

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE STUART YOUNT, Individually and
in his Capacity as Owner of GEORGE
STUART YOUNT IRA,

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a Nevada
limited liability company; CR Cal Neva, LLC,
a Nevada limited liability company; ROBERT
RADOVAN; WILLIAM CRISWELL; CAL
NEVA LODGE, LLC, a Nevada limited
liability company; POWELL, COLEMAN and
ARNOLD LLP; DAVID MARRINER;
MARRINER REAL ESTATE, LLC, a Nevada
limited liability company; NEW CAL-NEVA
LODGE, LLC, a Nevada limited liability
company; and DOES 1 through 10, Inclusive,

Defendants.

Electronically Filed
Feb 20 2019 09:15 a.m.
Elizabeth A. Brown

Supreme Court No.: ~~CV1600767~~ of Supreme Court

Second Judicial District Court

Case No.: CV1600767

DOCKETING STATEMENT CIVIL APPEALS

GENERAL INFORMATION

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

WARNING

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

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

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste

the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department B7
County Washoe Judge Hon. Egan Walker
District Ct. Case No. CV16-00767

2. Attorney filing this docketing statement:

Attorney Martin A. Little, Ryan T. O'Malley Telephone 702.257.1483
Firm Howard & Howard Attorneys PLLC
Address 3800 Howard Hughes Pkwy., Ste. 1000, Las Vegas, Nevada 89169

Client(s) Defendants/Appellants Criswell Radovan, LLC; CR Cal Neva, LLC; Robert Radovan; William Criswell, and Powell; and Coleman and Arnold LLP

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

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

Attorney Daniel F. Polsenberg, Joel D. Henriod Telephone 702.949.8200
Firm Lewis Roca Rothgerber Christie LLP
Address 3993 Howard Hughes Parkway Suite 600

Client(s) Plaintiffs/Respondent George Stuart Yount, individually and in his capacity as owner of George Yount IRA

Attorney Richard G. Campbell, Jr. Telephone 775.686.2446
Firm The Law Office of Richard G. Campbell, Jr., Inc.
Address 200 South Virginia Street, 8th Floor

Client(s) Plaintiffs/Respondent George Stuart Yount, individually and in his capacity as owner of George Yount IRA

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

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

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

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: Yount v. Criswell Radovan, LLC, et al., Case No. 74275

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:
None

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

This case arises from a dispute over shares in a real estate development project. Plaintiff/Respondent investor sued the Defendant/Appellant developers for various claims including fraud and conversion to obtain a refund of his investment based upon his allegations that he did not receive the shares that he had been promised. Specifically, Respondent allegedly believed that he was receiving \$1 million in equity shares from one investor in the project when he in fact received \$1 million of identical equity shares from another investor. After receiving his shares, Respondent actively meddled in the project's financing in an attempt to supplant their own financing. Without funding, the project ultimately fell into bankruptcy.

On September 8, following a bench trial, the Honorable Patrick Flanagan issued a lengthy oral opinion denying all of Respondent's claims and awarding Appellants compensatory damages, attorneys' fees, and litigation costs. This oral ruling was memorialized in a written "Amended Order" filed on September 8, 2018. Plaintiff/Respondent filed a Notice of Appeal from this Order on September 19, 2017, which created Case No. 74275 (the "Related Case"). Appellant/Respondents were satisfied with the judgment and did not appeal. Judge Flanagan subsequently died before a final judgment could be entered. On March 13, 2018, The Honorable Jerry Polaha entered a written Judgment which had been submitted to chambers by counsel for Co-Defendants David Marriner and Marriner Real Estate, LLC. The terms of the order materially differed from those of the September 19, 2017 Amended Order, and Appellants' awards for lost development fees, management fees, attorneys' fees, and costs. Thus, on March 27, 2018, Appellants filed a Motion to Amend and Motion for Attorneys Fees, seeking inclusion of those items.

On August 9, 2018, Plaintiff/Respondent filed in the Related Case a Motion to Determine Appellate Jurisdiction. In an August 24, 2018 Order on Jurisdiction, the Nevada Supreme Court stated that the March 12, 2018 Judgment "made no substantive changes to the terms of the amended order[.]" While this may have been true with respect to Plaintiff's appeal (which challenged the district court's entire judgment in toto), the terms were substantively different with respect to Appellants' damages to the extent that it (unilaterally and without hearing) excised their awards for lost development fees, management fees, attorneys' fees, and costs. Nevertheless, the district court refused to act on the Appellants' motions, believing that it lacked jurisdiction based upon the Related Case.

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

Does a district court have jurisdictional authority to consider a Motion to Amend Judgment where an appeal is taken from a document styled as an "Order" which is deemed by the Nevada Supreme Court to be a final judgment, and a document styled "Judgment" is subsequently entered that differs materially from the Order being appealed from, and the relief sought via the Motion is to make the Judgment conform to the Order?

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

Appellant is not aware of any pending proceedings before the Nevada Supreme Court raising the same or similar issues.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

This is an appeal from a post-judgment order in a civil case, which means that it is presumptively assigned to the Court of appeals pursuant to NRAP 17(b)(8). However, the district court's determination that it lacked jurisdiction was based upon an Order of the Supreme Court in related case number 74275, which the district court believed was dispositive of its jurisdiction to consider Appellants' Motion. Appellants therefore respectfully suggest that the Supreme Court maintain jurisdiction over this appeal, consolidate the cases, and entertain a Motion to clarify the Court's August 24, 2018 Order on Jurisdiction

14. Trial. If this action proceeded to trial, how many days did the trial last? 7 Days.

Was it a bench or jury trial? Bench trial.

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

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from N/A

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

Judge Flanagan issued a written "Amended Order" containing its findings of fact and conclusions of law on September 8, 2018. Appellant/Respondents were satisfied with the judgment and did not appeal. Judge Flanagan subsequently died before a final judgment could be entered. On March 13, 2018, The Honorable Jerry Polaha entered a written Judgment which had been submitted to chambers by counsel for Co-Defendants David Marriner and Marriner Real Estate, LLC. The terms of the order materially differed from those of the September 19, 2017 Amended Order, and Appellants' awards for lost development fees, management fees, attorneys' fees, and costs. Thus, on March 27, 2018, Appellants filed a Motion to Amend and Motion for Attorneys Fees, seeking inclusion of those items.

On August 9, 2018, Plaintiff/Respondent filed in the Related Case a Motion to Determine Appellate Jurisdiction. In an August 24, 2018 Order on Jurisdiction, the Nevada Supreme Court stated that the March 12, 2018 Judgment "made no substantive changes to the terms of the amended order[.]" While this may have been true with respect to Plaintiff's appeal (which challenged the district court's entire judgment in toto), the terms were substantively different with respect to Appellants' damages to the extent that it (unilaterally and without hearing) excised their awards for lost development fees, management fees, attorneys' fees, and costs. Nevertheless, the district court refused to act on the Appellants' motions, believing that it lacked jurisdiction based upon the Related Case.

The District Court has refused to exercise jurisdiction to consider Appellants' Motion to Amend and Motion for Attorneys Fees. It has not issued a written order or instructed any of the parties to prepare a proposed order. The District Court's apparent determination that it lacks jurisdiction to rule on the Motion is, itself, a ruling, as courts always have jurisdiction to consider their own jurisdiction. *Whitehead v. Nevada Comm'n On Judicial Discipline*, 110 Nev. 128, 136-37, 906 P.2d 230, 235 (1994), *decision clarified on denial of reh'g*, 110 Nev. 380, 873 P.2d 946 (1994). Given the unusual procedural posture of this case, Appellants have noticed this appeal to ensure that its rights are preserved while it pursues a Motion for Clarification of the Court's Order on Jurisdiction.

17. Date written notice of entry of judgment or order was served N/A

Was service by:

☐ Delivery

☐ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☒ NRCP 59 Date of filing March 28, 2018

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

(b) Date of entry of written order resolving tolling motion N/A

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed January 22, 2019

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) | |

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

The District Court has refused to exercise jurisdiction to consider Appellants' Motion to Amend and Motion for Attorneys Fees. It has not issued a written order or instructed any of the parties to prepare a proposed order. The District Court's apparent determination that it lacks jurisdiction to rule on the Motion is, itself, a ruling, as courts always have jurisdiction to consider their own jurisdiction. *Whitehead v. Nevada Comm'n On Judicial Discipline*, 110 Nev. 128, 136–37, 906 P.2d 230, 235 (1994), *decision clarified on denial of reh'g*, 110 Nev. 380, 873 P.2d 946 (1994).

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

(a) Parties:

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA,

CRISWELL RADOVAN, LLC, a Nevada limited liability company;

CR Cal Neva, LLC, a Nevada limited liability company;

ROBERT RADOVAN;

WILLIAM CRISWELL;

CAL NEVA LODGE, LLC, a Nevada limited liability company;

POWELL, COLEMAN and ARNOLD LLP;

DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company;

NEW CAL-NEVA LODGE, LLC

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

Appellants do not take exception to any portions of the Judgment entered in this case that pertain to David Marriner and Marriner Real Estate, LLC.

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

Plaintiff/respondent asserted the following claims against Appellants:

- Breach of Contract against CR Cal Neva LLC; Cal Neva Lodge, LLC; Criswell Radovan, LLC; and New Cal-Neva Lodge, LLC
- Breach of Duty Against Defendants Powell Coleman and Arnold LLP
- Fraud against Defendants William Criswell; Robert Radovan; CR Cal Neva, LLC; Criswell Radovan, LLC; Cal Neva Lodge, LLC; David Marriner; Marriner Real Estate, LLC; and New Cal-Neva Lodge, LLC
- Negligence against Defendant Powell, Coleman and Young LLP
- Conversion against CR Cal Neva, LLC; William Criswell; Robert Radovan; Criswell

Radovan, LLC; and New Cal-Neva Lodge, LLC

- Punitive Damages against all Defendants
- Claim for Fraud under NRS 90.570 against Defendants William Criswell; Robert Radovan; Cr Cal Neva, LLC; Criswell Radovan, LLC; Cal Neva Lodge, LLC; David Marriner; and Marriner Real Estate, LLC

Defendants David Marriner and Marriner Real Estate asserted the following cross-claims:

- Equitable indemnity against Criswell Radovan, LLC; Robert Radovan; William Criswell; and Powell, Coleman and Arnold, LLP
- Contribution against Criswell Radovan, LLC; Robert Radovan; William Criswell; and Powell, Coleman and Arnold, LLP
- Declaratory relief against Criswell Radovan, LLC; Robert Radovan; William Criswell; and Powell, Coleman and Arnold, LLP

All of Plaintiff/Respondents' claims were dismissed with prejudice. The cross-claims of David Marriner and Marriner Real Estate were denied as moot.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

Criswell Radovan, LLC, et al.

Name of appellant

Ryan T. O'Malley

Name of counsel of record

February 19, 2019

Date



Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 19th day of February, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Richard G. Campbell, Esq. The Law Office of Richard G. Campbell, Jr., Inc. 333 Flint Street
Reno, NV 89501 Telephone: (775)-384-1123 Facsimile: (775) 997-7417 Attorneys for Plaintiff

Andrew N. Wolf, Esq. Incline Law Group, LLP 264 Village Boulevard, Suite 104 Incline Village,
NV 89451 Telephone: (775) 831-3666 Attorneys for Defendants David Marriner and Marriner
Real Estate, LLC

Daniel F. Polsenberg, Esq. Joel D. Henriod, Esq. Lewis Roca Rothberger Christie LLP 3993
Howard Hughes Parkway #600 Las Vegas, NV 89169 Telephone: (702) 949-8200 Facsimile:
(702) 949-8398 Attorneys for Plaintiff

Dated this

19

day of

February, 2019


Signature

EXHIBIT A

1 **CODE: 1880**

2 ANDREW N. WOLF (#4424)
3 JEREMY L. KRENEK (#13361)
4 Incline Law Group, LLP
264 Village Blvd., Suite 104
Incline Village, Nevada 89451
(775) 831-3666

5 Attorneys for Defendants DAVID MARRINER and
6 MARRINER REAL ESTATE, LLC

7
8 IN THE SECOND JUDICIAL DISTRICT COURT OF
9 THE STATE OF NEVADA IN AND FOR THE
10 COUNTY OF WASHOE

11 GEORGE STUART YOUNT, Individually
12 and in his Capacity as Owner of GEORGE
STUART YOUNT IRA,

13 Plaintiff,

14 v.

15 CRISWELL RADOVAN, LLC, a Nevada
16 limited liability company; CR Cal Neva,
LLC, a Nevada limited liability company;
17 ROBERT RADOVAN; WILLIAM
CRISWELL; CAL NEVA LODGE, LLC, a
18 Nevada limited liability company;
19 POWELL, COLEMAN and ARNOLD
LLP; DAVID MARRINER; MARRINER
20 REAL ESTATE, LLC, a Nevada limited
liability company; NEW CAL-NEVA
21 LODGE, LLC, a Nevada limited liability
company and DOES 1-10,

22 Defendants.
23

CASE NO. CV16-00767

DEPT NO. B7

24 **JUDGMENT**

25 This matter came before the Court for a bench trial on August 29, 2017, through
26 September 8, 2017, the late Hon. Patrick Flanagan, District Judge, presiding. Plaintiff George
27 Stuart Yount, individually and in his capacity as owner of George Stuart Yount IRA, appeared
28

1 by and through his counsel of record, Richard G. Campbell, Jr., Esq. Defendants Criswell
2 Radovan, LLC, CR Cal Neva, LLC, Robert Radovan, William Criswell, and Powell, Coleman
3 and Arnold, LLP, appeared by and through their counsel Martin A. Little, Esq., of Howard &
4 Howard Attorneys PLLC. Defendants David Marriner and Marriner Real Estate, LLC,
5 appeared by and through their counsel of record, Andrew N. Wolf, Esq., of Incline Law Group,
6 LLP.

7 On September 8, 2017, at the conclusion of the trial and following the close of the
8 evidence, Judge Flanagan, ruling from the bench, orally stated his findings of fact, conclusions
9 of law and decision on the record in open court pursuant to NRCP 52. Judge Flanagan also
10 adopted the proposed findings of fact submitted by the defendants prior to trial. Transcript
11 1131:14-16.

12 On or about September 15, 2017, a transcript of the trial was filed, containing Judge
13 Flanagan's ruling from the bench. On September 15, 2017, the same day, Judge Flanagan
14 issued an *AMENDED ORDER* clarifying his award of damages to the various Defendants.

15 At the conclusion of his ruling from the bench, Judge Flanagan requested that
16 defendants' counsel prepare the judgment. Thereafter, Judge Flanagan suddenly fell ill and
17 passed away on October 6, 2017. Thereafter, on October 30, 2017, defense counsel jointly
18 submitted a proposed form of findings of fact, conclusions of law and judgment.

19 Subsequently, the matter was assigned to the undersigned District Judge. On November
20 13, 2017, the court held a status conference wherein the court directed the parties to file briefs
21 regarding the appropriate procedure to be followed after Judge Flanagan's untimely passing.
22 This briefing was completed on or about February 2, 2018. Based on the briefing, the court
23 determines that the primary rules which govern further proceedings by the undersigned
24 successor judge are NRCP 52 (findings by the court; judgment on partial findings), NRCP 58
25 (entry of judgment) and NRCP 63 (inability of a judge to proceed).

26 In this case, Judge Flanagan left an extensive record of his decision, including
27 summaries of witness testimony, the credibility of certain witnesses, his analysis of various trial
28 exhibits, and his determination of each claim for relief.

1 The court has reviewed the trial transcript in its entirety and the exhibits referenced in
2 the transcript and in Judge Flanagan's ruling. Pursuant to NRCP 63, the court hereby certifies
3 its familiarity with the record. Moreover, given the status of the case at the time of Judge
4 Flanagan's passing (evidence closed, closing arguments completed, and a completed ruling
5 from the bench on the merits, followed by his written Amended Order), and the detailed extent
6 of Judge Flanagan's ruling from the bench and his subsequently filed Amended Order dated
7 September 8, 2017, the court has determined, pursuant to NRCP 63, that the proceedings in this
8 case may be completed as set forth herein without prejudice to the parties.

9 Under NRCP 63, the court has discretion to recall witnesses. The court finds no need or
10 reason to recall witnesses. See: *Smith's Food King v. Hornwood*, 108 Nev. 666, 836 P. 2d 1241
11 (1992); and, *Canseco v. United States*, 97 F.3d 1224, 1227 (9th Cir. 1996) [successor judges
12 need only certify their familiarity with those portions of the record that relate to the issues
13 before them]. Compare: *Mergentime Corporation v. Washington Metropolitan Area Transit*
14 *Authority*, 166 F.3d 1257 (DC Cir. 1999). Accordingly, the court now enters judgment as
15 follows:

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Second
17 Amended Complaint, and each of the causes of action stated therein, are dismissed with
18 prejudice as to all Defendants.

19 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Marriner's
20 and Marriner Real Estate's crossclaim against the other defendants is moot and is dismissed
21 with prejudice.

22 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff
23 GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE
24 STUART YOUNT IRA, shall pay William Criswell the sum of **\$1.5 Million** in compensatory
25 damages.

26 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff
27 GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE
28 STUART YOUNT IRA, shall pay Robert Radovan the sum of **\$1.5 Million** in compensatory


1 damages.

2 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff
3 GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE
4 STUART YOUNT IRA, shall pay DAVID MARRINER, individually, the sum of **\$1.5 Million**.

5 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that GEORGE
6 STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT
7 IRA, shall pay each defendant its costs of suit as allowed by law. Each Defendant shall file and
8 serve its verified memorandum of costs as required by Chapter 18 NRCP.

9 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendants
10 may seek recovery of their attorney's fees by an appropriate motion pursuant to NRCP 54(d)
11 and NRS 18.010, or as otherwise allowed by law.

12 DATED this 9 day of March 2018.

13 
14 DISTRICT COURT JUDGE

15 Submitted by:

16
17 INCLINE LAW GROUP, LLP
18 Andrew N. Wolf, Esq.
19 264 Village Boulevard, Suite 104
20 Incline Village, NV 89451
21 Telephone: (775) 831-3666
22 *Attorneys for Defendants*
23 *David Marriner and Marriner Real Estate, LLC*
24
25
26
27
28

EXHIBIT B

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

GEORGE STUART YOUNT,
Individually and in his Capacity as
Owner of GEORGE YOUNT IRA,

Case No.: CV16-00767

Dept. No.: 7

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a
Nevada limited liability company; CR
CAL NEVA, LLC, a Nevada limited
liability company; ROBERT
RADOVAN; WILLIAM CRISWELL;
CAL NEVA LODGE, LLC, a Nevada
limited liability company; POWELL,
COLEMAN and ARNOLD, LLP;
DAVID MARRINER; MARRINER
REAL ESTATE, LLC, a Nevada
limited liability company; and DOES
1-10,

Defendants.

AMENDED ORDER

On September 8, 2017, after hearing testimony and taking evidence in a seven-day bench trial, this Court dismissed Plaintiff's Second Amended Complaint, dismissed the crossclaims by Defendants David Marriner and Marriner Real Estate, LLC as moot and entered judgment against Plaintiff and in favor of Defendants. In its oral ruling, the Court awarded damages on Defendants' counterclaim.

///

///

Upon further consideration, the Court is concerned that its oral recitation of damages maybe subject to misinterpretation and thus hereby amends its previous *Order* as follows:

1. WILLIAM CRISWELL ("Criswell"), is awarded \$1.5 million in compensatory damages, two years' salary, management fees (if applicable), attorney's fees and costs of suit;
2. ROBERT RADOVAN ("Radovan"), is awarded \$1.5 million in compensatory damages, two years' salary, management fees (if applicable), attorney's fees and costs of suit;
3. DAVID MARRINER; is awarded \$1.5 million in compensatory damages¹, attorney's fees and costs of suit;
4. POWELL, COLEMAN AND ARNOLD, LLP ("PCA"), is awarded its attorney's fees and costs of suit;²
5. CRISWELL RADOVAN, LLC (Criswell Radovan), is awarded its lost Development Fees,³ attorney's fees and costs of suit;
6. CR CAL NEVA, LLC ("CR Cal Neva"), is awarded its lost Development Fees,⁴ attorney's fees, and costs of suit;
7. CAL NEVA LODGE, LLC, is awarded its attorney's fees and costs of suit;⁵
8. MARRINER REAL ESTATE, LLC, is awarded its attorney's fees, and costs.⁶

IT IS SO ORDERED this 15 day of September, 2017.

Patrick Flanagan
PATRICK FLANAGAN
District Judge

¹ These damages include both lost commissions (Ex. 1) and loss of business good will.

² There was no testimony or evidence of damages to PCA produced at trial.

³ Less that which has been earned and paid up to \$1.2 million in the aggregate. (Ex. 3, p. 8)

⁴ Less that which has been earned and paid up to \$1.2 million in the aggregate. (Ex. 3, p.8)

⁵ There were no damages sought on behalf of this project development entity.

⁶ Only to the extent that they are not duplicative of any award or fees to David Marriner individually.

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 15 day of September, 2017, I electronically filed the following with the Clerk of
5 the Court by using the ECF system which will send a notice of electronic filing to
6 the following:

7 Richard G. Campbell, Jr., Esq., attorney for Plaintiff George Stuart Yount;
8 Andrew N. Wolf, Esq., Attorney for Defendants David Marriner and Marriner
9 Real Estate, LLC; and
10 Martin A. Little, Esq., attorney for Defendants Criswell Radovan, LLC; CR
11 Cal Neva, LLC; Robert Radovan; William Criswell; Cal Neva Lodge, LLC;
12 Powell, Coleman, and Arnold, LLP.

13
14 
15 Judicial Assistant
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28

EXHIBIT C

1 **CODE 1090**
2 **DOWNEY BRAND LLP**
3 **RICHARD G. CAMPBELL, JR. (Bar No. 1832)**
4 **100 West Liberty, Suite 900**
5 **Reno, NV 89501**
6 **Telephone: 775-329-5900**
7 **Facsimile: 775-997-7417**
8 **Attorneys for Plaintiff**

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

14 **GEORGE STUART YOUNT, Individually**
15 **and in his Capacity as Owner of GEORGE**
16 **STUART YOUNT IRA,**

17 **Plaintiff,**

18 **v.**

19 **CRISWELL RADOVAN, LLC, a Nevada**
20 **limited liability company; CR Cal Neva,**
21 **LLC, a Nevada limited liability company;**
22 **ROBERT RADOVAN; WILLIAM**
23 **CRISWELL; CAL NEVA LODGE, LLC, a**
24 **Nevada limited liability company;**
25 **POWELL, COLEMAN and ARNOLD**
26 **LLP; DAVID MARRINER; MARRINER**
27 **REAL ESTATE, LLC, a Nevada limited**
28 **liability company; NEW CAL-NEVA**
LODGE, LLC, a Nevada limited liability
company; and DOES 1-10,

Defendants.

CASE NO. CV16-00767

DEPT NO. B7

SECOND AMENDED COMPLAINT
(Exemption from Arbitration Requested)

PLAINTIFF GEORGE STUART YOUNT, individually and in his capacity as owner of
the GEORGE STUART YOUNT IRA (hereinafter "Plaintiff"), for their Complaint against
Defendants CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL

1 NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM
 2 CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL,
 3 COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a
 4 Nevada limited liability company; and, NEW CAL-NEVA LODGE, LLC, a Nevada limited
 5 liability company (hereinafter "Defendants") and DOES 1 through 10, inclusive, allege as
 6 follows:

7 PARTIES

8 1. Plaintiff George Stuart Yount is an individual who resides in Crystal Bay, Nevada.

9 2. The George Stuart Yount IRA is an IRA owned by George Stuart Yount, for which
 10 Premiere Trust, Inc., serves as custodian.

11 3. Defendant Criswell Radovan, LLC ("Criswell Radovan") is a Nevada limited
 12 liability company whose managers are Sharon Criswell, William Criswell and Robert Radovan,
 13 and upon information and belief is the owner of CR Cal Neva, LLC.

14 4. Defendant CR Cal Neva, LLC ("CR") is a Nevada limited liability company
 15 whose managing member is William Criswell, and upon information and belief is owned by
 16 William Criswell, Robert Radovan and/or Criswell Radovan.

17 5. Defendant Robert Radovan ("Radovan") is an individual residing, upon
 18 information and belief, in Napa, California, and doing business in Nevada both individually and
 19 through various entities, including Defendants.

20 6. Defendant William Criswell ("Criswell") is an individual residing, upon
 21 information and belief, in Napa, California, and doing business in Nevada both individually and
 22 through various entities, including Defendants.

23 7. Defendant Cal Neva Lodge, LLC ("CNL") is a Nevada limited liability company
 24 whose manager is Robert Radovan.

25 8. Powell, Coleman and Arnold LLP ("Powell Coleman") is a law firm located in
 26 Dallas, Texas, who has and continues to represent CR and CNL as to the financing and
 27 development of the Cal Neva Lodge located in Nevada and California (as referred herein, the
 28 "Cal Neva Lodge", or "Project").

1 9. Defendant David Marriner ("Marriner") is an individual residing in Incline
2 Village, Nevada, and acting as an agent and/or broker for CNL, CR, Criswell Radovan, LLC, and
3 the Cal Neva Lodge, who was being paid a percentage of any money from investors he brought to
4 the project.

5 10. Marriner Real Estate, LLC ("Marriner Real Estate") is a Nevada limited liability
6 company whose manager is David Marriner, and upon information and belief is solely owned by
7 David Marriner which has acted as an agent and/or broker for CNL, CR, Criswell Radovan, LLC,
8 and Cal Neva Lodge.

9 11. Defendant New Cal-Neva Lodge, LLC ("NCNL") is a Nevada limited liability
10 company whose managing member is Cal Neva Lodge, LLC.

11 12. Plaintiff is ignorant of the true names and capacities of the DOES named herein as
12 DOES 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names.
13 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.
14 Plaintiff is informed and believes, and thereon alleges, that each of these fictitiously named DOE
15 Defendants was, and continues to be, responsible in some manner for the acts or omissions herein
16 alleged.

17 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

18 13. On or about February 18, 2014, David Marriner, acting individually and as
19 Marriner Real Estate, collectively hereafter "Marriner," met with Plaintiff and told him about the
20 new owners and developers of the Cal Neva Lodge, primarily Radovan and Criswell and their
21 related entities, including Defendants, who were looking for investors to help fund a newly
22 formed Nevada LLC that would acquire, remodel and reopen the Cal Neva Lodge. Marriner
23 acted as and represented that he was the agent and broker for the new owner and their myriad
24 legal entities. Thereafter, for a period of several months, Marriner acting individually and as the
25 owner of Marriner Real Estate, kept in contact with Plaintiff and made numerous representations
26 about the Project, the development of the Cal Neva Lodge and Radovan and Criswell's successful
27 development history. Specifically, Marriner told Yount that Criswell and Radovan had a
28 successful track record in developing high end hotel/resort properties. Marriner also provided

1 marketing and promotional materials related to the Project, and tours of the Cal Neva Lodge, all
2 intended to induce Plaintiff to become an investor in the Project and Cal Neva Lodge.

3 14. On or about July 22, 2015, Marriner represented to Yount that the project was on
4 schedule, and would open in December 2015, and sent to Yount via e-mail with an attached
5 construction progress report that did not disclose that the project was substantially over budget,
6 was in need of a cash infusion and that the General Contractor, Penta, had not been paid, facts
7 which Marriner was aware of.

8 15. During July, August, September and October 2015, prior to October 12 when
9 Younts sent \$1,000,000 to the escrow holder for shares in the offering under the Private
10 Placement Memo, Marriner knew that the general contractor and subcontractors on the job were
11 not being paid, but did not disclose this to Yount.

12 16. Prior to Yount's investment, Marriner knew that the developers had requested
13 \$1,000,000 from another investor, Les Busick, to meet the immediate needs of the project to keep
14 Penta from leaving the job. This was not disclosed to Yount.

15 17. On July 14, 2015, Marriner sent Yount an investor list that should \$1,500,000
16 available under the \$20,000,000 Private Placement Memo. Marriner knew that prior to Yount's
17 investment in October 2015 that the \$20,000,000 cap on funds that could be raised under the
18 Private Placement Memo had been fully met yet failed to inform Yount of this fact, and that
19 Yount could no longer be included in the investor group under the Private Placement Memo.

20 18. On or about July 25, 2015, Radovan sent an email to Plaintiff providing numerous
21 documents and other information related to the Project and development of the Cal Neva Lodge,
22 including financial information showing that the project was on budget and on time, with the
23 intent to induce the Plaintiff into purchasing a "Founders Unit" in CNL for \$1,000,000, as CNL
24 was serving as the primary development vehicle for the Project.

25 19. Plaintiff was later provided a "Subscription Booklet" that included Subscription
26 Instructions, a member signature page, a certificate of nonforeign status, investor instruction to
27 escrow and wire transfer information and an IRS form W-9. Plaintiff was also informed that by
28 both Marriner and Radovan there was still \$1,500,000 of Founders Units available for purchase of

1 the \$20,000,000 of Founders Units authorized under the Subscription Agreement and related
2 offering materials. Plaintiff reviewed the Subscription Booklet, and based on the information
3 contained therein and the representations made by Radovan, Criswell, Marriner, and their
4 respective agents and entities, including Defendants, decided to purchase a Founders Unit in the
5 amount of \$1,000,000. Plaintiff elected to utilize funds held by the George Stuart Yount IRA of
6 Plaintiff for the purchase of such Founders Unit.

7 20. On or about October 12, 2015, Plaintiff, as owner of the George Stuart Yount IRA,
8 and Deborah Erdman as Trust Officer for Premier Trust Inc., as the custodian of the George
9 Stuart Yount IRA, signed and delivered the Subscription Agreement. On October 13, 2015,
10 Criswell, as president of CR signed the Acceptance of Subscription as manager of CNL. On
11 October 15, 2015, Premier Trust Inc. on behalf of the George Stuart Yount IRA, wired the
12 amount of \$1,000,000 to the trust account of Powell Coleman, the designated escrow holder for
13 subscription funds under the Subscription Agreement. Pursuant to the Subscription Agreement
14 the \$1,000,000 was to be deposited into the account of CNL.

15 21. On or about December 12, 2015, a meeting of members and investors in the
16 Project was held at the Fairwinds Lodge near the Cal Neva Lodge. At that meeting, for the first
17 time, Plaintiff was informed of several issues that Marriner and/or the developers had not
18 disclosed or were incorrectly represented to him prior to his investment, primarily that the Project
19 was substantially over budget, Penta had not been paid, and the Cal Neva Lodge was not going to
20 open as scheduled.

21 22. The revelations at the December 12, 2015 meeting caused great concern to the
22 Plaintiff and the members and investors. Additionally, at that time, the bank statements of CNL
23 did not reflect that the \$1,000,000 had been deposited into any CNL account.

24 23. On or about January 22, 2016, Plaintiff received a Capitalization Table for CNL
25 indicating that his \$1,000,000 investment was not in CNL, but was within the \$2,000,000 equity
26 investment of CR in CNL. Plaintiff immediately responded that was in error and that his intent
27 all along, and the terms of the Subscription Agreement, provided for his purchase of a Founders
28 Unit under the Subscription Agreement as was evidenced by the fully executed Subscription

1 Agreement delivered by Plaintiff to CNL. Plaintiff had never entered into any verbal or written
2 agreement to buy any portion of the CR's Founder's Units in CNL. Plaintiff then requested that
3 the Capitalization Table be corrected to reflect that he was a holder of a \$1,000,000 Founders
4 Unit in CNL, as provided by the Subscription Agreement.

5 24. Based on these series of events, Plaintiff then started inquiring into the
6 whereabouts of his \$1,000,000.

7 25. On or about February 2, 2016, Plaintiff received an email from Bruce Coleman, a
8 partner of Powell Coleman, with attached documents, apparently drafted by Powell Coleman,
9 consisting of an Assignment of Interest in Limited Liability Company (backdated to October 13,
10 2015), Resolution of Members of CNL approving such assignment, and a Purchase Agreement
11 for CR to repurchase from Plaintiff the one-half of CR's equity position in CNL, which was
12 asserted by Powell Coleman to have been transferred to Plaintiff for \$1,000,000, which
13 agreement also classified Plaintiff's \$1,000,000 as a loan from Plaintiff to CR. Basically these
14 assignment documents set forth that the Subscription Agreement had been erroneously executed
15 and that the parties actually intended for the Plaintiff to purchase an interest in CR's Founder
16 Units in CNL, which was neither the intent nor agreement of the parties. Plaintiff responded to
17 Mr. Coleman expressly representing that it was never his intent, nor the agreement of the parties,
18 to purchase any portion of CR's interest in CNL, and that the only agreement and intent was to
19 purchase a Founders Unit in CNL in accordance with the Subscription Agreement, as evidenced
20 by his signed Subscription Agreement.

21 26. On or about March 16, 2016, Plaintiff sent an email to Mr. Coleman inquiring as
22 to the whereabouts of his \$1,000,000. After a series of emails between Plaintiff and Mr.
23 Coleman, Mr. Coleman disclosed that the \$1,000,000 had been transferred to CR on October 14,
24 2015, because "I was told by CR that it had sold 50% of its \$2m interest in Cal Neva Lodge, LLC
25 to you for \$1m and that the payment would be transferred through my trust account. At the time
26 of this transaction Cal Neva Lodge had already sold all of the shares it was authorized to sell
27 under the terms of its Operating Agreement, so I had no reason to question the sale of a portion of
28 CR's interest to you." As of March 16, 2016, Mr. Coleman, upon Plaintiff's information and

1 belief, had in his possession the executed Subscription Agreement of October 13, 2015 with
 2 attached escrow instructions. Those escrow instructions directed that Powell Coleman was the
 3 escrow holder and specifically set forth that the \$1,000,000 from Plaintiff be retained in the
 4 escrow account until such time as certain conditions were met, at which time the funds were to be
 5 deposited into CNL. Plaintiff then asked Mr. Coleman for any documentation demonstrating that
 6 CR had sold 50% of its interest to him and authorizing that the payment would be transferred
 7 through his trust account. No such documentation was ever provided by Mr. Coleman.

8 27. Plaintiff has made repeated demands on Criswell and Radovan and their respective
 9 entities, including Defendants, for repayment of his \$1,000,000 and has yet to be repaid.

10 **FIRST CAUSE OF ACTION**

11 **(Breach of Contract against CR Cal Neva LLC; Cal Neva Lodge, LLC; Criswell
 12 Radovan, LLC; and New Cal-Neva Lodge, LLC)**

13 28. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the
 14 allegations in paragraphs 1 through 27 above.

15 29. The Subscription Agreement Plaintiff signed on October 13, 2015, which was
 16 countersigned by Criswell on October 14, 2015, was a binding contract which required the
 17 Plaintiff's \$1,000,000 to be held in escrow and then either deposited into the account of CNL if
 18 certain conditions were met, and if not, returned to the Plaintiff. If, as represented by counsel for
 19 CNL, the authorized capital of CNL, the terms of the offering, or the operating agreement for
 20 CNL prohibited the purchase by the Plaintiff, then the \$1,000,000 should have been returned to
 21 the Plaintiff as directed in the Subscription Agreement. The \$1,000,000 was not returned to
 22 Plaintiff; it was instead deposited into an account of CR without any authorization by Plaintiff or
 23 any agreement for such a transfer. The actions by CR and its agents and/or attorneys constituted
 24 a breach of the Subscription Agreement causing damage to the Plaintiff in an amount in excess
 25 \$1,000,000.

26 **SECOND CAUSE OF ACTION**

27 **(Breach of Duty Against Defendant Powell Coleman and Arnold LLP)**

28 30. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the
 allegations in paragraphs 1 through 29 above.

33. On October 15, 2015, Powell Coleman negligently distributed and transferred Plaintiff's \$1,000,000 to CR without Plaintiff's consent and without any documentation evidencing that the \$1,000,000 was for a purchase agreement between CR and Plaintiff and that payment was to go through the Powell Coleman Trust Account. Such transfer of Plaintiff's \$1,000,000 was a breach of the duty that Powell Coleman, as an escrow holder, had to Plaintiff. Such breach of duty has caused Plaintiff damages in excess of \$1,000,000.

(Fraud Against Defendants William Criswell; Robert Radovan; CR Cal Neva, LLC; Criswell Radovan, LLC; Cal Neva Lodge, LLC; David Marriner; Marriner Real Estate, LLC; and, New Cal-Neva Lodge, LLC)

35. Defendants, William Criswell, Robert Radovan, CR Cal Neva, LLC, Criswell Radovan, LLC, Cal Neva Lodge, LLC and New Cal-Neva Lodge, LLC knowingly made fraudulent misrepresentations or material omissions of fact to Plaintiff intended to induce Plaintiff into contributing \$1,000,000 to obtain a Founders Unit in CNL. Such fraudulent misrepresentations include, but are not limited to, that the Cal Neva Lodge would open on or near the end of 2015; that the Project was only slightly over budget; that a refinancing of the \$6,000,000 mezzanine financing with a \$15,000,000 loan was in place or imminent; that the developers had a successful track record of developing similar projects; that the developers would

1 not receive distributions or other payments related to the Project until after the preferred returns
2 and equity investments were paid or returned to the investors; and, that there was \$1,500,000 left
3 under the offering authorized and contemplated by the Subscription Agreement and related
4 offering documents for purchase of a Founders Unit by Plaintiff.

5 36. On or about February 18, 2014, David Marriner, acting individually and as
6 Marriner Real Estate, collectively hereafter "Marriner," met with Plaintiff and told him about the
7 new owners and developers of the Cal Neva Lodge, primarily Radovan and Criswell and their
8 related entities, including Defendants, who were looking for investors to help fund a newly
9 formed Nevada LLC that would acquire, remodel and reopen the Cal Neva Lodge. Marriner
10 acted as and represented that he was the agent and broker for the new owner and their myriad
11 legal entities. Thereafter, for a period of several months, Marriner acting individually and as the
12 owner of Marriner Real Estate, kept in contact with Plaintiff and made numerous representations
13 about the Project, the development of the Cal Neva Lodge and Radovan and Criswell's successful
14 development history. Specifically, Marriner told Yount that Criswell and Radovan had a
15 successful track record in developing high end hotel/resort properties. Marriner also provided
16 marketing and promotional materials related to the Project, and tours of the Cal Neva Lodge, all
17 intended to induce Plaintiff to become an investor in the Project and Cal Neva Lodge.

18 37. Prior to Plaintiff signing the Subscription Agreement, there was also a material
19 omission by Defendants, Robert Radovan, CR Cal Neva, LLC, Criswell Radovan, LLC, and Cal
20 Neva Lodge, LLC, and Defendants failed to disclose, that CNL's liabilities exceeded its assets,
21 and that Project was in fact in need of capital because the general contractor and numerous sub-
22 contractors had not been paid. Plaintiff was not aware of the inaccuracy of the representations by
23 Defendants, or the material omissions by Defendants, and was never informed prior to his
24 investment that the Project was in serious financial trouble, that the offering contemplated by the
25 Subscription Agreement and related offering documents was fully subscribed, and that the
26 offering limit of \$20,000,000 had already been met when he signed the Agreement.

27 38. On or about July 22, 2015, Marriner represented to Yount that the project was on
28 schedule, and would open in December 2015, and sent to Yount via e-mail with an attached

1 construction progress report that did not disclose that the project was substantially over budget,
 2 was in need of a cash infusion and that the General Contractor, Penta, had not been paid, facts
 3 which Marriner was aware of.

4 39. During July, August, September and October 2015, prior to October 12 when
 5 Younts sent \$1,000,000 to the escrow holder for shares in the offering under the Private
 6 Placement Memo, Marriner knew that the general contractor and subcontractors on the job were
 7 not being paid, but did not disclose this to Yount.

8 40. Prior to Yount's investment, Marriner knew that the developers had requested
 9 \$1,000,000 from another investor, Les Busick, to meet the immediate needs of the project to keep
 10 Penta from leaving the job. This was not disclosed to Yount.

11 41. On July 14, 2015, Marriner sent Yount an investor list that should \$1,500,000
 12 available under the \$20,000,000 Private Placement Memo. Marriner knew that prior to Yount's
 13 investment in October 2015 that the \$20,000,000 cap on funds that could be raised under the
 14 Private Placement Memo had been fully met yet failed to inform Yount of this fact, and that
 15 Yount could no longer be included in the investor group under the Private Placement Memo.

16 42. Plaintiff justifiably relied on the representations by Defendants and would not have
 17 made the investment had he known the true status and details of the Project or CNL. Plaintiff
 18 suffered damages from Defendants' fraud in excess of \$1,000,000.

19 **FOURTH CAUSE OF ACTION**
 20 **(Negligence Against Defendant Powell, Coleman and Young LLP)**

21 43. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the
 22 allegations in paragraphs 1 through 42 above.

23 44. Defendant Powell Coleman had a duty as attorneys serving as escrow holder of
 24 Plaintiff's \$1,000,000 to insure that distribution of that amount was done in accordance with the
 25 Subscription Agreement and Plaintiff's authorized and intended use for such funds. Powell
 26 Coleman's transfer of those funds to its client, CR, without any express written authorization
 27 from Plaintiff, was the proximate cause of Plaintiff's damages that are in excess of \$1,000,000.

28 ///

FIFTH CAUSE OF ACTION**(Conversion against CR Cal Neva, LLC; William Criswell; Robert Radovan; Criswell Radovan, LLC; and New Cal-Neva Lodge, LLC)**

45. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the allegations in paragraphs 1 through 44 above.

46. Defendants wrongfully exercised dominion over Plaintiff's \$1,000,000 when it instructed their attorneys, Powell Coleman, to transfer Plaintiff's \$1,000,000 out of Powell Coleman's trust account and into the possession of Defendants. Plaintiff had never authorized such transfer, nor executed any documents allowing such transfer, and such act to direct the transfer of funds was in derogation of Plaintiff's ownership of such funds. Such Conversion caused Plaintiff damages in excess of \$1,000,000.

SIXTH CAUSE OF ACTION**(Punitive Damages against all Defendants)**

47. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the allegations in paragraphs 1 through 46 above.

48. Defendants Criswell Radovan, CR, Criswell, Radovan, Marriner and Marriner Real Estate's actions were fraudulent and in conscious disregard of Plaintiff's rights with the express malicious intent of causing harm to Plaintiff, and as such Plaintiff should be entitled to punitive damages.

49. Defendant Powell Coleman was specifically engaged in the business of administering escrows in Nevada and acting as an escrow agent for a Nevada business transaction, involving a Nevada property and holding money for residents of Nevada, without having procured a Nevada license to act as an escrow agent. As such Nevada Revised Statute 645A.222(2) authorizes an action for an award of punitive damages.

SEVENTH CAUSE OF ACTION**(Claim for Fraud under NRS 90.570 in the Offer, Sale and Purchase of a Security against Defendants William Criswell; Robert Radovan; CR Cal Neva, LLC; Criswell Radovan, LLC; Cal Neva Lodge, LLC; David Marriner; and Marriner Real Estate, LLC)**

50. Plaintiff realleges and incorporates by this reference, as set forth in full herein, the allegations in paragraphs 1 through 49 above.

1 51. Defendants, Robert Radovan, CR Cal Neva, LLC, Criswell Radovan, LLC, Cal
2 Neva Lodge, LLC, David Marriner, and Marriner Real Estate, LLC knowingly made fraudulent
3 misrepresentations and/or material omissions of fact to Plaintiff intended to induce Plaintiff into
4 contributing \$1,000,000 to obtain a Founders Unit in CNL. Such fraudulent misrepresentations
5 include, but are not limited to, that the Cal Neva Lodge would open on or near the end of 2015;
6 that the Project was only slightly over budget; that a refinancing of the \$6,000,000 mezzanine
7 financing with a \$15,000,000 loan was in place or imminent; that the developers had a successful
8 track record of developing similar projects; that the developers would not receive distributions or
9 other payments related to the Project until after the preferred returns and equity investments were
10 paid or returned to the investors; and, that there was \$1,500,000 left under the Subscription
11 Agreement and related offering documents for purchase of a Founders Unit by Plaintiff.

12 52. On or about February 18, 2014, David Marriner, acting individually and as
13 Marriner Real Estate, collectively hereafter "Marriner," met with Plaintiff and told him about the
14 new owners and developers of the Cal Neva Lodge, primarily Radovan and Criswell and their
15 related entities, including Defendants, who were looking for investors to help fund a newly
16 formed Nevada LLC that would acquire, remodel and reopen the Cal Neva Lodge. Marriner
17 acted as and represented that he was the agent and broker for the new owner and their myriad
18 legal entities. Thereafter, for a period of several months, Marriner acting individually and as the
19 owner of Marriner Real Estate, kept in contact with Plaintiff and made numerous representations
20 about the Project, the development of the Cal Neva Lodge and Radovan and Criswell's successful
21 development history. Specifically, Marriner told Yount that Criswell and Radovan had a
22 successful track record in developing high end hotel/resort properties. Marriner also provided
23 marketing and promotional materials related to the Project, and tours of the Cal Neva Lodge, all
24 intended to induce Plaintiff to become an investor in the Project and Cal Neva Lodge.

25 53. Prior to Plaintiff signing the Subscription Agreement, there was also a material
26 omission by Defendants, William Criswell, Robert Radovan, CR Cal Neva, LLC, Criswell
27 Radovan, LLC, Cal Neva Lodge, LLC, and who failed to disclose, that CNL's liabilities exceeded
28 its assets, and that Project was in fact in need of capital because the general contractor and

1 numerous sub-contractors had not been paid. Plaintiff was not aware of the inaccuracy of the
2 representations by Defendants, or the material omissions by Defendants, and was never informed
3 prior to his investment that the Project was in serious financial trouble, that the offering
4 contemplated by the Subscription Agreement and related offering documents was fully
5 subscribed, and that the offering limit of \$20,000,000 had already been met when he signed the
6 Agreement.

7 54. On or about July 22, 2015, Marriner represented to Yount that the project was on
8 schedule, and would open in December 2015, and sent to Yount via e-mail with an attached
9 construction progress report that did not disclose that the project was substantially over budget,
10 was in need of a cash infusion and that the General Contractor, Penta, had not been paid, facts
11 which Marriner was aware of.

12 55. During July, August, September and October 2015, prior to October 12 when
13 Younts sent \$1,000,000 to the escrow holder for shares in the offering under the Private
14 Placement Memo, Marriner knew that the general contractor and subcontractors on the job were
15 not being paid, but did not disclose this to Yount.

16 56. Prior to Yount's investment, Marriner knew that the developers had requested
17 \$1,000,000 from another investor, Les Busick, to meet the immediate needs of the project to keep
18 Penta from leaving the job. This was not disclosed to Yount.

19 57. On July 14, 2015, Marriner sent Yount an investor list that should \$1,500,000
20 available under the \$20,000,000 Private Placement Memo. Marriner knew that prior to Yount's
21 investment in October 2015 that the \$20,000,000 cap on funds that could be raised under the
22 Private Placement Memo had been fully met yet failed to inform Yount of this fact, and that
23 Yount could no longer be included in the investor group under the Private Placement Memo.
24 Plaintiff justifiably relied on the representations by Defendants, Robert Radovan, CR Cal Neva,
25 LLC, Criswell Radovan, LLC, Cal Neva Lodge, LLC, David Marriner, and Marriner Real Estate,
26 LLC and would not have made the investment had he known the true status and details of the
27 Project or CNL. Plaintiff suffered damages from Defendants' fraud in excess of \$1,000,000.

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For damages against Defendants in excess of \$1,000,000;
2. For punitive damages provided for by law;
3. For interest on the judgment as provided by law;
4. An award of attorneys' fees as provided for by law and under NRS 645A.222 and NRS 90.660(3);
5. Costs of the suit herein incurred; and,
6. For other such relief as the Court may deem just and proper.

DATED: September 27, 2016.

DOWNEY BRAND LLP

By: 

RICHARD G. CAMPBELL, JR.
Attorney for Plaintiff

VERIFICATION

STATE OF Nevada
COUNTY OF Washoe ss.


I, GEORGE STUART YOUNT, declare:

I am the Plaintiff in the above-entitled action.

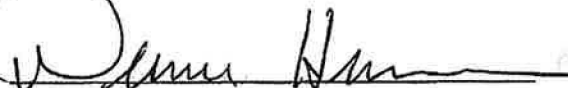
I have read the foregoing SECOND AMENDED COMPLAINT on file herein and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

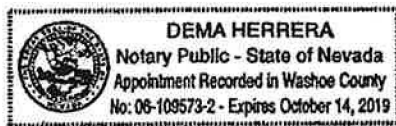
I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 27th day of September, 2016.


GEORGE STUART YOUNT

Subscribed and sworn to before me,
this 27 day of September, 2016.


NOTARY PUBLIC
Commission Expires: Oct 14, 2019



SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, filed in this case:
SECOND AMENDED COMPLAINT;

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

- OR -

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

☐ A specific state or federal law, to wit:

(State specific state or federal law)

- or -

☐ For the administration of a public program

- or -

☐ For an application for a federal or state grant

Dated: September 27, 2016.

DOWNEY BRAND LLP

By: Danielle L. Blecker

PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 100 West Liberty, Suite 900, Reno, Nevada 89501. On September 27, 2016, I served the following document(s):

SECOND AMENDED COMPLAINT

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ **BY HAND:** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada addressed as set forth below.
- ☐ **BY EMAIL:** by causing the document(s) to be electronically served.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by Reno Carson Messenger Service of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY E-MAIL/ELECTRONIC FILING SYSTEM:** by causing the document(s) to be electronically served via the court's electronic filing system to the following attorneys associated with this case.

Martin A. Little
Jolley Urga Woodbury & Little
3800 Howard Hughes Parkway, 16h Floor
Las Vegas, Nevada 89169

Andrew N. Wolf
Incline Law Group, LLC
264 Village Blvd, Suite 104
Incline Village, NV 89451

Ali P. Hamidi
Cox, Castle & Nicholson LLP
555 California Street, 10th Floor
San Francisco, CA 94104-1513

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 27, 2016, at Reno, Nevada.



EXHIBIT D

1 **CODE: 1137**

2 ANDREW N. WOLF (#4424)
3 JEREMY L. KRENEK (#13361)
4 Incline Law Group, LLP
264 Village Blvd., Suite 104
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(775) 831-3666

5 Attorneys for Defendants DAVID MARRINER and
6 MARRINER REAL ESTATE, LLC

7
8 IN THE SECOND JUDICIAL DISTRICT COURT OF
9 THE STATE OF NEVADA IN AND FOR THE
10 COUNTY OF WASHOE

11 GEORGE STUART YOUNT, Individually
12 and in his Capacity as Owner of GEORGE
STUART YOUNT IRA,

CASE NO. CV16-00767

DEPT NO. B7

13 Plaintiff,

14 v.

15 CRISWELL RADOVAN, LLC, a Nevada
16 limited liability company; CR Cal Neva,
LLC, a Nevada limited liability company;
17 ROBERT RADOVAN; WILLIAM
CRISWELL; CAL NEVA LODGE, LLC, a
18 Nevada limited liability company;
19 POWELL, COLEMAN and ARNOLD
LLP; DAVID MARRINER; MARRINER
20 REAL ESTATE, LLC, a Nevada limited
liability company; and DOES 1-10,

21 Defendants.
22

23
24 **DEFENDANTS DAVID MARRINER's and MARRINER REAL**
25 **ESTATE, LLC's ANSWER TO SECOND AMENDED COMPLAINT AND CROSS-**
CLAIM FOR INDEMNITY, CONTRIBUTION AND DECLARATORY RELIEF RE
APPORTIONMENT OF FAULT

26 COMES NOW, Defendants DAVID MARRINER and MARRINER REAL ESTATE,
27 LLC (hereafter collectively "MARRINER" or "Defendants") and hereby answer the *SECOND*
28 *AMENDED COMPLAINT* filed by Plaintiff GEORGE STUART YOUNT, individually and in his

1 capacity as owner of the GEORGE STUART YOUNT IRA (hereafter "Plaintiff"), on September
2 27, 2016 (hereinafter, the "Complaint"). The paragraph numbers below correspond to the
3 paragraph numbers of the Complaint.

4 PARTIES

5 1. Admit.

6 2. Defendants are without knowledge or information sufficient to form a belief as to
7 the truth of such allegations, and Defendants accordingly deny such allegations.

8 3. Admit the allegations regarding the place of organization of Criswell Radovan,
9 LLC, and the identity of its currently listed managers. Defendants are without knowledge or
10 information sufficient to form a belief as to the truth of the remaining allegations, and Defendants
11 accordingly deny such allegations.

12 4. Admit the allegations regarding the place of organization of CR Cal Neva, LLC.
13 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
14 remaining allegations, and Defendants accordingly deny such allegations.

15 5. Admit.

16 6. Admit.

17 7. Admit.

18 8. Defendants are without knowledge or information sufficient to form a belief as to
19 the truth of such allegations, and Defendants accordingly deny such allegations.

20 9. Admit that Marriner Real Estate, LLC, was engaged as a consultant for Cal Neva
21 Lodge, LLC ("CNL"), per a written Real Estate Consulting Agreement dated February 13, 2014,
22 and that David Marriner is the sole member and manager of Marriner Real Estate, LLC. Deny
23 that Marriner was engaged as an agent of CR, Criswell-Radovan, LLC, or any defendant than
24 CNL.

25 10. Admit that Marriner Real Estate, LLC, was engaged as a consultant for Cal Neva
26 Lodge, LLC ("CNL"), per a written Real Estate Consulting Agreement dated February 13, 2014,
27 mentioned above.

28 11. Admit.

1 12. Defendants are without knowledge or information sufficient to form a belief as to
2 the truth of such allegations, and Defendants accordingly deny such allegations.

3 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

4 13. Paragraph 13 contains numerous allegations, which for sake of clarity are broken
5 out into the following subparagraphs, a, b, c, et seq.

- 6 a. At all times relevant to this lawsuit, Marriner was acting solely in his
7 capacity as manager of and on behalf of Marriner Real Estate, LLC,
8 pursuant to the consulting agreement with CNL mentioned above.
- 9 b. Marriner believes he first discussed the subject project with Plaintiff on or
10 about February 18, 2014.
- 11 c. Admit that Marriner initially informed Plaintiff about the new owners and
12 developers of the Cal Neva Lodge, primarily Radovan and Criswell and
13 their related entities, who were looking for investors to help fund a
14 newly formed Nevada LLC that would acquire, remodel and reopen the
15 Cal Neva Lodge.
- 16 d. Plaintiff initially expressed little or no interest in investing in the project.
- 17 e. In June and July, 2015, Plaintiff expressed interest in visiting and
18 ultimately investing in the project, at which time, Marriner provided
19 Plaintiff a copy of the private placement memorandum and other
20 documents related to the project and the investment generated by CNL
21 and/or Criswell-Radovan, and put Plaintiff in touch with Criswell-
22 Radovan.
- 23 f. Thereafter, Plaintiff obtained substantially all further information regarding
24 the Cal Neva Lodge project directly from Criswell-Radovan and other
25 agents of CNL, and relied solely upon Criswell-Radovan, CNL and
26 Plaintiff's own investigation in making his investment. Marriner is
27 informed and believes, and thereon alleges, that Plaintiff did not rely on
28 material information generated by Marriner in making his investment.

- 1 g. Marriner denies that he acted as an agent for, or held himself out as an
2 agent of any entity other than CNL.
- 3 h. Admit that Marriner provided a tour of the project to Plaintiff.
- 4 i. Admit that Marriner provided Plaintiff information generated by CNL and
5 Criswell-Radovan regarding the project.
- 6 j. Admit that Marriner informed Plaintiff that Criswell-Radovan were
7 involved in other large-scale, high-end hotel projects, and believed this was
8 true.
- 9 k. Marriner denies the remainder of this paragraph.

10 14. Admit that in July, 2015, Marriner believed that the project was on schedule and
11 that the project was expecting to open in December 2015. Admit that in July, 2015, Marriner sent
12 Plaintiff a construction progress report generated by CNL and/or Criswell-Radovan. During the
13 time period of July 22 – July 29, 2015, Plaintiff believed and stated that the project was
14 substantially over budget and communicated extensively via telephone and email with Robert
15 Radovan regarding the status of the project and in regard to the numerous questions Plaintiff had
16 posed regarding the project and the proposed investment in the project (including the numerous
17 questions contained in Plaintiff's various emails dated from July 16 to July 26, 2015). From
18 August 3, 2015, and thereafter until his investment funded in October, 2015, Plaintiff advised
19 Marriner that Plaintiff would obtain all further information pertinent to his investment directly
20 from Robert Radovan, CNL, Criswell-Radovan and others, that Plaintiff was relying upon the
21 investigation and analysis of his own accountants, and that Plaintiff would not be seeking
22 information from Marriner, and that Plaintiff was handling the transaction directly with Criswell-
Radovan. Marriner denies the remaining allegations.¹

23 ¹ On August 3, 2015, in response to an email from Marriner asking if Plaintiff had any more questions, Plaintiff sent
24 Marriner an email which states, "I've been dealing directly with Robert, thanks. He will be taking questions from my
25 CPA [Ken Tramer] early this week. More soon." On August 8, 2015, Plaintiff sent Robert Radovan an email
26 (copied to Marriner) which states, "I believe the ball is in your court to respond to Ken's questions & requests for
27 further information, Robert???" Subsequent correspondence in this time period indicates that Plaintiff and his CPA
28 relied on information generated by Robert Radovan, Criswell-Radovan, and/or CNL, that Plaintiff worked directly
with Robert Radovan, Criswell-Radovan, and/or CNL to execute and fund his investment. Plaintiff's execution and
funding of his investment was thereafter delayed for approximately two months until October, 2015. On October 10,
2015, before Plaintiff executed his investment subscription documents on October 12, 2016, or funded the investment
on October 14, 2015, Plaintiff was advised that the opening of the Cal-Neva Lodge would be delayed until the Spring
or early Summer of 2016.

1 15. Denied.

2 16. Marriner is without knowledge or information sufficient to form a belief as to the
3 truth of these allegations, and accordingly denies such allegations. However, Marriner admits
4 that due to a delay in Plaintiff's ability to fund his investment, and uncertainty over whether
5 Plaintiff would actually invest in the project, CNL obtained additional funding from Mr. Busick.
6 At that time, Plaintiff was working directly with Criswell-Radovan, their attorneys, and Plaintiff's
7 IRA sponsor/trustee to execute and fund his investment. Marriner did not conceal or suppress
8 any material information.

9 17. Marriner is without knowledge or information sufficient to form a belief as to the
10 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
11 conceal or suppress any material information. See answers to paragraphs 13-16, above.

12 18. Marriner is without knowledge or information sufficient to form a belief as to the
13 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
14 conceal or suppress any material information. See answers to paragraphs 13-16, above.

15 19. Marriner is without knowledge or information sufficient to form a belief as to the
16 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
17 conceal or suppress any material information. See answers to paragraphs 13-16, above.

18 20. Marriner is without knowledge or information sufficient to form a belief as to the
19 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
20 conceal or suppress any material information. See answers to paragraphs 13-16, above.

21 21. Admit the meeting took place on December 12, 2015, as alleged, deny the
22 remaining allegations. Marriner did not misrepresent, conceal or suppress any material
23 information. See answers to paragraphs 13-16, above.

24 22. Marriner is without knowledge or information sufficient to form a belief as to the
25 truth of these allegations, and accordingly denies such allegations.

26 23. Marriner is without knowledge or information sufficient to form a belief as to the
27 truth of these allegations, and accordingly denies such allegations.

28 24. Marriner is without knowledge or information sufficient to form a belief as to the
truth of these allegations, and accordingly denies such allegations.

1 25. Marriner is without knowledge or information sufficient to form a belief as to the
2 truth of these allegations, and accordingly denies such allegations.

3 26. Marriner is without knowledge or information sufficient to form a belief as to the
4 truth of these allegations, and accordingly denies such allegations.

5 27. Marriner is without knowledge or information sufficient to form a belief as to the
6 truth of these allegations, and accordingly denies such allegations.

7
8 **FIRST CLAIM FOR RELIEF**
9 **(BREACH OF CONTRACT AGAINST CR CAL NEVA LLC; CAL-NEVA LODGE, LLC;
10 CRISWELL RADOVAN, LLC; and NEW CAL-NEVA LODGE, LLC)**

11 Response to Paragraphs 28-29: This Claim for relief is not asserted against Marriner who
12 therefore does not respond to these allegations.

13 **SECOND CLAIM FOR RELIEF**
14 **(BREACH OF DUTY AGAINST DEFENDANT POWELL COLEMAN
15 AND ARNOLD LLP)**

16 Response to Paragraphs 30-33: This Claim for relief is not asserted against Marriner who
17 therefore does not respond to these allegations.

18 **THIRD CLAIM FOR RELIEF**
19 **(FRAUD AGAINST DEFENDANTS WILLIAM CRISWELL, ROBERT RADOVAN;
20 CR CAL NEVA, LLC; CRISWELL RADOVAN, LLC; CAL NEVA LODGE, LLC;
21 DAVID MARRINER; MARRINER REAL ESTATE, LLC; AND NEW
22 CAL-NEVA LODGE, LLC)**

23 34. See responses to Paragraphs 1-33, above.

24 35. Marriner is without knowledge or information sufficient to form a belief as to the
25 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
26 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
27 above.

28 36. Marriner is without knowledge or information sufficient to form a belief as to the
truth of these allegations, and accordingly denies such allegations. However, Marriner did not
misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
above.

1 37. Marriner is without knowledge or information sufficient to form a belief as to the
2 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
3 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
4 above.

5 38. Marriner is without knowledge or information sufficient to form a belief as to the
6 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
7 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
8 above.

9 39. Marriner is without knowledge or information sufficient to form a belief as to the
10 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
11 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
12 above.

13 40. Marriner is without knowledge or information sufficient to form a belief as to the
14 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
15 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
16 above.

17 41. Marriner is without knowledge or information sufficient to form a belief as to the
18 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
19 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
20 above.

21 42. Marriner is without knowledge or information sufficient to form a belief as to the
22 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
23 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
24 above.

25 **FOURTH CLAIM FOR RELIEF**
26 **(NEGLIGENCE AGAINST DEFENDANT POWELL, COLEMAN AND YOUNG, LLP)**

27 43. Response to Paragraphs 43-44: This Claim for relief is not asserted against
28 Marriner who therefore does not respond to these allegations.

1
2 **FIFTH CLAIM FOR RELIEF**
3 **(CONVERSION AGAINST CR CAL NEVA, LLC; WILLIAM CRISWELL; ROBERT**
4 **RADOVAN; CRISWELL RADOVAN, LLC; AND NEW CAL-NEVA LODGE, LLC)**

5 Response to Paragraphs 45-46: This Claim for relief is not asserted against Marriner who
6 therefore does not respond to these allegations.

7 **SIXTH CLAIM FOR RELIEF**
8 **(PUNITIVE DAMAGES AGAINST ALL DEFENDANTS)**

9 47. See response to Paragraphs 1-46, above.

10 48. Denied.

11 49. Defendants are without knowledge or information sufficient to form a belief as to
12 the truth of such allegations, and Defendants accordingly deny such allegations.

13 **SEVENTH CAUSE OF ACTION**
14 **(CLAIM FOR FRAUD UNDER NRS 90.570 IN THE OFFER, SALE AND PURCHASE OF**
15 **A SECURITY AGAINST DEFENDANTS WILLIAM CRISWELL, ROBERT RADOVAN;**
16 **CR CAL NEVA, LLC; CRISWELL RADOVAN, LLC; CAL NEVA LODGE, LLC;**
17 **DAVID MARRINER; AND MARRINER REAL ESTATE, LLC)**

18 50. See response to Paragraphs 1-49, above.

19 51. Marriner is without knowledge or information sufficient to form a belief as to the
20 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
21 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
22 above.

23 52. Marriner is without knowledge or information sufficient to form a belief as to the
24 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
25 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
26 above.

27 53. Marriner is without knowledge or information sufficient to form a belief as to the
28 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
above.

1 54. Marriner is without knowledge or information sufficient to form a belief as to the
2 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
3 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
4 above.

5 55. Marriner is without knowledge or information sufficient to form a belief as to the
6 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
7 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
8 above.

9 56. Marriner is without knowledge or information sufficient to form a belief as to the
10 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
11 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
12 above.

13 57. Marriner is without knowledge or information sufficient to form a belief as to the
14 truth of these allegations, and accordingly denies such allegations. However, Marriner did not
15 misrepresent, conceal or suppress any material information. See answers to paragraphs 13-16,
16 above.

17 **AFFIRMATIVE DEFENSES**

18 1) **First Affirmative Defense.** One or more claims for relief asserted in Plaintiff's
19 action fails to state a claim for relief against Marriner.

20 2) **Second Affirmative Defense.** Plaintiff's action is barred by Plaintiff's reliance
21 upon his own independent investigation.

22 3) **Third Affirmative Defense.** Plaintiff's action is barred by Plaintiff's reliance
23 upon the actions, advice and communications of others.

24 4) **Fourth Affirmative Defense.** Plaintiff's action is barred by Marriner's good faith
25 reliance upon actions and information provided by others.

26 5) **Fifth Affirmative Defense.** Plaintiff's action is barred by the terms and conditions
27 of the documents evidencing Plaintiff's investment, including the Private Placement
28 Memorandum and related documents and information received therewith which were accepted

1 and approved by Plaintiff, and which together comprise Plaintiff's consent, waiver, release and/or
2 assumption of risk.

3 6) **Sixth Affirmative Defense.** Plaintiff's damages, if any, and his claims against
4 Marriner, if ultimately proven, were caused by the lack of due care, acts, errors, omissions, and
5 communications of others.

6 7) **Seventh Affirmative Defense.** Plaintiff's damages, if any, and his claims against
7 Marriner, if ultimately proven, were caused by Plaintiff's own lack of due care.

8 Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC reserve the
9 right to assert other affirmative defenses not currently known to exist, which are discovered after
10 the filing of this answer. No waiver is intended or implied.

11 **PRAYER**

12 Wherefore, Defendants pray for a judgment as follows:

- 13 1) that Plaintiff take nothing by this action;
14 2) for costs, expert witness fees and attorney's fees as may be allowed by law.
15 3) for such other relief that the court deems to be fair, just and equitable.

16 **Affirmation:** The undersigned hereby affirms that the foregoing document does not
17 contain the social security number of any person.

18 Dated: October 24, 2016.

19 INCLINE LAW GROUP, LLP

20 By: 

21 ANDREW N. WOLF (#4424)

22 Attorneys for Defendants DAVID MARRINER
23 and MARRINER REAL ESTATE, LLC
24
25
26
27
28

EXHIBIT E

1 DAVID MARRINER; MARRINER REAL
2 ESTATE, LLC, a Nevada limited liability
company,

3 Cross-claimant,

4 v.

5 CRISWELL RADOVAN, LLC, a Nevada
6 limited liability company; ROBERT
7 RADOVAN; WILLIAM CRISWELL;
POWELL, COLEMAN and ARNOLD LLP,

8 Cross-claim defendants.
9

10 **CROSS-CLAIM FOR INDEMNITY, CONTRIBUTION AND DECLARATORY RELIEF**
11 **RE APPORTIONMENT OF FAULT AGAINST DEFENDANTS / CROSS-CLAIM**
12 **DEFENDANTS CRISWELL RADOVAN, LLC, a Nevada limited liability company;**
13 **ROBERT RADOVAN; WILLIAM CRISWELL; and POWELL, COLEMAN and**
ARNOLD LLP

14 COMES NOW, Defendants DAVID MARRINER and MARRINER REAL ESTATE,
15 LLC (hereafter collectively "MARRINER" or "Defendants") and for a cross-claim against
16 defendants CRISWELL RADOVAN, LLC, a Nevada limited liability company; ROBERT
17 RADOVAN; WILLIAM CRISWELL; and POWELL, COLEMAN and ARNOLD LLP, hereby
18 allege and plead as follows.

19 **FIRST CLAIM FOR RELIEF**
(EQUITABLE INDEMNITY AGAINST ALL CROSS-CLAIM DEFENDANTS)

20 1. Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC
21 (hereafter collectively "MARRINER") are named as co-defendants in the above-entitled action
22 with defendants CRISWELL RADOVAN, LLC, a Nevada limited liability company; ROBERT
23 RADOVAN; WILLIAM CRISWELL; POWELL, COLEMAN and ARNOLD LLP.

24 2. MARRINER denies all claims and liability alleged in the *SECOND AMENDED*
25 *COMPLAINT* filed by Plaintiff GEORGE STUART YOUNT, individually and in his capacity as
26 owner of the GEORGE STUART YOUNT IRA (hereafter "Plaintiff"), on September 27, 2016
27 (hereinafter, the "Complaint"). The Complaint alleges damages arising as a result of a transaction
28 described in the Complaint. Said Complaint, for purposes of its allegations only, is incorporated

1 by reference herein as though fully set forth at length. MARRINER denies all claims and liability
2 alleged in the Complaint.

3 3. MARRINER is informed and believes and thereon alleges that based on the
4 matters alleged in Plaintiff's COMPLAINT, MARRINER and each of the cross-claim defendants
5 acted in various capacities as agent for the defendant CAL NEVA LODGE, LLC, a Nevada
6 limited liability company, in conjunction with the alleged transaction which is the subject of
7 Plaintiff's lawsuit.

8 4. MARRINER is incurring and has incurred attorney's fees, court costs, and other
9 costs in connection with defending said Complaint, the exact amount of which is unknown at this
10 time. When the same has been ascertained, MARRINER will seek leave of court to amend this
11 Cross-claim to set forth the true nature and amount of said costs and expenses.

12 5. If MARRINER is held liable and responsible to Plaintiff for damages as alleged in
13 the Complaint, it will be solely due to the alleged conduct of Cross-claim defendants, and each of
14 them, as herein alleged, in regard to which MARRINER's fault, if any, is only passive. Therefore,
15 MARRINER is entitled to be fully indemnified by said Cross-claim defendants, and each of them
16 should such liability arise.

17 6. MARRINER is entitled to equitable indemnification by said Cross-claim
18 defendants, and each of them for any sum or sums for which he may be adjudicated liable to
19 Plaintiff, with costs of defense, costs of suit, and reasonable attorney's fees incurred therefrom.
20 Such indemnification should be complete if Marriner is found to be without fault or if his liability
21 as compared to the liability of others is only passive.

22 WHEREFORE, MARRINER prays for judgment as set forth below.

23 **SECOND CLAIM FOR RELIEF**
24 **(CONTRIBUTION AGAINST ALL CROSS-CLAIM DEFENDANTS)**

25 7. MARRINER refers to Paragraphs 1 through 6, above, and incorporates the same
26 herein by reference as though fully set forth here at length.

27 8. MARRINER contends that he is in no way legally responsible for the events
28 giving rise to the Plaintiff's causes of action, or legally responsible in any other manner for the
damages allegedly sustained by the Plaintiff. However, if as a result of the matters alleged in

1 Plaintiff's Complaint, MARRINER is held liable for all or any part of the claim asserted against
2 him by the Plaintiff, Cross-claim defendants, and each of them, to the extent that their fault was a
3 proximate cause of Plaintiff's damages and/or losses, are responsible for said damages and/or
4 losses in proportion to each Cross-claim defendants' comparative negligence or other legal fault
5 and MARRINER is entitled to contribution based on such proportionate liability.

6 9. By reason of the foregoing, MARRINER is entitled to contribution in proportion
7 to fault from Cross-claim defendants, and each of them, for all liability, costs, fees, expenses,
8 settlements and judgments paid by and incurred by MARRINER in connection with this
9 litigation.

10 WHEREFORE, MARRINER prays for judgment as set forth below.

11 **THIRD CLAIM FOR RELIEF**
12 **(DECLARATORY RELIEF RE APPORTIONMENT OF FAULT AGAINST ALL**
13 **CROSS-CLAIM DEFENDANTS)**

14 10. MARRINER refers to Paragraphs 1 through 9, above, and incorporates the same
15 herein as though set forth here in full.

16 11. An actual controversy has arisen between MARRINER and Cross-claim
17 defendants, and each of them, with respect to the rights, obligations and duties of the parties: (a)
18 MARRINER contends that he is without fault, responsibility or blame for any of the damages
19 which the Plaintiff may have suffered, and that if any such damages are proven by Plaintiff, it
20 would be the result of acts or omissions of the Cross-claim defendants and not the MARRINER.
21 MARRINER therefore contends that he is entitled to indemnity and/or contribution from Cross-
22 claim defendants, and each of them. (b) MARRINER is informed and believes and thereon
23 alleges that the Cross-claim defendants, and each of them contend to the contrary.

24 WHEREFORE, MARRINER prays for judgment as follows:

25 1) For a declaration of MARRINER's rights and duties vis-à-vis the Cross-claim
26 defendants.

27 2) For an order of the court declaring and determining the percentage of fault, if any,
28 as between MARRINER and the various Cross-claim defendants, for damages and losses

1 allegedly caused to Plaintiff, and determining which of such liabilities, if any, are joint and/or
2 several and the amount or amounts thereof.

3 3) For an order that MARRINER is entitled to be fully (or partially) indemnified by
4 Cross-claim defendants, and each of them, for any and all liability, payment, settlement and/or
5 judgment incurred by MARRINER as a result of this action.

6 4) For a judgment requiring contribution in favor of MARRINER against Cross-
7 claim defendants, and each of them, based upon the relative percentage of fault of each party.


8 5) For attorney's fees, court costs, investigative costs and other expenses incurred in
9 the defense of the complaint according to proof; and

10 6) For such other and further relief as the court may deem just and proper.

11 **Affirmation:** The undersigned hereby affirms that the foregoing document does not
12 contain the social security number of any person.

13 Dated: October 24, 2016.

14 INCLINE LAW GROUP, LLP

15 By: 
16 ANDREW N. WOLF (#4424)
17 Attorneys for Defendants DAVID MARRINER
18 and MARRINER REAL ESTATE, LLC
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Incline Law Group, LLP, and that on this day, I caused to be served, a true and correct copy of:

DEFENDANTS DAVID MARRINER's and MARRINER REAL ESTATE, LLC's ANSWER TO SECOND AMENDED COMPLAINT AND CROSS-CLAIM FOR INDEMNITY, CONTRIBUTION AND DECLARATORY RELIEF RE APPORTIONMENT OF FAULT

UPON:

Richard G. Campbell, Jr. DOWNEY BRAND LLC 100 West Liberty, Suite 900 Reno, NV 89501 Telephone: 775-329-5900 Facsimile: 775-997-7417	Attorney for Plaintiff George Stuart Yount, Individually and in his capacity as Owner of George Stuart Yount IRA
Martin A. Little JOLLEY URGAL WOODBURY & LITTLE 3800 Howard Hughes Parkway, 16 th Floor Las Vegas, NV 86169 Telephone: 702-699-7500 Facsimile: 702-699-7555	Attorney for Defendants Criswell Radovan, LLC, CR CAL NEVA LLC, Robert Radovan, William Criswell, Cal Neva Lodge, LLC, Powell, Coleman and ARNOLD, LLP

VIA: **Washoe County Efilex e-filing system:** A true and correct copy of the foregoing document(s) was (were) electronically served via the court's electronic filing system to the above named attorneys associated with this case. If the any of the above named attorneys (and all of their listed co-counsel within the same firm) are not registered with the court's e-filing system, then a true and correct paper copy of the above-named document(s) was(were) served on the attorney via U.S.P.S. first class mail with first-class postage prepaid, to the attorney's address listed above, on this date.

Date: October 24, 2016.


Crystal Lyle

EXHIBIT F

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Robert Radovan, William Criswell, and
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**IN THE SECOND JUDICIAL DISTRICT COURT OF
 THE STATE OF NEVADA IN AND FOR THE
 COUNTY OF WASHOE**

GEORGE STUART YOUNT, Individually and
 in his Capacity as Owner of GEORGE
 STUART YOUNT IRA,

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a Nevada
 limited liability company; CR Cal Neva, LLC, a
 Nevada limited liability company; ROBERT
 RADOVAN; WILLIAM CRISWELL; CAL
 NEVA LODGE, LLC, a Nevada limited
 liability company; POWELL, COLEMAN and
 ARNOLD LLP; DAVID MARRINER;
 MARRINER REAL ESTATE, LLC, a Nevada
 limited liability company; NEW CAL-NEVA
 LODGE, LLC, a Nevada limited liability
 company; and DOES 1 through 10, Inclusive,

Defendants.

CASE NO.: CV16-00767
 DEPT NO.: B7

DEFENDANTS' MOTION TO AMEND JUDGMENT

Defendants Criswell Radovan, LLC (Criswell Radovan), CR Cal Neva, LLC ("CR Cal
 Neva"), Robert Radovan ("Radovan"), William Criswell ("Criswell"), and Powell, Coleman and
 Arnold LLP ("PCA"), (Collectively "Defendants"), by and through their undersigned counsel,
 hereby move this Court to amend the Judgment entered on March 12, 2018, to include lost

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**IN THE SECOND JUDICIAL DISTRICT COURT OF
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GEORGE STUART YOUNT, Individually and
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 STUART YOUNT IRA,

Plaintiff,

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CRISWELL RADOVAN, LLC, a Nevada
 limited liability company; CR Cal Neva, LLC, a
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 RADOVAN; WILLIAM CRISWELL; CAL
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CASE NO.: CV16-00767
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DEFENDANTS' MOTION TO AMEND JUDGMENT

Defendants Criswell Radovan, LLC (Criswell Radovan), CR Cal Neva, LLC ("CR Cal Neva"), Robert Radovan ("Radovan"), William Criswell ("Criswell"), and Powell, Coleman and Arnold LLP ("PCA"), (Collectively "Defendants"), by and through their undersigned counsel, hereby move this Court to amend the Judgment entered on March 12, 2018, to include lost

1 management and development fees, consistent with the Amended Order filed on September 15,
2 2017.

3 This Motion is made and based on the attached Memorandum of Points and Authorities,
4 the pleadings and papers on file herein, and the arguments of counsel at any hearing hereof.

5 DATED this 27th day of March, 2018.

HOWARD & HOWARD ATTORNEYS PLLC

6
7 By: 
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14 Attorneys for Criswell Radovan, LLC,
15 CR Cal Neva, LLC, Robert Radovan,
16 William Criswell, Cal Neva Lodge, LLC,
17 Powell, Coleman and Arnold LLP,

14 MEMORANDUM OF POINTS AND AUTHORITIES

15 I.

16 STATEMENT OF FACTS

17 This matter came before the Honorable Patrick Flanagan for a bench trial on August
18 29, 2017. On September 8th, at the conclusion of the trial, Chief Judge Flanagan issued an
19 oral decision on the record in open court lasting over two hours. A copy of the transcript of
20 the issued decision is attached hereto as **Exhibit 1**. Significantly, in those findings, Chief
21 Judge Flanagan entered a sweeping defense verdict in favor of the Defendants, dismissing all
22 of Mr. Yount's claims against the Defendants with prejudice. Chief Judge Flanagan then
23 specifically found that Mr. Yount had colluded with another investor, IMC Investment Group
24 ("IMC") to intentionally interfere with Criswell Radovan's refinancing efforts with Mosaic,
25 which ultimately led to the demise of the Project:

26 In this case, but for the intentional interference with the contractual
27 relations between Mosaic and Cal-Neva, this Project would have
28 succeeded. That is undisputed. . . .

1 This Court has documented dozens of email exchanges between Mr.
 2 Yount and the IMC in their efforts to undermine the Mosaic loan
 3 and there is no more solid evidence of that than in Exhibit 124. That
 4 deal was done. That deal has been executed. That deal was in place.
 5 Mosaic had evidenced its enthusiasm to close this deal. And yet the
 6 day that individuals from the IMC went to the Mosaic offices
 7 without the knowledge of [Criswell Radovan], that deal was dead.
 8 The testimony is unequivocal, there was never an attempt by the
 9 IMC to resurrect it, despite the open invitation by Mosaic to
 10 reintroduce the loan.

11 **This Court finds that it was the intent of the IMC to kill this**
 12 **loan, divest [Criswell Radovan] from it shares on the threat of**
 13 **legal, civil, criminal actions for their own benefit and not the**
 14 **benefit of the project.**

15 *Id.* at 52-53 (emphasis added).

16 Chief Judge Flanagan then awarded Radovan and Criswell \$1.5 million each in
 17 compensatory damages, two year's salary, management fees, attorney fees and costs. *Id.* A week
 18 later, on September 15, 2017, he issued a separate Amended Order clarifying his damage award
 19 and including lost development fees to Criswell Radovan. *See* Amended Order, **Exhibit 2**
 20 hereto.

21 II.

22 LEGAL ARGUMENT

23 AN AMENDED JUDGMENT SHOULD BE ENTERED

24 A. LEGAL STANDARD

25 A motion to alter or amend the judgment shall be filed no later than 10 days after service
 26 of written notice of entry of the judgment. NRCp 59(e). The purpose of such a motion is "to seek
 27 correction at the trial court level of an erroneous order or judgment." *Chiara v. Belaustegui*, 86
 28 Nev. 856, 858, 477 P.2d 857, 859 (1970). Specifically, a motion to alter or amend the judgment
 is a proper method for challenging the total amount of the judgment. *See Fleischer v. August*, 103
 Nev. 242, 247, 737 P.2d 518, 521 (1987).

Here, the Judgment should be amended to conform to Judge Flanagan's decision,
 including the Amended Order, pursuant to which Criswell and Radovan were awarded lost
 management fees, and Criswell Radovan was awarded lost development fees. The basis for this
 award was squarely in the record, as was the amount of lost development fees, leaving only the
 amount of the lost management fees to be quantified.

B. THE JUDGMENT SHOULD BE AMENDED TO INCLUDE LOST DEVELOPMENT FEES

As the decision and Amended Order correctly note, Criswell Radovan was the developer of the subject project, entitled to a \$1.2 million Development Fee, payable in monthly installments of \$60,000. *See Confidential Private Placement Memorandum, Trial Ex. 3, p.8.* Criswell Radovan earned all of its Development Fee, but “recontributed to the Company \$480,000 of its Development Fee as of 6/1/14.” *See Section 7.4 of the Amended and Restated Operating Agreement, Trial Ex. 5; see also Trial Testimony of William Criswell, Volume I, pp. 186-188.* Importantly, Criswell Radovan was not repaid its Development Fee before the project failed. *See Trial Testimony of Robert Radovan, Volume VI, pp. 953-956.* Accordingly, pursuant to the Amended Order, the Judgment should be amended to include an award of \$480,000 to Criswell Radovan.

C. THE JUDGMENT SHOULD BE AMENDED TO INCLUDE LOST MANAGEMENT FEES

Criswell and Radovan had a binding agreement with Cal Neva Lodge, under which they would manage the operations of the property once it was completed and open. This fact is reflected in the Confidential Private Placement Memorandum, Trial Ex. 3 (recognizing that Cal Neva Lodge will enter into a hotel management agreement with Criswell Radovan or its affiliate) and the Amended and Restated Operating Agreement, Trial Ex. 5 (“Day-to-day management of the Project will be performed by an Affiliate of CR”).

As demonstrated by the attached Declaration of William Criswell, key provisions of the Management Agreement were:

- A separate entity, CR Hospitality, LLC was formed by Criswell and Radovan for the purpose of serving as the hotel manager under a franchise agreement with Starwood Hotels and as part of the Starwood Luxury Collection. Criswell and Radovan each owned 30.5% of the membership interest in the entity. The remaining interests were held by key executive personnel in the operation.
- A copy of the Management Agreement was reviewed and approved by the Executive Committee before closing with the investors, and was one of the documents provided to investors such at closing.
- The minimum term of the agreement was 10 years from the date of opening, with two options for CR Hospitality to extend the term by five additional years each.
- The fees to be paid to CR Hospitality or management of the hotel were:
 - A Basic Fee equal to 3% of Revenue; and
 - An incentive fee equal to 10% of Net Operating Income before reserves and debt service.

- The total fees to be earned by CR Hospitality for the initial term of ten years following opening were estimated in the Financial Pro Forma section of the Confidential Private Offering Memorandum dated March, 2014 and accepted in evidence at trial as Trial Exhibit 4.

The following chart shows the estimates of total management fees for each of the first ten years of operation as shown in Trial Exhibit 4 and calculates the share of those fees that would have been received by each of Radovan and Criswell were it not for Yount's actions:

Lost Management Fees Per Trial Exhibit 4 dated March 2014

1st Ten Year Term

Year	Base Fee ¹	Base Incentive Fee ²	Total Annual Fees	Criswell Share ³	Radovan Share
1 ⁴	650,250	-0-	650,250	198,326	198,326
2	809,416	617,266	1,426,682	435,138	435,138
3	862,039	772,100	1,634,139	498,412	498,412
4	887,900	725,115	1,613,015	491,970	491,970
5	914,537	751,291	1,665,828	508,078	508,078
6	941,973	778,252	1,720,225	524,669	524,669
7	970,232	806,022	1,776,254	541,757	541,757
8	999,339	834,625	1,833,964	559,359	559,359
9	1,029,320	864,086	1,893,406	577,489	577,489
10	1,060,199	881,368	1,941,567	592,178	592,178
				4,927,376	4,927,376
TOTAL					

¹ Found in fourth line from bottom of Financial Pro Forma of Trial Exhibit 4.

² The 30.5% share owned by each of Criswell and Radovan in the total management fees to be paid to CR Hospitality. Because this management agreement was for a single property, costs of on site management, record keeping, office space, etc. would have been costs of the hotel itself and are not shown as a reduction in these values.

³ 2015 was assumed to be a partial year as the first operating year when this projection was prepared in 2014. 2016 was to be the first full year of operations.

⁴ Found under Fixed Charges Section of Financial Pro Forma of Trial Exhibit 4.

1 Importantly, the Financial Pro Forma which forms the basis for these damages was not
2 only thoroughly vetted by several experts in the hotel industry, including Starwood Hotel and
3 Resorts, but according to testimony at trial, by Yount's own accountant, Ken Tratner, who looked
4 at the pro forma for reasonableness, and then gave the Pro Forma to a hospitality expert to review
5 who told him it was reasonable; and then accountant Tratner gave Yount the go ahead to invest.
6 See Trial Testimony of Ken Tratner, Volume VI, pp. 849-50, 855.

7 The above estimate of management fees is taken from Trial Exhibit 4, which was prepared
8 in early 2014 and reflected a then depressed hotel market in the area. A more recent, and much
9 higher, projection can be found in an updated pro forma (the "2015 Forecast") dated December
10 15, 2015 and prepared by Orion Hospitality, an outside consultant in the hospitality industry.
11 Using those projections, the total of projected management fees which were lost by Criswell and
12 Radovan due to the actions of Yount and others would be \$7,546,000.

13 Accordingly, pursuant to the Amended Order, the Judgment should be amended to include
14 an award of **at least** \$4,927,376 in lost management fees to each of Criswell and Radovan.


15 III.

16 CONCLUSION

17 Based on the foregoing, Defendants respectfully request that their Motion to Amend
18 Judgment be granted in its entirety.

19 DATED this 27th day of March 2018.

20 HOWARD & HOWARD ATTORNEYS PLLC

21 By: 
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CR Cal Neva, LLC, Robert Radovan,
William Criswell, Cal Neva Lodge, LLC

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION

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

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_____ A specific state or federal law, to wit:

(State specific state or federal law)

- OR -

For the administration of a public program

- OR -

_____ For an application for a federal or state grant

- OR -

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

Date: March 27th, 2018

HOWARD & HOWARD ATTORNEYS, PLLC

By: 

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EXHIBIT G

\$2515

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**SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA**

GEORGE STUART YOUNT,
Individually and in his Capacity as
Owner of GEORGE STUART YOUNT
IRA,

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a
Nevada limited liability company; CR
Cal Neva, LLC, a Nevada limited
liability company; ROBERT
RADOVAN; WILLIAM CRISWELL;
CAL NEVA LODGE, LLC, a Nevada
limited liability company; POWELL,
COLEMAN and ARNOLD LLP;
DAVID MARRINER; MARRINER
REAL ESTATE, LLC, a Nevada limited
liability company; NEW CAL-NEVA
LODGE, LLC, a Nevada limited liability
company; and DOES 1 through 10,
Inclusive,

Defendants.

Case No. CV16-00767

Dept. No. B7

NOTICE OF APPEAL

Defendants Criswell Radovan, LLC ("Criswell Radovan"), CR Cal Neva, LLC ("CR Cal Neva"), Robert Radovan ("Radovan"), William Criswell ("Criswell"), and Powell, Coleman and Arnold LLP ("PCA") (collectively "Defendants") hereby appeal to the Supreme Court of Nevada from:

1. The Judgment entered in this matter on March 13, 2018 (attached as Exhibit 1).
2. The district court's December 20, 2018 refusal to consider Defendants' timely Motion to Amend, which was filed in this matter on March 27, 2018 (minute order attached as Exhibit 2).

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

DATED this 22nd day of January, 2019.

HOWARD & HOWARD ATTORNEYS, PLLC

By: /s/Ryan T. O'Malley

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Attorneys for Criswell Radovan, LLC,

CR Cal Neva, LLC, Robert Radovan,

William Criswell, Cal Neva Lodge,

LLC, Powell, Coleman and Arnold LLP

LIST OF EXHIBITS

<i>Exhibit 1</i>	The Judgment entered in this matter on March 13, 2018
<i>Exhibit 2</i>	The district court's December 20, 2018 refusal to consider Defendants' timely Motion to Amend, which was filed in this matter on March 27, 2018

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

I served the foregoing **NOTICE OF APPEAL** in this action or proceeding electronically with the Clerk of the Court via the E-Flex system, which will cause this document to be served upon the following counsel of record:

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I certify under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service was executed by me on January 22nd, 2019 at Las Vegas, Nevada.

/s/ Anya Ruiz

An Employee of HOWARD & HOWARD ATTORNEYS PLLC