of response.	240.00/hr		144.00
10/14/2013	- GAK	Telephone call from Travis Gerber and long conference about further action and his client's refusal to discuss settlement at all.	240.00/hr		144.00
10/30/2013	- GAK	Review email from Mr. Gerber re: notice of withdrawal of appeal in response to court's order; draft response as to its acceptability and acknowledgment that we will be proceeding in the district court to obtain complete resolution to all remaining claims.	240.00/hr		144.00
11/14/2013	- GAK	Review and respond to email from [REDACTED]	240.00/hr		48.00
11/17/2013	- KMA	Initial review and evaluation of pleadings, motion to confirm arbitration award; judgment confirming arbitration award and inclusion of additional fees and costs upon request	240.00/hr		144.00
11/18/2013	- KMA	Review cross motions for summary judgment as to validity of association, court's order granting associations motion for summary judgment; evaluate necessity of [REDACTED]	240.00/hr		360.00
11/19/2013	- KMA	[REDACTED]			

[REDACTED]

[REDACTED]

		Rate	Tax#	Amount
12/2/2013 - GAK	Review motions for reconsideration and motion for summary judgment; Telephone call Travis Gerber re: extension to respond; draft confirming email.	240.00/hr		120.00
12/17/2013 - KMA	Initial review of Artemis Motion for Relief from Judgement and Motion for Summary Judgment; telephone call to counsel's office re: opposition date; review local rules re: [REDACTED] [REDACTED] review and evaluate [REDACTED] supplement of [REDACTED] of [REDACTED] email to Artemis counsel re: date for filing of opposition.	240.00/hr		<del>\$ 120</del> -240.00
12/19/2013 - KMA	Further evaluation of motion for relief from judgment or order under NRCP 60(b) due to alleged error in confirming arbitration award from "non-binding arbitration"; reevaluate Supreme Court order re: same and in applicability of statutory provisions for confirmation of awards of non-binding arbitration with subsequent district court action; research and review Chapter 38 provisions re: applicability of statutes on confirmation of arbitration award at district court level.	240.00/hr		192.00
12/20/2013 - KMA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12/28/2013 - KMA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/2/2014 - KMA	Continued work on draft opposition to motion for relief and motion for summary judgment, draft of undisputed facts.	240.00/hr		<del>\$ 144</del> -288.00
1/3/2014 - KMA	Continued preparation of draft opposition to motion to set aside and motion for summary judgment; revise arguments in relation [REDACTED] [REDACTED] evaluate [REDACTED]	240.00/hr		<del>\$ 600</del> -240.00

[REDACTED]

[REDACTED]

Rate    Tax#    Amount

[REDACTED]  
[REDACTED] research [REDACTED]  
[REDACTED] review procedural  
rules as specific basis for entry of judgment following  
order granting summary judgment [REDACTED]  
[REDACTED]

1/4/2014 - KMA

[REDACTED]

[REDACTED]

[REDACTED]

1/6/2014 - KMA

[REDACTED]

[REDACTED]

[REDACTED]

- KMA

[REDACTED]

[REDACTED]

[REDACTED]

1/7/2014 - KMA

[REDACTED]

[REDACTED]

[REDACTED]

1/8/2014 - GAK

Review and revise opposition to motion for relief from  
judgment and to summary judgment; review [REDACTED]  
[REDACTED] and analyze [REDACTED]

240.00/hr

\$168<sup>00</sup>  
336.00

- KMA

Additional revisions to Opposition; follow-up legal  
research regarding [REDACTED]  
[REDACTED] draft proposed Judgment.

240.00/hr

\$240<sup>00</sup>  
480.00

- AAD

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Rate Tax# Amount

for Summary Judgment and provide revisions to affidavits that will be filed in support of the opposition to the motions.

1/9/2014 - KMA Additional revisions to Opposition, Affidavits, proposed Judgment, in preparation for filing with the Court; final citation check of authorities, minor revisions re: cited authorities; finalized Oppositions [REDACTED]

240.00/hr

\$300<sup>00</sup>  
-600.00

- GAK Review proposed Stipulation; telephone call with Mr. Gerber; execute documents for Opposition.

240.00/hr

168.00

- CAL Finalize Second Supplemental Memorandum of Costs and Opposition to Artemis Exploration Company's Motion for Relief from Judgment or Order (NRCP 60(b)) [REDACTED]

140.00/hr

98.00

[REDACTED] draft filing letter to Court Clerk to enclose in overnight package with pleadings; email copies of all to opposing counsel.

1/10/2014 - GAK Return telephone call to Travis Gerber.

240.00/hr

48.00

1/13/2014 - KMA [REDACTED]

[REDACTED]

[REDACTED]

- CAL [REDACTED]

[REDACTED]

[REDACTED]

1/14/2014 - GAK Telephone call from Travis Gerber re: pleadings and documents on file.

240.00/hr

48.00

1/15/2014 - KMA [REDACTED]

[REDACTED]

[REDACTED]



		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
				<del>\$24.00</del>
3/6/2014 - KMA	Several telephone calls with Judicial Executive Assistant (Stefanie Pattani) for Judge Kacin in Elko County to coordinate a date and time for [REDACTED] hearings.	240.00/hr		<del>48.00</del>
3/7/2014 - KMA	Review message from judge's chambers re: oral argument required by court, provide date re: same.	240.00/hr		<del>\$12.00</del> <del>24.00</del>
3/10/2014 - KMA	Receive and review Order Setting Hearing from the Court; email client a copy of same to advise of the hearing on May 28, 2014.	240.00/hr		<del>48.00</del> <del>\$12.00</del>
3/17/2014 - KMA	[REDACTED]			
3/27/2014 - KMA	Telephone conference with [REDACTED] to confirm [REDACTED] the May 28, 2014 hearing in Elko on the counter Motions for Summary Judgment.	240.00/hr		<del>\$24.00</del> <del>48.00</del>
3/28/2014 - KMA	[REDACTED]			
5/26/2014 - KMA	Review and evaluate prior briefing of first motion for summary judgment, court orders granting Ruby Lakes MSJ, subsequent judgment fees and costs award, supreme court order to show cause; begin preparation for oral argument in Elko on Artemis motion for relief under Rule 60(b), counter motions for summary judgment on Rule Lakes' counterclaims.	240.00/hr		<del>600.00</del> <del>\$300.00</del>
5/27/2014 - KMA	Continued preparation for oral argument on motion for relief from judgment, and counter motions for summary judgment; telephone conference with local counsel Bob Wines re: same, briefs, and particular [REDACTED] [REDACTED] telephone conference with [REDACTED] re: oral argument [REDACTED] outline for oral argument, exhibit references for court.	240.00/hr		<del>1,560.00</del> <del>\$780.00</del>
- KMA	Prepare oral argument binders for hearing on May 28, 2014, including pleadings, rules, exhibits, research, etc.	240.00/hr		<del>\$60.00</del> <del>120.00</del>
5/28/2014 - KMA	Completed preparation for oral argument on motion for relief and counter motions for summary judgment; travel to Elko to Reno and back for oral argument; conference with [REDACTED]	240.00/hr		<del>3,120.00</del> <del>\$1,560.00</del>

[REDACTED]

[REDACTED]

		Rate	Tax#	Amount
	[REDACTED] attended oral argument before Judge Kacin in Elko.			
5/29/2014 - KMA	Telephone conference with [REDACTED] re [REDACTED] [REDACTED]	240.00/hr		<del>246.00</del> \$108.00
6/3/2014 - KMA	Review proposed order for release of costs bond from opposing counsel; preparation of status email to [REDACTED] and on motion for relief and counter motions for summary judgment; revise and finalize status report.	240.00/hr		<del>744.00</del> \$72.00
6/17/2014 - KMA	Receive and review conformed Order Releasing Cost Bond & Supersedeas Bonds from the Court; [REDACTED]	240.00/hr		24.00
8/12/2014 - KMA	Status update and review information from court clerk re: potential decision from court, still under submission and pending.	240.00/hr		24.00
12/8/2014 - KMA	Exchange emails with [REDACTED] re: status [REDACTED]	240.00/hr		24.00
1/20/2015 - GAK	Review Second Request for Review filed by the Plaintiff; [REDACTED]	240.00/hr		48.00
3/27/2015 - KMA	Review information from Judge Kacin assistant as to time line for written decision on motions; email to [REDACTED]	240.00/hr		72.00
4/20/2015 - KMA	Review and evaluate order granting motion for relief; reevaluate articulated basis in order re: relief under 60(b)(4) judgment void for lack of subject matter jurisdiction; reevaluate [REDACTED] by [REDACTED] [REDACTED] reevaluate [REDACTED] status [REDACTED] email/report to [REDACTED] forthcoming orders on [REDACTED] [REDACTED]	240.00/hr		<del>408.00</del> \$204.00



[REDACTED]

[REDACTED]

		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
	[REDACTED]			
5/19/2015 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
5/26/2015 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
5/28/2015 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
6/1/2015 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
6/8/2015 - KMA	Initial review and evaluation of Motion for Reconsideration of court's prior order granting summary judgment in favor of Association and Motion for Leave to file supplement to on motion for summary judgment on remaining counterclaims; evaluate [REDACTED]	240.00/hr		288.00
6/15/2015 - KMA	Status email to [REDACTED] re: [REDACTED] [REDACTED] review [REDACTED] [REDACTED] revise and finalize [REDACTED]	240.00/hr		192.00
6/19/2015 - KMA	Reevaluate motions for reconsideration and leave to file supplemental brief; review [REDACTED] re: [REDACTED] [REDACTED] review [REDACTED]	240.00/hr		1,200.00

			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
		oppositions to motions for reconsideration and leave to file supplemental brief.			
6/21/2015 - KMA	Continued draft of opposition to motion for leave to supplement briefing and motion for reconsideration; review [REDACTED] further revisions to oppositions.		240.00/hr		816.00
6/22/2015 - KMA	Further revisions to oppositions to motion for supplemental briefing and motion for reconsideration, finalize and [REDACTED] filing of signature copy with court with overnight delivery of original; follow up email to [REDACTED] re: [REDACTED]		240.00/hr		528.00
6/23/2015 - KMA	Telephone conference with Artemis counsel office re: date of reply; email re: same and requesting email copy of filed reply.		240.00/hr		48.00
- KMA	[REDACTED]				
6/25/2015 - KMA	Emails from [REDACTED] re: [REDACTED] documents for exhibit; email to [REDACTED] re: [REDACTED] latest motions filed by Artemis, association opposition thereto, inquiry as to status of [REDACTED] revise and finalize status email; review additional documents [REDACTED]		240.00/hr		360.00
6/26/2015 - KMA	Continued review and compilation of [REDACTED] for exhibit for court; review [REDACTED] email to [REDACTED] re: [REDACTED] on roster.		240.00/hr		312.00
6/29/2015 - KMA	[REDACTED]				

[REDACTED]

[REDACTED]

Rate    Tax#    Amount

[REDACTED]

6/30/2015 -

[REDACTED]

[REDACTED]

[REDACTED]

7/1/2015 -

[REDACTED]

[REDACTED]

[REDACTED]

9/21/2015 - KMA    Review and evaluate order from Judge Kacin re: joinder of parties to declaratory relief counterclaim and declaratory relief complaint; status update re: further proceedings; potential letter to all owners with disclaimer/opt in/opt out forms.

240.00/hr

120.00

9/28/2015 - KMA    Reevaluate order re: joinder of necessary parties; draft of status email/report [REDACTED]

240.00/hr



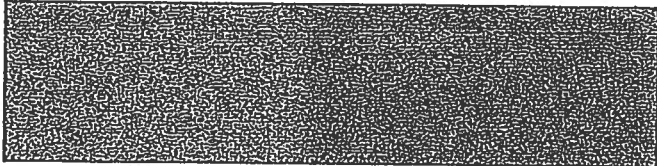

696.00

[REDACTED] email to [REDACTED] status and necessity of discussion re: same; revise draft letter to all owners re: court's joinder, acceptance of service of order, etc; revise acceptance of service forms; email to [REDACTED]; telephone conference with [REDACTED], re: order, proceedings going forward; reevaluate "acceptance of service", "disclaimer"; conference with [REDACTED] maintenance, access for first responders, brush clearance [REDACTED]; follow up email to [REDACTED]



			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
		[REDACTED]: review Rule 20 re: permissive joinder, party alignment.			
9/29/2015	- GAK	Review and revise proposed documentation to send to membership.	240.00/hr		144.00
	- KMA	Conference with [REDACTED] joinder order, further proceedings in relation thereto; telephone conference with [REDACTED]: same, [REDACTED] [REDACTED] review itemization as to functions carried out by Association and assessments for same; draft of proposed declaration for owner review; draft of letter to owners re: same; revisions to declaration and letter, and finalized draft of same for review.	240.00/hr		408.00
9/30/2015	- KMA	Final revisions to proposed letter and declaration; email to [REDACTED]	240.00/hr		72.00
10/1/2015	- KMA	Review email from Lee Perks re [REDACTED] review Chapter 116 provisions re: [REDACTED] requirements; response email [REDACTED]	240.00/hr		96.00
10/5/2015	- KMA	Follow up email to [REDACTED] status of draft letter and proposed declaration to owners.	240.00/hr		24.00
10/6/2015	- KMA	Review email from [REDACTED] in response to status report, request to update ongoing status.	240.00/hr		24.00
10/7/2015	- KMA	Exchange emails with [REDACTED] status; meeting with [REDACTED] re: [REDACTED], joinder order [REDACTED] [REDACTED] [REDACTED] proceedings going forward to comply with court's joinder order; begin revisions [REDACTED] email opposing counsel re: suggested conference time; telephone conference with Ms. Kern, opposing counsel re: joinder order, proposals for compliance with same, procedural issues, potential stipulation to amend complaint, answer, counterclaim and cross claim, provisions of stipulations re: not changes to prior rulings, procedural status of parties, potential telephone conference with court; email to [REDACTED] re: follow up discussions.	240.00/hr		648.00
	- GAK	Conference call with the Gerber Law Firm regarding the court's order	240.00/hr		300.00
10/8/2015	- KMA	Conference with [REDACTED] re: [REDACTED] [REDACTED] of stipulation to file amended complaint, join owners as defendants and cross claimants, [REDACTED] [REDACTED]	240.00/hr		240.00



		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
	 and final judgment as to declaration Ruby Lakes as 116 association and award of attorney's fees and costs.			
10/9/2015 - KMA	Review owner roster and amend caption to include owners as defendants and cross defendants.	240.00/hr		120.00
10/20/2015 - KMA	Email to Artemis counsel re: status of proposed stipulation for joinder as discussed in telephone conference; follow up email to  re: same.	240.00/hr		96.00
10/22/2015 - KMA	Review and exchange emails to Travis Gerber re: amended caption, amended complaint, draft joint letter, proposed stipulation and order; email to Gerber re: amended caption; initial review proposed letter.	240.00/hr		168.00
11/4/2015 - KMA	Review draft of joint letter to lot owners; revisions to same.	240.00/hr		120.00
11/5/2015 - KMA	Review proposed amended complaint; revise prior answer and counterclaim as amended answer, counterclaim, and cross claim as to declaratory relief claim; review email from Lee Perks re: status and response thereto; additional revisions to draft letter to owners and finalized draft of amended answer, counterclaim and cross claim; email to Lee Perks re: same and forthcoming stipulation for review; continued work on draft stipulation.	240.00/hr		336.00
11/6/2015 - KMA		240.00/hr		240.00
11/7/2015 - KMA	Review chronology of case, pleadings, and draft Stipulation to Amend Pleadings and Join Parties Pursuant to Court's Order re: Joinder filed September 11, 2015; redraft and revise same, additional language re: no abrogation, nullification, etc. of rulings to date including order granting summary judgment in favor of Association.	240.00/hr		336.00
11/9/2015 - KMA	Confirm referenced pleading and order dates for inclusion in proposed stipulation; revise and finalize same for forwarding to 	240.00/hr		144.00
11/12/2015 - KMA	Review and exchange emails with Lee Perks re: stipulation, timeframe for same and sending out of joint letter; email to Artemis counsel re: same, potential telephone conference with judge on stipulation.	240.00/hr		72.00



		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
11/19/2015 - GAK	Review and revise proposed letter to owners.	240.00/hr		120.00
11/23/2015 - KMA	Email from Artemis counsel re: status of joint letter and stipulation; response email re: same.	240.00/hr		48.00
11/24/2015 - KMA	Revise proposed stipulation and order re: language as to issue re: Ruby Lake Estates as Chapter 116 common interest community consistent with joint letter to owners; email to Artemis counsel with proposed SAO and letter; review and respond to emails re: same; revise joint letter to include Artemis will be appealing final judgment to Supreme Court; follow up email re: same.	240.00/hr		216.00
12/3/2015 - KMA	Review email from Travis Gerber re: SAO, evaluate suggested changes thereto.	240.00/hr		48.00
12/8/2015 - KMA	Reevaluate proposed language from Artemis counsel re: language of stipulation, questions as to draft amended answer, exhibits to amended complaint.	240.00/hr		72.00
12/15/2015 - KMA	Exchange emails with Artemis counsel re: status; reevaluate requested revisions and; revise SAO re: specific identification of orders and initial revision to draft Answer to First Amended Complaint re: exhibits; email to Gerbers re: same, forthcoming revised Answer.	240.00/hr		240.00
12/16/2015 - KMA	Review and compare original complaint, proposed first amended complaint, and exhibit references; revise proposed answer to First Amended Complaint, include response/reference as to exhibits; finalize same for forwarding to opposing counsel in conjunction with Stipulation to Amend in compliance with Joinder Order; follow up email to opposing counsel re: revisions, comments thereto.	240.00/hr		336.00
12/17/2015 - KMA	Review and evaluate response email from Artemis counsel re: language of stipulation as over inclusive re: filing of First Amended Complaint and Amended Answer.	240.00/hr		48.00
12/18/2015 - KMA	Review email from [REDACTED] re: [REDACTED] response email [REDACTED] re: same, [REDACTED] [REDACTED]	240.00/hr		96.00
12/21/2015 - KMA	Review follow up email from Artemis counsel; reevaluate SAO language; further revisions to language re: pleadings, amendments, compliance with Joinder Order; email to Artemis counsel re: same.	240.00/hr		240.00
1/4/2016 - KMA	Review email from Artemis counsel re: stipulation, setting up of phone conference with judge.	240.00/hr		24.00

[REDACTED]

[REDACTED]

			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
1/6/2016	- KMA	Email [REDACTED] Stipulation and Order to join parties; email to Artemis counsel re: same.	240.00/hr		72.00
1/12/2016	- KMA	Review email from Gerber re: submission of SAO to court and request for telephone conference.	240.00/hr		24.00
1/14/2016	- KMA	Email from [REDACTED] review roster and amended caption re: same; correct same per proposed Amended Answer; email to Artemis counsel re: same and copy of corrected caption, inquiry as to status of SAO and attempts to set up telephone conference with Court; response email; revise SAO with corrected caption, email to Artemis counsel re: same; forward original amended SAO with corrected caption to counsel for submission; [REDACTED] copy of amended caption.	240.00/hr		336.00
1/15/2016	- KMA	Telephone conference with [REDACTED]	240.00/hr		72.00
1/19/2016	- KMA	Telephone conference with court clerk and Artemis counsel to schedule phone conference on stipulation and order to comply with joinder order of other property owners.	240.00/hr		48.00
1/29/2016	- KMA	Email update to [REDACTED]	240.00/hr		24.00
2/5/2016	- KMA	Telephone conference with Judge Kacin and Artemis counsel re: the proposed SAO for compliance with joinder order.	240.00/hr		192.00
2/16/2016	- KMA	Review emails from Artemis counsel and signed stipulation and order re: joinder; response email coordinating filing of amended pleadings, service, and letter to owners.	240.00/hr		72.00
2/17/2016	- KMA	Exchange further emails with Artemis counsel re: coordination of filing amended pleadings, service, letters to owners.	240.00/hr		24.00
3/1/2016	- KMA	Initial review letter, packet, summonses, and acceptances of service from Artemis counsel for sending out of joint letter to owners along with amended complaint; answer, counterclaim, and cross claim per court's joinder order.	240.00/hr		72.00
3/4/2016	- KMA	Finalize joint letter, confer with [REDACTED] re: [REDACTED], coordination of same with Artemis counsel for mailing, email counsel.	240.00/hr		96.00



		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
3/4/2016	- KMA	Review, approve, finalize email to Artemis counsel re: joint letter to owners, filing of amended pleadings, and re: packages to send to owners requesting acceptance of service.	240.00/hr	48.00
3/7/2016	- KMA	Emails with [REDACTED]; further coordinate details re: preparing joint letter for mailing to owners.	240.00/hr	72.00
3/8/2016	- KMA	Finalized answer to first amended complaint, send for filing with court, review owner roster and coordinate addresses on joint letter to same; telephone conference with Lee Perks re: status, judge sign off on SAO but with changes, potential timeline for packets to go out to owners, owners who might participate vs. those who will not, potential further briefing on Ruby Lake pending MSJ on counterclaim for declaratory relief depending on participation of other owners.	240.00/hr	192.00
3/11/2016	- KMA	Check status of filing of First Amended Complaint, status of mailing and filing of answer to same; preparation of status report [REDACTED] revise and finalize.	240.00/hr	312.00
3/17/2016	- KMA	Review prior transmittal to court and status update from court clerk on filing of answer to First Amended Complaint, mailing, and anticipated receipt of same for completion of packages to property owners.	240.00/hr	NO CHARGE
3/24/2016	- KMA	Review documents and organize packets to send to homeowners; review Acceptances of Service and evaluate issues as to same, necessity to include service of Answer and Cross claim; telephone conference with Zach Gerber requesting inclusion of same in Acceptances of Service.	240.00/hr	192.00
4/1/2016	- KMA	Review status of mailings to all property owners; confirm list of owners in caption; telephone conferences with [REDACTED] re: [REDACTED]; amend caption for SAO to file second amended complaint with new owners identified, answer to second amended complaint; telephone conference with Zach Gerber re: same, follow up email; additional telephone conference with Zach Gerber re: stipulation to amend; follow up email re: same; prepare SAO to amend to include four additional owners; exchange additional emails re: amended captions on summonses and acceptances.	240.00/hr	408.00
4/4/2016	- KMA	Exchange further emails with Artemis counsel re: SAO to amend caption, logistics for same, for filing second amended Complaint, answer to same, and mailing to property owners.	240.00/hr	168.00







		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
	finalizing letter; review response email re: same and additional changes; review email from [REDACTED] and follow up response re: [REDACTED]			
5/12/2016 - KMA	Review answer to Counterclaim (per follow up with Joinder Order); review emails confirming receipt of acceptance of service by Dennis Cunningham.	240.00/hr		48.00
5/16/2016 - KMA	Exchange emails with Artemis counsel's office re: ongoing status of receipt of acceptances of service; emails with Lee Perks re: updated phone numbers.	240.00/hr		72.00
5/18/2016 - KMA	Review answer filed by Harold and Mary Wyatt; email Artemis counsel re: status of acceptances, any other filed answers, request confirmation in writing no further briefing; follow up email [REDACTED]; review response from Artemis counsel re: remaining owners to obtain acceptance or service; response email as to same, verify filing of answer only on behalf of Wyatts.	240.00/hr		168.00
5/23/2016 - KMA	Initial review and evaluate of requests for production and interrogatories re: road maintenance, other maintenance, common expense; email re: owners left to receive acceptances vs. attempt service.	240.00/hr		96.00
5/31/2016 - KMA	Telephone conference with [REDACTED] re: new discovery requests, [REDACTED] time [REDACTED] of [REDACTED] telephone conference with Artemis counsel re: new discovery requests, reasons therefore, timeline, status of service on owners; follow up email.	240.00/hr		240.00
6/1/2016 - KMA	Review certificate of service from court re: letter sent in by owners Phil and Dorothy Frank; review status emails re: additional acceptances and/or personal service on remaining owners.	240.00/hr		48.00
6/6/2016 - KMA	Email from [REDACTED] telephone call to [REDACTED] re: [REDACTED] review emails from Gerber office re: same.	240.00/hr		96.00
6/8/2016 - KMA	Telephone conference with [REDACTED] re: [REDACTED] status of service on other owners; email to Artemis counsel re: lack of updated address for owner Dibona; review email re: same; preparation of request for updated address for Dibona USPS.	240.00/hr		168.00
6/9/2016 - KMA	Attempts to reach last owners re: acceptances of service, status of suit.	240.00/hr		72.00

[REDACTED]

[REDACTED]

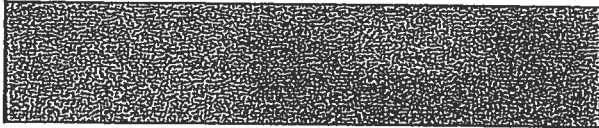


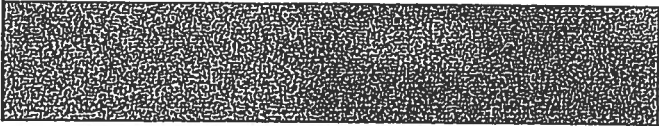





			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
6/10/2016	- KMA	Email from Gerbers re: additional efforts to track down the Dibonas; response email re: same, potential need to serve by publication, and calls to owners Gowan and Teitlebaum.	240.00/hr		48.00
6/16/2016	- CAL	Receive and review email from attorney Gerber regarding status of homeowners that have still not returned the Acceptance of Service ("AOS") Dibonas, Cecchi and Teitlebaum; receive and review email from attorney Gerber advising that Michael Gowan had signed and returned the AOS and that Mary Gowan is due to come into the office to sign her AOS; telephone call from Beth Teitlebaum to advise that she is signing the AOS today and mail back before she leaves the country; email to attorney Gerber to update on telephone conversation with Ms. Teitlebaum and that the Postmaster search came back with no new information.	240.00/hr		120.00
6/20/2016	- KMA	Status conference [REDACTED] re: service on homeowners, compare prior list to determine remaining owners to serve.	240.00/hr		72.00
7/12/2016	- KMA	Email from [REDACTED] re: [REDACTED] new [REDACTED] response email re: [REDACTED] email to Artemis counsel re: request for additional time, status of defaults, new property owner.	240.00/hr		72.00
7/13/2016	- KMA	Additional emails with Artemis counsel re: extension on discovery requests; email to [REDACTED] [REDACTED]	240.00/hr		48.00
7/15/2016	- KMA	Emails with Gerbers re: status of acceptances, SAO to include new owner; follow up email [REDACTED] acceptance as to owner Cecchi.	240.00/hr		72.00
7/25/2016	- KMA	Follow up email [REDACTED] re: status of acceptance of service by Mr. and Mrs. Cecchi.	240.00/hr		24.00
7/26/2016	- KMA	Email to [REDACTED] re: status of service on owners Mr. and Mrs. Cecchi.	240.00/hr		NO CHARGE
7/27/2016	- KMA	Telephone conference with owner Mike Cecchi; follow up email to [REDACTED] email to Artemis counsel re: necessity of personal service on Cecchis.	240.00/hr		432.00
7/28/2016	- KMA	Exhcnage emails re: personal service on Cecchis.	240.00/hr		24.00
	- KMA	Emails with Artemis counsel re: status, coordinate personal service on Cecchis.	240.00/hr		72.00

[REDACTED]

[REDACTED]

			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
8/4/2016	-	KMA	Email to Artemis counsel re: additional time on discovery requests.	240.00/hr	48.00
8/8/2016	-	KMA	Status update on personal service of Cecchis; meeting [REDACTED] re: documents for discovery requests.	240.00/hr	72.00
8/11/2016	-	KMA	Review affidavits of service on Cecchis; follow up email re: filing of same.	240.00/hr	48.00
9/2/2016	-	KMA	Review email from [REDACTED] and brief status report [REDACTED]	240.00/hr	72.00
9/6/2016	-	KMA	Review email from Artemis counsel re: status of filed acceptances of service, timeline for filing defaults, SAO to remove McGowan from caption due to quitclaim, and add new owner; response email re: same.	240.00/hr	48.00
9/16/2016	-	KMA	Review and revise proposed stipulations on entry of default, add new owner as party, dismiss Mary Ann McGowan due to sale of interest in property; draft email to Artemis counsel re: same.	240.00/hr	96.00
9/19/2016	-	KMA	Email to Zach Gerber re: SAO and application for entry of default.	240.00/hr	48.00
10/4/2016	-	KMA	Review email from Zach Gerber re: status of defaults.	240.00/hr	24.00
10/5/2016	-	KMA	Exchange emails with Zach Gerber re: status as to defaults, remaining service on new owner.	240.00/hr	48.00
10/6/2016	-	KMA	Exchange additional emails with Gerber on serving new owner; [REDACTED]	240.00/hr	48.00
10/7/2016	-	KMA	Review request to take default of joined parties, declaration in support of same, entered default; notice of intent as to defendant Frank, necessity of serving new owner Johnson.	240.00/hr	72.00
10/20/2016	-	KMA	Review email from Zach Gerber rejoinder in briefing by Wyatt; determination of service on new owner Johnson, any response to joinder; [REDACTED]	240.00/hr	72.00
10/21/2016	-	KMA	Telephone conferenc with Zach Gerber re: status, need for service on David Johnson, joinder of Wyatts, mutual agreement of not wanting further briefing schedule by Judge; potential timeline for completion of defaults and resubmission of motions to judge for decision.	240.00/hr	96.00



		<u>Rate</u>	<u>Tax/</u>	<u>Amount</u>
10/25/2016 - KMA	Exchange emails with Zach Gerber re: status of service on remaining property owner.	240.00/hr		24.00
10/27/2016 - KMA	Exchange emails with Zach Gerber re: service on new owner Johnson; potential acceptance of same.	240.00/hr		24.00
11/7/2016 - KMA	Telephone call to owner David Johnson; emails with Zach Gerber re: efforts to get in touch with Mr. Johnson to accept service.	240.00/hr		48.00
11/16/2016 - KMA	Attempts to reach owner Johnson; email update to Zach Gerber.	240.00/hr		48.00
- KMA	Telephone conference with attorney David Johnson, advised trustee for owner trust of property, ownership interest conveyed to various beneficiaries, recorded deed in September.	240.00/hr		48.00
11/17/2016 - KMA	Exchange emails with Zach Gerber re: new lot owners, service of same.	240.00/hr		48.00
11/18/2016 - KMA	Review email from Zach Gerber re: conveyance to Van Der Meer Trust beneficiaries, last owners to join to action, inquiry as to means to contact.	240.00/hr		48.00
11/22/2016 - KMA	Telephone conference with Zach Gerber re: status of service, death of owner Van De Meer, joinder of Wyatts in prior motions, necessity of brief response to same, SAOs to amend caption to remove David Johnson in light of information re: trustee of Van De Meer Trust, and to resubmit motions for decision.	240.00/hr		96.00
12/3/2016 - KMA				
12/5/2016 - KMA	Evaluate proposed stipulations forwarded by Gerber; email to Zach Gerber re: same.	240.00/hr		48.00
- KMA	Re: review and revise proposed stipulation and order re: defendant Johnson and to submit for decision by court.	240.00/hr		72.00
12/6/2016 - KMA				
12/11/2016 - KMA				

[REDACTED]

[REDACTED]

		Rate	Tax#	Amount
12/12/2016 - KMA	Exchange emails with Amy Hacket re: status of service, re: submission of motions for decision by Judge Kacin; email to Zach Gerber re: Joint Request for Review, SAO [REDACTED] revise and finalize response to joinder.	[REDACTED]		[REDACTED]
12/14/2016 - KMA	Review and approve letters to court and opposing counsel re: response to joinder, stipulation to submit for decision.	240.00/hr		72.00
12/21/2016 - KMA	Review email from Gerber, and Reply to RLEHOA Response to Joinder.	240.00/hr		NO CHARGE
1/6/2017 - KMA	[REDACTED]	[REDACTED]		[REDACTED]
1/31/2017 - KMA	Review and evaluate emails with [REDACTED] re: snow removal issues. [REDACTED] response [REDACTED] re: same.	240.00/hr		144.00
3/10/2017 - KMA	Telephone conference with Zach and Travis Gerber re: upcoming oral argument.	240.00/hr		72.00
3/13/2017 - KMA	Exchange additional emails with [REDACTED] re: status, upcoming hearing in Elko; exchange additional emails with [REDACTED] re: [REDACTED]	240.00/hr		<del>72.00</del> \$ 36.00
3/14/2017 - KMA	Review order from court setting oral argument for cross motions for summary judgment on remaining counterclaims, Artemis motion for leave to file supplement to motion for summary judgment and motion for reconsideration of prior order granting Association's motions for summary judgment; email to [REDACTED] and [REDACTED]	240.00/hr		<del>120.00</del> \$ 60.00
4/28/2017 - KMA	Review latest pleadings and organize to begin preparation for oral argument in Elko; review prior outlines; telephone call to Lee Perks re: upcoming hearing.	240.00/hr		<del>240.00</del> \$ 113.00
- KMA	Confer with [REDACTED] hearing [REDACTED]	240.00/hr		<del>240.00</del> \$ 48.00
4/30/2017 - KMA	Review prior [REDACTED] hearing, issues raised as to reconsideration, compare/contrast [REDACTED] in preparation for upcoming hearing; review overall [REDACTED] all owners joined, [REDACTED]	240.00/hr		<del>120.00</del> \$ 60.00

[REDACTED]

[REDACTED]

		Rate	Tax#	Amount
	[REDACTED] evaluate [REDACTED] for hearing, [REDACTED]			
5/1/2017 - KMA	Travel to Elko for hearing before Judge Kacin; further evaluate issues re: [REDACTED] [REDACTED] reconsideration of prior ruling.	240.00/hr		<del>1,200.00</del> \$600.00
5/2/2017 - KMA	Prepare for hearing before Judge Kacin on cross motions for summary judgment, motion for reconsideration, motion for leave to file supplemental briefs; attend hearing before Judge Kacin; confer with [REDACTED] [REDACTED] return travel from Elko.	240.00/hr		<del>2,640.00</del> \$1,320.00
5/3/2017 - KMA	[REDACTED]			
7/20/2017 - KMA	[REDACTED]			
8/9/2017 - KMA	[REDACTED]			
11/2/2017 - KMA	Review letter from Judge Kacin's law clerk re: status of decision; review [REDACTED] updated status email [REDACTED]	240.00/hr		<del>1,140.00</del> \$720.00
12/12/2017 - KMA	[REDACTED]			
12/13/2017 - KMA	[REDACTED]			
- GAK	[REDACTED]			
- KMA	[REDACTED]			

			Rate	Tax#	Amount
12/14/2017 - KMA	[REDACTED]		[REDACTED]		[REDACTED]
12/15/2017 - KMA	[REDACTED]		[REDACTED]		[REDACTED]
12/18/2017 - KMA	[REDACTED]		[REDACTED]		[REDACTED]
12/19/2017 - KMA	[REDACTED]		[REDACTED]		[REDACTED]
12/21/2017 - KMA	[REDACTED]		[REDACTED]		[REDACTED]
1/4/2018 - KMA	Review email and proposed Stipulation and Order to dismiss and for entry of final judgment; initial revisions.		240.00/hr		72.00
1/5/2018 - KMA	Email to Gerbers re: stipulation.		240.00/hr		24.00
1/8/2018 - GAK	Conference with [REDACTED]		240.00/hr		288.00
- KMA	Telephone conference with Artemis counsel re: motion to dismiss, stipulation as to counterclaims, issues related thereto, no dismissal with prejudice, issues and claims reserved; review and re-evaluate [REDACTED] and evaluate [REDACTED]; begin revisions to stipulation; telephone conference with [REDACTED] case to final judgment [REDACTED]		240.00/hr		960.00
1/9/2018 - KMA	Follow up emails with Artemis counsel re: proposed stipulation, issues as to motion to dismiss.		240.00/hr		48.00
1/10/2018 - KMA	Revisions to proposed stipulation on dismissal of counterclaims; email to Artemis counsel re: same.		240.00/hr		288.00
1/11/2018 - KMA	Draft status update [REDACTED] proposed stipulation; revise and finalize.		240.00/hr		120.00



[REDACTED]

[REDACTED]

			<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
1/12/2018 - KMA	Email to counsel; review response, and evaluate proposed edits to stipulation.		240.00/hr		72.00
1/16/2018 - KMA	Review, reevaluate latest proposed stipulation to dismiss counterclaims from Artemis counsel, evaluate language [REDACTED]		240.00/hr		72.00
1/17/2018 - KMA	Confer re: [REDACTED] review [REDACTED]; revise version sent from Artemis counsel; draft response email; additional revisions [REDACTED]		240.00/hr		264.00
1/18/2018 - KMA	Emails with Artemis counsel re: phone conference; status email to [REDACTED] to get to final judgment; [REDACTED] revisions to email to Artemis counsel re: issues as to same, no entitlement to fees/costs by either side in connection with counterclaims and cross claim; finalized same and forward revised stipulation.		240.00/hr		384.00
- GAK	Review proposed Stipulation; conference with [REDACTED]		240.00/hr		144.00
1/22/2018 - KMA	Review email from Artemis counsel re: agreement to dismiss without prejudice, each party to bear its own fees and costs as to counterclaims and crossclaim.		240.00/hr		24.00
1/24/2018 - KMA	Review and evaluate revised Stipulation and Order; change language re: fees costs as to counterclaims and cross claim.		240.00/hr		72.00
1/26/2018 - KMA	Further revise Stipulation and Order; draft proposed judgment; evaluate whether dismissal of other owners and Wyatts required for final judgment; email to Artemis counsel re: same.		240.00/hr		384.00
2/5/2018 - KMA	Email to Artemis counsel re: status of stipulation.		240.00/hr		24.00
2/6/2018 - KMA	Email from [REDACTED]; response email [REDACTED] re: same, [REDACTED] review email from Artemis counsel.		240.00/hr		144.00
2/7/2018 - KMA	Response email from Artemis counsel re: proposed order and judgment, issue as to other named defendants and Wyatts as defendants, cross defendants who have answered; final judgment issue; evaluate pleadings, second amended complaint and procedural status as to		240.00/hr		264.00



		<u>Rate</u>	<u>Tax#</u>	<u>Amount</u>
	final judgment with Wyatts remaining as parties; re-evaluate Rule 54(b); response email to Artemis counsel.			
2/8/2018 - KMA	Review and evaluate revised, proposed Judgment from Artemis counsel; telephone conference re: same with Travis Gerber, joinder of Wyatts, defaulted parties, 54(b) issues, Wyatts stipulating to be bound by prior Orders.	240.00/hr		192.00
2/9/2018 - KMA	Further evaluate possible resolution re: all claims as to all parties, stipulation as to Wyatts, 54(b) certification as to defaulted parties given only claim pending is claim for declaratory relief previously decided by court; evaluate proposed revisions to proposed judgment and begin edits to same.	240.00/hr		144.00
2/12/2018 - KMA	Additional revisions to propose stipulation and order for dismissal without prejudice, stipulation to bind Wyatts to prior orders, provisions as to non-appearing defaulted parties, second amended complaint claim for declaratory relief identical to original declaratory relief claim, provisions re: no just reason for delay as to defaulted parties per Rule 54(b); email to Artemis counsel re: same.	240.00/hr		432.00
2/13/2018 - KMA	Initial review of Artemis counsel's latest revisions to stipulation.	240.00/hr		48.00
2/14/2018 - KMA	Incorporate additional revisions into proposed Judgment based on language of stipulation and order for dismissal and entry of final judgment; email to Artemis counsel, and review response email re: same, and re: finalizing of stipulation and proposed judgment.	240.00/hr		216.00
2/16/2018 - KMA	Review finalized documents from counsel; revise Stipulation and Order to include language as to no argument re: motion to dismiss; finalize same; email to [REDACTED]; telephone conference [REDACTED]; [REDACTED]; approve letter to counsel re: Stipulation and Order for Dismissal Without Prejudice and Entry of Final Judgment, Final Judgment; follow up email to counsel re: same.	240.00/hr		456.00
2/23/2018 - KMA	Exchange emails with Artemis counsel re: status of submitted Stipulation and Order and proposed judgment.	240.00/hr		24.00
3/9/2018 - KMA	Initial review of entered judgment, notice of entry, dates for mailing; notice of appeal, case appeal statement; confirm date for motion for attorneys fees.	240.00/hr		144.00
3/13/2018 - KMA	Exchange additional emails re: appeal, review notice of referral to Supreme Court mediation program; review notice of appeal docketed with Supreme Court.	240.00/hr		96.00

[REDACTED]

[REDACTED]

3/14/2018 - KMA Review exemption from settlement program, pending deadlines; email updating as to same for briefing schedule; review case appeal statement submitted by Artemis..

Rate	Tax/	Amount
240.00/hr		120.00

[REDACTED]

[REDACTED]

[REDACTED]

Additional Charges :

Qty/Price

[REDACTED]

1  
[REDACTED]

[REDACTED]

[REDACTED]

1  
[REDACTED]

[REDACTED]

[REDACTED]

1  
[REDACTED]

[REDACTED]

[REDACTED]

1  
[REDACTED]

[REDACTED]

6/1/2014 - [REDACTED]

1  
[REDACTED]

[REDACTED]

1/31/2015 - TG Photocopy Charges

3  
0.20

0.60

4/30/2015 - TG Photocopy Charges

18  
0.20

3.60

5/31/2015 - TG Photocopy Charges

12  
0.20

2.40

6/30/2015 - TG Photocopy Charges

569  
0.20

113.80

- [REDACTED]

1  
[REDACTED]

[REDACTED]

[REDACTED]

1  
[REDACTED]

[REDACTED]

- [REDACTED]

1  
48.93
















48.93

9/30/2015 - TG Photocopy Charges

20  
0.20

4.00



			<u>Qty/Price</u>	<u>Tax#</u>	<u>Amount</u>
1/31/2016	-	TG Postage Charges	1 1.29		1.29
3/31/2016	-	TG Photocopy Charges	2,904 0.20		580.80
4/5/2016	-	TG UPS Shipping Charges	1 29.03		29.03
4/30/2016	-	TG Photocopy Charges	283 0.20		56.60
	-	TG Postage Charges	1 280.14		280.14
8/8/2016	-	TG Reno/Carson Messenger Service - Service on Kris Cecchi	1 63.00		63.00
	-	TG Reno/Carson Messenger Service - Service on Mike Cecchi	1 25.00		25.00
10/31/2016	-	TG Photocopy Charges	47 0.20		9.40
12/31/2016	-	TG Photocopy Charges	57 0.20		11.40
	-	TG Postage Charges	1 4.45		4.45
5/1/2017	-		1 		
	-		1 		
5/2/2017	-		1 		
5/22/2017	-		1 		
12/31/2017	-	TG Photocopy Charges	58 0.20		11.60
	-		1 		
2/16/2018	-	TG UPS Shipping Charges	1 32.83		32.83

[REDACTED]

[REDACTED]

2/28/2018 - TG Photocopy Charges

Qty/Price	Tax/	Amount
47		9.40
0.20		

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Additional Charges :

		<u>Qty/Price</u>	<u>Tax#</u>	<u>Amount</u>
6/30/2013 - GAK	Photocopy Charges	333 0.20		66.60
- GAK	Postage Charges	1 1.78		1.78
7/1/2013 - TG	LexisNexis - Online Legal Research	1 10.39		10.39
7/31/2013 - TG	Photocopy Charges	93 0.20		18.60
- TG	Postage Charges	1 5.42		5.42
12/31/2013 - TG	Photocopy Charges	29 0.20		5.80
1/9/2014 - TG	Fourth Judicial District Court - Filing Fee for Opposition to Motion for Summary Judgment	1 25.00		25.00
- TG	UPS Shipping Charges	1 41.14		41.14
1/22/2014 - TG	Fourth Judicial District Court - Filing Fee for Motion for Summary Judgment	1 200.00		200.00
- TG	UPS Shipping Charges	1 38.01		38.01