

**FILED**

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

**MAR 07 2019**

**INDICATE FULL CAPTION:**

A. J. JOHNSON, an individual, JAMES E.  
JOHNS an individual, J. E. JOHNS  
& ASSOCIATES, a Nevada business entity,  
v.  
JOHN LINDBERG, an individual, MICHA

No. .78086

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**DOCKETING STATEMENT  
CIVIL APPEALS**

**GENERAL INFORMATION**

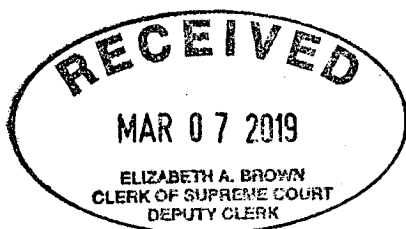
Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for 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.



19-10348

1. Judicial District Second Department 3  
County Washoe Judge Hon. Jerome Polaha  
District Ct. Case No. CV15-00281

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

Attorney Glade L Hall Telephone (775) 324-6447  
Firm Glade L Hall, Attorney  
Address 105 Mt. Rose St., Ste. B  
Reno, NV 89509

Client(s) A.J. JOHNSON, JAMES E. JOHNS, J.E. JOHNS & ASSOCIATES,

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 John D. Moore Telephone (775) 336-1600  
Firm MOORE LAW GROUP, PC  
Address 3715 Lakeside Drive, Ste. A  
Reno NV 89509

Client(s) JOHN LINDBERG, MICHAL LINDBERG, and JUDITH L. LINDBERG

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

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

(List additional counsel on separate sheet if necessary)

**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:

None

**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:

Plaintiffs sought alleged damages for failure of a real estate licensee to disclose material facts about a residential property.

The district court found the licensees liable and awarded damages of aprox. \$3,000 and attorney's fees totaling \$48,000.

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

1. Whether the district court should have applied the "without recourse" provision of NRS 113.130 to the claim of material and relevant non disclosure of the septic tank size and its implications for the use of the subject property, when the court also found that the size of the septic tank could not have initially been known by the parties involved in the sale transaction, under circumstances whereby the size of the septic tank was investigated and accurately determined to be 1000 gallons prior to close of escrow, which determination was read and approved in writing by the buyers.

2. Whether the district court made a plain error of law when it concluded that the initial claimed failure to disclose the septic tank capacity proximately caused damages to the plaintiffs when two years after close of escrow the plaintiffs elected to seek a zoning variance to allow usage of mother-in-law quarters which variance would require the addition of more septic tank capacity.

(See attachment for additional issues.)

**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:

None

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: There is no Nevada case law that construes the provisions of NRS 113.130 and NRS 645.252 in a compatible manner.. NRS 113.130 provides that buyers who elect to proceed with a real estate purchase after being aware of inaccuracies in initial information regarding a property which have been corrected and accurately disclosed prior to close of escrow takes the property "without recourse". NRS 645.252 makes sellers and licensees liable for damages caused by failure to disclose information that is relevant and material and which the licensee knows or through the exercise of due diligence should know without regard to whether the correct information was provided later

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

This appeal presents a matter raising as a principal issue a question of statewide public importance in that it affects all residential real estate transactions, specifically, whether there is a duty of licensees to know and/or investigate matters outside the scope of their own expertise. Further, the appeal presents a matter raising as a principal issue the reconciliation of NRS 645.252, imposing liability on real estate licensees for failure to disclose, with the provisions of NRS 113.130 which provides a process of investigation by knowledgeable persons to discover problems or defects in real property during a due diligence period then providing a buyer the election to cancel the transaction without liability or to close the transaction and take the property without recourse. Herein, all errors were corrected and the buyer closed, but 2 years later sued based on superceded info.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 3

Was it a bench or jury trial? Bench

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No.

**TIMELINESS OF NOTICE OF APPEAL**

**16. Date of entry of written judgment or order appealed from** January 24, 2019

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

N/A

**17. Date written notice of entry of judgment or order was served** January 24, 2019.

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 October 9, 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 January 24, 2019

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

Was service by:

☐ Delivery

☒ Mail

**19. Date notice of appeal filed** \_\_\_\_\_

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:  
February 4, 2019

Appellants are Amina Johnson and her wholly owned business entity,. James Johns passed away while the district court action was pending. J.E. Johns & Associates and Amina Johnson are represented by Glade L Hall. Glade L Hall filed 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)(i) \_\_\_\_\_

**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 Amended Judgment appealed from is a final judgment commenced in the court where judgment is rendered.



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

**(a) Parties:**

Plaintiffs: John Lindberg; Michal Lindberg; and Judith L. Lindberg.

Defendants: Harry Richard Reynolds; Deann Reynolds; J. E. Johns & Associates;  
James E. Johns; A.J. Johnson; Brian F. Kincannon; Group One Inc. dba Keller  
Williams Realty; and Robvert Clement.

**(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:**

Harry Richard Reynolds and Deann Reynolds were formally dismissed  
Brian F. Kincannon, Robert Clement, and Group One Inc. dba Keller Williams  
Realty were formally dismissed.

**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.**

Lindbergs claimed fraud and breach of contract against the Reynolds defendants.  
Lindbergs claimed breach of the NRS 645.252 duty to disclose facts against the  
Johnson and Johns defendants and against Brian Kincannon, Robert Clement and  
Group One, Inc.

Lindbergs claimed failure to supervise against James I Johns and Brian Kincannon.

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

☒ Yes

☐ No

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

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

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

## VERIFICATION

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

A.J. Johnson, J.E. Johns & Associates

Name of appellant

Glade L Hall

Name of counsel of record

2-20-19  
Date

Glade L Hall  
Signature of counsel of record

February 20, 2019 Washoe County, Nev  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 20<sup>th</sup> day of February, 2019, 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.)

John D. Moore, Esq.  
The Moore Group  
715 Lakeside Drive, Ste. A  
Reno NV 89509

Dated this 20<sup>th</sup> day of February, 2019

Glade L Hall  
Signature

## **ADDENDUM TO RESPONSE #9, ISSUES ON APPEAL**

3. Whether the district court committed plain error of law when it found A. J. Johnson liable for incorrect information in the listing under which the plaintiffs made their offer to purchase the subject property, which listing was posted by James E. Johns.
4. Whether the district court committed plain error of law when it entered findings of fact and conclusions of law that effectively nullified the application of several key provisions in the printed forms created by the local and State of Nevada Board of Realtors to comply with the provisions of NRS Chapter 113 and other sources of law. In particular, the provision in the Offer and Acceptance Agreement that "At close of escrow Buyer assumes all further costs associated with . . . the septic system."
5. Whether the district court committed plain error of law when it granted \$48,000 dollars in attorney's fees on a \$3,000 recovery.
6. Whether the district court committed plain error of law when it awarded attorney's fees to the plaintiffs and refused to consider attorney's fees for the Johns appellants under circumstances where the plaintiffs had settled with the Reynolds for \$50,000 and with the Kincannon defendants for \$7,500 and plaintiffs' damages were found to be \$27,000 and the plaintiffs had refused an offer of judgment from the Johns defendants after the foregoing settlements and when the then plaintiffs' attorney's fees were \$13,000.
7. Whether the district court committed plain error of law when it allowed the plaintiffs' judgment including interest on the subject attorney's fees from the commencement of the action, March 27, 2015 when the bulk of such fees were incurred in 2017 and 2018.

<b>1</b>	NOT. OF ENTRY, AMD. JGMT.
<b>2</b>	AMENDED JUDGMENT
<b>3</b>	DEF'S MOT. TO AMEND
<b>4</b>	NOTICE OF ENTRY, FNDGS.
<b>5</b>	FINDINGS, CONCL. & JGMT
<b>6</b>	ORDER DISMISS, REYNOLDS
<b>7</b>	ORDER DISMISS, KINC.
<b>8</b>	STIP. FOR DISMISSAL
<b>9</b>	ANSW. & CROSS CLM. REYN.
<b>10</b>	SECOND AMD. COMP.
<b>11</b>	
<b>12</b>	
<b>13</b>	
<b>14</b>	
<b>15</b>	



2535  
John D. Moore, Esq.  
Nevada State Bar No. 8581  
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3715 Lakeside Drive, Suite A  
Reno, NV 89509  
(775) 336-1600  
Attorney for Plaintiffs  
john@moore-lawgroup.com

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

JOHN LINDBERG, an individual; MICHAL  
LINDBERG, an individual; and JUDITH L.  
LINDBERG, an individual,

Plaintiffs,

v.

HARRY RICHARD REYNOLDS, an  
individual; DEANN REYNOLDS, an  
individual; J.E. JOHNS & ASSOCIATES, a  
Nevada business entity; JAMES E. JOHNS,  
an individual; A.J. JOHNSON, an individual;  
BRIAN F. KINCANNON, an individual;  
GROUP ONE, INC., a Nevada corporation  
dba Keller Williams Realty; ROBERT  
CLEMENT, an individual; and DOES 3  
through 10, inclusive,

Defendants.

Case No. CV15-00281

Dept. No. 3

**NOTICE OF ENTRY OF AMENDED JUDGMENT FOLLOWING HEARING**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 24, 2019, the Court entered its Amended  
Judgment Following Hearing in the above-captioned matter. A copy of the same is attached hereto  
and incorporated herein by reference.

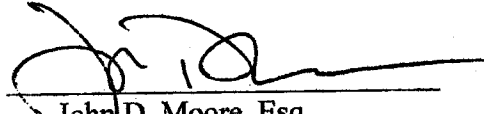
**AFFIRMATION PURSUANT TO NRS 239B.030**

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

DATED this 24<sup>th</sup> day of January, 2019.

MOORE LAW GROUP, PC

By



John D. Moore, Esq.  
Nevada State Bar No. 8581  
3715 Lakeside Drive, Suite A  
Reno, NV 89509  
(775) 336-1600 telephone  
(775) 336-1601 fax  
john@moore-lawgroup.com  
Attorney for Plaintiffs

1105

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

JOHN LINDBERG, an individual; MICHAL  
LINDBERG, an individual; and JUDITH L.  
LINDBERG, an individual,

Plaintiffs,

v.

HARRY RICHARD REYNOLDS, an  
individual; DEANN REYNOLDS, an  
individual; J.E. JOHNS & ASSOCIATES, a  
Nevada business entity; JAMES E. JOHNS,  
an individual; A.J. JOHNSON, an individual;  
BRIAN F. KINCANNON, an individual;  
GROUP ONE, INC., a Nevada corporation  
dba Keller Williams Realty; ROBERT  
CLEMENT, an individual; and DOES 3  
through 10, inclusive,

Defendants.

Case No. CV15-00281

Dept. No. 3

**AMENDED JUDGMENT FOLLOWING HEARING**

Following a bench trial in this matter conducted in August of 2018, on September 18, 2018,  
the Court issued its Findings of Fact and Conclusions of Law and Judgment ("FFCLJ"). Thereafter,  
and in accordance with the Court's September 18, 2019 FFCLJ, the Court issued a Judgment in favor  
of the Plaintiffs on September 26, 2018. In this Judgment, Plaintiffs were awarded \$75,780.79 as  
damages against the remaining Defendants A.J. Johnson, James E. Johns (through his estate), and J.E.



1 Johns & Associations (the "remaining Defendants"). In this Judgment, the Court also awarded  
2 Plaintiffs pre-judgment interest in the amount of \$19,121.48 and ordered that post-judgment interest  
3 at the rate of \$14.53 per day would accrue on the Judgment until paid.

4 On October 9, 2018, the remaining Defendants filed a Motion to Amend of Alter Judgment  
5 pursuant to NRCP 59(e) ("Motion"). Plaintiffs opposed that Motion on October 24, 2018. The  
6 remaining Defendants filed a reply in support of their Motion on November 21, 2018, which was filed  
7 late according to local rules and the Nevada District Court Rules. Plaintiffs filed a written non-  
8 opposition to the late filing of the remaining Defendants' reply and this Court reviewed all documents  
9 filed in support of and in opposition to this Motion. Upon considering all relevant documents, on  
10 December 5, 2018, the Court granted the Motion in part, finding the Judgment should be amended,  
11 and denied the Motion in part, finding that the remaining Defendants had not made a more favorable  
12 Offer of Judgment to the Plaintiffs prior to trial. The Court also ordered the parties to set a hearing on  
13 the Motion to determine by what amount the Judgment should be amended in accordance with the  
14 Court's order regarding the remaining Defendants' Motion. On January 9, 2019, the Plaintiffs and the  
15 remaining Defendants, personally and through counsel, appeared before this Court, where the Court  
16 heard arguments regarding the amount by which the Judgment should be reduced, if at all.

17 Upon considering all the documents on file related to the Motion, and upon considering the  
18 arguments and evidence presented to the Court at the above-noted hearing, AND FOR GOOD CAUSE  
19 APPEARING, the Court hereby amends the September 26, 2018 Judgment as follows:

20 1. The amount of the Judgment awarded to Plaintiffs as damages, totaling \$75,780.79,  
21 includes an amount awarded to Plaintiffs to compensate them for the costs Plaintiffs incurred to  
22 enlarge the septic tank found at their property and to obtain a variance for the enlarged tank  
23 (\$27,663.95) and to compensate Plaintiffs for attorney's fees and costs Plaintiffs incurred to bring their  
24  
25  
26  
27  
28

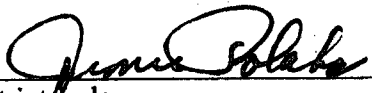
1 claims against the remaining Defendants (\$48,116.84). These damages are awardable to Plaintiffs  
2 under NRS 645.252 and NRS 645.257 because this Court found in its September 18, 2018 FFCLJ that  
3 these damages were caused a proximate result of the remaining Defendants' violations of NRS  
4 645.252 and NRS 645.257, in that the remaining Defendants knew or should have known that the  
5 septic tank found at the property was insufficient for the size of the property. But for the remaining  
6 Defendants' violations of these statutes, the Plaintiffs would not have been required to enlarge the  
7 septic tank found at their property and obtain a variance for this work and they would not have been  
8 required to incur attorney's fees and costs to vindicate their rights.  
9

10 2. Of the damages awarded to Plaintiffs, to avoid a double recovery associated with the  
11 cost to enlarge the septic tank found at the property, these costs (\$27,663.95) must be off-set by  
12 amounts Plaintiffs recovered by way of settlements from other defendants in this case that settled with  
13 the Plaintiffs prior to trial. The amount Plaintiffs settled with their own realtor (\$7,500.00) will be  
14 deducted from this amount. The Court finds, however, that the settlement with the sellers in this case  
15 (\$50,000.00) cannot all be attributed to the costs of enlarging the septic tank and obtaining a variance,  
16 because Plaintiffs possessed significant multiplying claims against the sellers under NRS 113.150  
17 which Plaintiffs could not recover from the remaining Defendants, whereby the Plaintiffs would be  
18 entitled to treble damages against the sellers associated with any claim established under NRS  
19 113.150. As such, the Court finds that only one-third ( $1/3$ ) of the settlement with the sellers  
20 (\$50,000.00  $\times$   $1/3$  = \$16,650.00) can be applied as an off-set in the remaining Defendants' favor. As  
21 such, after making these off-sets, the Plaintiffs are awarded \$3,513.95 associated with the cost of  
22 enlarging the septic tank and obtaining a variance for that work. Because the damages awarded to  
23 Plaintiffs as attorneys fees and costs in this matter were proximately caused by the Defendants'  
24 violations of NRS 645.252 and NRS 645.257, the costs and attorneys fees must also form part of the  
25  
26  
27  
28

1 Amended Judgment against the remaining Defendants. This amount cannot be reduced by any  
2 settlement with the other defendants in this case because those settlements cannot be said to relate to  
3 an award of attorney's fees and costs to the Plaintiffs. Therefore, the amount of attorney's fees and  
4 costs in the amount of \$48,116.84 awarded to Plaintiffs against the remaining Defendants shall not be  
5 reduced.  
6

7 3. As such, the Judgment entered by the Court on September 26, 2018 is hereby amended  
8 and reduced to a total amount of \$51,630.79. The amount of pre-judgment and post-judgment interest  
9 must also be amended, because the determination of these awards was related to the original amount  
10 of the September 26, 2018 Judgment. The calculus for this award remains the same, however, using  
11 seven percent (7%) interest and calculating pre-judgment interest from February 10, 2015 (the date  
12 Plaintiffs filed their complaint) until September 18, 2018 (the date the Court issued its FFCLJ), which  
13 totals 1,316 days. As such, Plaintiffs are awarded \$13,028.40 in pre-judgment interest ( $\$51,630.79 \times$   
14  $.07/365$  days per year = \$9.90 per day  $\times 1,316$  days = \$13,078.40). Plaintiffs are also entitled to post-  
15 judgment interest from September 18, 2018, until this judgment is paid in full at the rate of \$9.90 per  
16 day ( $\$51,630.79 \times .07/365$  days per year = \$9.90 per day).  
17

18 JUDGMENT IS SO ENTERED this 24<sup>th</sup> day of January, 2019.  
19  
20

21   
22 District Judge

23 Submitted by:

24 /s/ John D. Moore

25 John D. Moore, Esq.

26 Nevada State Bar No. 8581

27 3715 Lakeside Drive, Suite A

28 Reno, NV 89509

john@moore-lawgroup.com

Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Moore Law Group, PC, and that on January 24, 2019, I caused the foregoing document to be served on all parties to this action by:

☐ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☐ personal delivery

☐ facsimile (fax)

☐ Federal Express/UPS or other overnight delivery

☐ Reno/Carson Messenger Service

☒ E-service via flex filing system

to the following:

- GLADE HALL, ESQ. for AMINA JOHNS; J.E. JOHNS & ASSOCIATES et al



\_\_\_\_\_  
An Employee of Moore Law Group, PC

1 Code:  
2 Glade L Hall, Esq. (#1609)  
3 105 Mt. Rose St.  
4 Reno, Nevada 89509  
5 (775) 324-6447

6 Attorney for Johns Defendants

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

9 \* \* \* \* \*

10 **JOHN LINDBERG, MICHAL LINDBERG,**  
11 **JUDITH L. LINDBERG,**

12 Plaintiffs,

Case No. 15-00281

13 vs.

Dept. No. 3

14 **HARRY RICHARD REYNOLDS, DEANN**  
15 **REYNOLDS, J.E. JOHNS & ASSOCIATES, A.**  
16 **J. JOHNSON, KEN AMUNDSON,**  
17 **BRIAN F. KINCANNON,**

Defendants.

**DEFENDANTS' MOTION TO**  
**AMEND OR ALTER JUDGMENT**  
**PURSUANT TO NRCP 59(e)**

18 \_\_\_\_\_ /  
19 The remaining defendants in the above-entitled matter hereby move the Court for an order  
20 amending or altering the Judgment entered herein on September 26, 2018 so as to find that said  
21 defendants are entitled to a judgment of dismissal based on settlements made with other defendants  
22 and an Offer of Judgment made by the remaining defendants on March 2018.

23 This motion is made pursuant to NRCP 59(e) and based on the FINDINGS OF FACT,  
24 CONCLUSIONS OF LAW AND JUDGMENT entered herein on September , 2018; the Affidavit of  
25 A. J. Johnson, affixed hereto as Exhibit 1, the Offer of Judgment, affixed hereto as Exhibit 2, and  
26 other relevant pleadings and documents on file herein.

27 **FACTS, LAW and ARGUMENT**

28 On or about Noveber 3, 2017, the remaining defendants in this action made an offer of  
judgment in favor of Plaintiffs in the amount of \$5,000.00. Said offer was not accepted by the

1 Plaintiffs.

2 At the point in time when said Offer was made, Defendants are informed and believe that  
3 Plaintiffs had reached and received settlements from other defendants in the amount of \$57,500.

4 In its FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT, entered herein  
5 on September 26, 2018 this Court had determined the damages the Plaintiffs' established at the trial  
6 of this matter to be \$27,663.95. The schedule of attorney's fees set forth in Exhibits 46 and 50 show  
7 that the accumulated attorney's fees as of May 31, 2018 total \$14,504.84. Thus, on the date of the  
8 defendants' offer of judgment the Plaintiffs did not have more than \$14,504.00 in attorney's fees,  
9 making the total value of their claim \$42,168.89. Thus acceptance of defendants' Offer of Judgment  
10 would have resulted in the Plaintiffs having received \$62,500.00 as the total of their settlements.  
11 Accordingly, the Court's award, less the attorney's fees they would have avoided had they accepted  
12 the offer of judgment, is less than the total amount of remaining defendants offer of judgment when  
13 added to the set-off of the amounts previously accepted and received from the settling defendants.

14 The remaining defendants are entitled to a set-off and a form of contribution as to prior  
15 settlements in good fait, because such settlements under subsection 1(a) of NRS 17.245, reduce the  
16 claims against non-settling tortfeasors by the amount of the settlement, i.e. through an equitable set-  
17 off. *The Doctors Company, v. Vincent*, 120 Nev. 644, 98 P3d. 681 (2004).

18 Plaintiff's, therefore, have not obtained a judgment that is more favorable than accepting the  
19 remaining defendants; offer. Likewise, it follows that Plaintiffs are not entitled to recover attorney's  
20 fees by reason of the provisions of NRCP 68(f)(1)

21 Further, the remaining defendants are entitled to have their costs, interest and reasonable  
22 attorney's fees, if any be allowed. NRCP 68(f)(2)

23 A motion to alter or amend a judgment or appealable order is not limited in scope, as long as it  
24 is timely, in writing, complies with procedural requirements, and request a substantive alteration of  
25 vacation of a judgment or order, not merely correction of a clerical error or relief that s wholly  
26 collateral in the judgment or order. *AA Primo Builders, LLC*, 126 Nev Adv Opp 53. 245 P.3d at  
27 1193. Among the grounds for such a motion are correcting manifest errors of law or fact, newly  
28 discovered or previously unavailable evidence, a need to prevent a manifest injustice, or a change in

1 controlling law.

2 The accepted settlements from other defendants in this action were not available of relevant to  
3 the issues in the remaining defendants' case, until the Findings, conclusion and Judgment were  
4 entered herein. There is a clear need to prevent injustice under the instant circumstances.

5 **CONCLUSION**

6 The Court should vacate the Judgments entered herein against the remaining defendants and  
7 enter judgment in favor of the remaining defendants, awarding their costs, interest and attorney's fees  
8 from November 3, 2017.

9 The undersigned hereby affirms that the foregoing document does not contain the social  
10 security number of any person.

11 Respectfully submitted this

12 Dated this 9<sup>th</sup> day of October, 2018.

13 */s/ Glade L Hall*

14  
15 GLADE L HALL, Esq. (#1609)  
16 105 Mt. Rose St. Ste. B  
17 Reno NV 89509  
18 (775)324-6447  
19  
20  
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3  
4 **CERTIFICATE OF MAILING**  
5

6 I certify that I am an employee of the Law Office of Glade L. Hall, that on the 9th day  
7 of October, 2018, I did the following.

8 Electronically filed with the Clerk of the Court, using the eFlex system which  
9 constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

10 JOHN DAVID MOORE, ESQ. for JUDITH LINDBERG et al

11 DATED this 9th day of October, 2018.

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

14 */s/ Glade L Hall*

15 \_\_\_\_\_  
16 GLADE L HALL, Esq. (#1609)  
17 105 Mt. Rose St. Ste. B  
18 Reno NV 89509  
19 (775)324-6447  
20  
21  
22  
23  
24



INDEX OF EXHIBITS

\1 Affidavit to A. J. Johnson

1 Pf.

2 Offer of Judgment

3 pgs.

2545  
John D. Moore, Esq.  
Nevada State Bar No. 8581  
MOORE LAW GROUP, PC  
3715 Lakeside Drive, Suite A  
Reno, NV 89509  
(775) 336-1600  
Attorney for Plaintiffs  
john@moore-lawgroup.com

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

JOHN LINDBERG, an individual; MICHAL  
LINDBERG, an individual; and JUDITH L.  
LINDBERG, an individual,

Plaintiffs,

v.

HARRY RICHARD REYNOLDS, an  
individual; DEANN REYNOLDS, an  
individual; J.E. JOHNS & ASSOCIATES, a  
Nevada business entity; JAMES E. JOHNS,  
an individual; A.J. JOHNSON, an individual;  
BRIAN F. KINCANNON, an individual;  
GROUP ONE, INC., a Nevada corporation  
dba Keller Williams Realty; ROBERT  
CLEMENT, an individual; and DOES 3  
through 10, inclusive,

Defendants.

Case No. CV15-00281

Dept. No. 3

**NOTICE OF ENTRY OF FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW AND JUDGMENT**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 18, 2018, the Court entered its Findings of  
Fact, Conclusions of Law and Judgment, in the above-captioned matter. A copy of the same is  
attached hereto and incorporated by reference.

1                                   **AFFIRMATION PURSUANT TO NRS 239B.030**

2           The undersigned attorney does hereby affirm that the preceding document does not contain the  
3 social security number of any persons

4           DATED this 1<sup>st</sup> day of September, 2018.

5                                   MOORE LAW GROUP, PC

6  
7           By \_\_\_\_\_

8                                   John D. Moore, Esq.  
9                                   Nevada State Bar No. 8581  
10                                  3715 Lakeside Drive, Suite A  
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14                                  john@moore-lawgroup.com  
15                                  Attorney for Plaintiffs

1  
2  
3  
4  
5  
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
7 **THE STATE OF NEVADA IN AND FOR THE**  
8 **COUNTY OF WASHOE**

9 **JOHN LINDBEG, MICHAL LINDBERG,**  
10 **JUDITH L. LINDBERG,**

11 **Plaintiff,**

**Case No. CV15-00281**

**Dept. No. 3**

12 **vs.**

13 **HARRY RICHARD REYNOLDS DEANN**  
14 **REYNOLDS, J. E. JOHNS & ASSOCIATES, A**  
15 **J. JOHNSON, KEN AMUNDSON, BRIAN F.**  
16 **KINCANNON,**

**Defendants.**

17 \_\_\_\_\_ /  
18 **FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT**

19 This matter came up for trial on Monday, August 20, 2018 and concluded on Wednesday,  
20 August 22, 2018. Some of the Defendants to this action had settled with Plaintiffs prior to trial.  
21 The remaining Defendants included James E. Johns (who is deceased), A.J. Johnson (individually  
22 and as the representative of Mr. Johns's estate) and J.E. Johns & Associates, against which a default  
23 was entered by the Court on March 1, 2018. The remaining issues in the case were presented and  
24 contested in the hearing. The Court has reviewed the memoranda of law set forth in the parties' Trial  
25 Statements, heard the testimony of the witnesses, and reviewed the exhibits entered into evidence  
26 and based thereon, makes the following Findings of Fact and Conclusions of Law:  
27  
28

## FINDINGS OF FACT

1  
2 1. The Johnson parties reside in Washoe County, Nevada and the causes of action arise  
3 from a transaction conducted in Washoe County, Nevada.

4 2. In September of 2012, Harry and Deann Reynolds (the "Sellers") listed for sale their  
5 residential real property located at 20957 Eaton Road, Reno, Nevada. The Johns defendants  
6 represented the Sellers.  
7

8 3. The allegations describing the basis for this cause of action are that Defendants Johns,  
9 Johnson, Clement and Kincannon each owed a duty to the Lindbergs to comply with NRS 645.252,  
10 and failed to disclose material and relevant facts, data, or information which they knew, or which by  
11 the exercise of reasonable care and diligence they should have known, of the subject property and  
12 yet failed to exercise reasonable skill and care with respect to all parties to the transaction. As a  
13 result of the claimed breaches, plaintiffs claim to have a cause of action pursuant to NRS 645.252,  
14 to recover their actual damages and to attorney's fees as damages.  
15

16 4. The acts and actions comprising the second alleged cause of action are that Defendants  
17 Johns and Clement owed an additional duty to the Lindbergs to maintain adequate supervision of  
18 their agents and to use reasonable care in the supervisions of their agents, which they breached,  
19 causing damages and the need to expend attorney's fees.  
20

21 5. Clement and Kincannon, the plaintiffs' agents settled with the plaintiffs prior to trial.  
22

23 6. The facts precipitating this law suit are approximately 1 year after the close of escrow  
24 when the plaintiffs went to upgrade the electrical components of the smallest building in order to  
25 make it a work shop, they encountered official rejection by the County building department because  
26 prior owners did not complete the permit process on those two additional units on the property and  
27 they further discovered that the septic system was not up to code hence disabling the use of the  
28

1 'mother-in-law' structure as a living quarter which was their original purpose of purchasing that  
2 particular property.

3 7. Another claim by the plaintiffs was that they were under the impression the living space  
4 they purchased was 240 feet larger than it turned out to be and as a consequence they were shorted  
5 240 sq.ft. of such space which totaled, at the \$99.00 per sq.ft. purchase price, \$23,760.00. They  
6 seek that amount as additional damages.  
7

8 8. On September 12, 2012, when the property went on the market, the listing information set  
9 forth in the listing was supplied by the Reynolds and Defendant A.J. Johnson did the listing. The  
10 listing disclosed that the property was located in a "single family residential zone", the listing also  
11 disclosed that there were three separate structures on the property, and that these three structures  
12 comprised 3,880 square feet of living space. The reported source of that information was the  
13 assessor. That same day, two hours later, Defendant Johnson re-did the listing showing that the total  
14 living space was 2,180 sq.ft. and that was for the main residence. A third listing, this one by  
15 Defendant James E. Johns, included the same information but reported the living space at 3,880 just  
16 as the original listing had done. It denoted that there were two living dwellings on the lot, which  
17 violated the zoning code.  
18  
19

20 9. Plaintiffs should have verified the square footage in light of the changed listing  
21 information which their agent ought to have been aware and from their own appraisal. Prior to the  
22 listing of the property the Sellers obtained an appraisal of the property, which disclosed that the  
23 actual living space was 3,640 square feet. Ms. Johnson was provided with this appraisal.  
24 Also, the plaintiffs obtained an appraisal which confirmed the actual square footage of living space  
25 and found the same value for the property (\$400,000). Thus, prior to close of escrow, all parties to  
26  
27  
28

1 the transaction were or should have been aware that the existing structures did not comply with the  
2 applicable zoning and that the actual living space was somewhere in the range of 3,640 sq. ft.

3 11. In addition, the RESIDENTIAL OFFER AND ACCEPTANCE AGREEMENT which  
4 the plaintiffs signed, states the following:

5 "Verification of Information"

6  
7 "BUYER has not received or relied upon any representations by either Brokers or SELLER  
8 with respect to the condition of the property which are not contained in this Agreement or in any  
9 attachments. The information contained in the Multiple Listing Service, computer, or  
10 advertisements, and feature sheets pertaining to this property are not warranted or guaranteed by the  
11 Brokers. Errors and/or omissions in inputting information, while uncommon, are possible. BUYER  
12 shall be responsible for verifying the accuracy of pertinent information." (Emphasis added).  
13

14 12. The problem with the septic system could not directly be identified at the time of the sale  
15 or the COE since the problem was below the surface of the ground. The original statement that it  
16 was a 15,000 gallon capacity was shown not to be accurate when Waters Septic cleaned it and  
17 reported on it prior to the COE. That was not the problem however. The problem was when it was  
18 discovered that the 'mother-in-law quarters had its sewer pipe connected to the main house's sewer  
19 pipe which then poured into the 1000 gallon tank which was inadequate without a variance from the  
20 county health department. Although the defendants could not have known the fact of the pipe  
21 situation, the Court finds that a real estate broker and/or agent should have known that the zoning  
22 code infraction - two dwellings on a single family lot including two living dwellings would indicate  
23 that the tank capacity was too small - and should have at least raised a concern that should have  
24 been relayed to the plaintiffs to make them aware of a potential problem.  
25  
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1           13. The Court found the testimony of Ms. Cartinella credible and persuasive. She testified  
2 that an agent must know the relevant state laws, zoning requirements, and health regulations. She  
3 testified that the agent had to know that with three units on the 1.1A lot with an excess of 3  
4 bedrooms, the septic capacity was too small. The statement in the listing that there are three  
5 separate units on the property, the main residence, an in-law quarter or guest house or studio or  
6 office with endless possibilities was misleading and needed to be clarified especially when the  
7 defendant agent was aware of the zoning category which was 'Single Family' and the intended  
8 purchase purpose of the buyers.  
9

10           14. The Court finds the buyers were mislead by the manner the property was listed. Both  
11 seller's and buyers' agents were at fault.  
12

13           15. The Court finds that because real estate agents have knowledge or ought to have  
14 knowledge of such things that is the reason people hire and compensate them. Lay people looking  
15 at the lot in question would see three structures and think - fine. Realtors looking at the same lot  
16 and knowing the zoning codes and septic regulations would think, 'uh oh' and should at least raise  
17 the question about the adequacy of the 1000 gallon septic tank. They are not required to research the  
18 issue and check on permits and such, but they have to put the lay people on notice of potential  
19 expense after the deal is concluded. Defendants were compensated for their part of the sale  
20 transaction but no one expressed concern about what to a real estate agent ought to have been  
21 obvious. That failure cost the plaintiffs damages for which they must be compensated.  
22

23           16. The Court finds Defendants are responsible for the costs of repair and legal fees  
24 necessitated by Defendants' failure to so notify the plaintiffs.  
25

26           17. Plaintiffs spent \$27,663.95 to remedy the septic system, to obtain a variance from  
27 Washoe County to install a second septic tank at the property with a 1,000-gallon capacity to make  
28 the septic system conform to Washoe County's building code requirements, and to perform all



1 other requirements imposed by Washoe County to remedy the septic system in order for the  
2 plaintiffs to be able to use the unit as an in-law quarter.

3 17. As of January 3, 2018, Plaintiffs spent \$16,406.75 in attorney's fees and costs of suit.  
4 Since January 3, 2018, Plaintiffs have spent an additional \$31,710.09 in attorney's fees and costs  
5 of suit for total fees including costs of \$48,116.75. To the extent that any of the foregoing  
6 Findings of Fact constitute a conclusion of law, the Court so concludes and the same stands for the  
7 Conclusions of Law.

### 8 CONCLUSIONS OF LAW

9 1. In accordance with NRS 645.252(1)(a), a real estate "licensee who acts as an agent in a  
10 real estate transaction. . . [s]hall disclose to each party to the real estate transaction as soon as is  
11 practicable. . . [a]ny material and relevant facts, data or information which the licensee knows, or  
12 which by the exercise of reasonable care and diligence should have known, relating to the property  
13 which is the subject of the transaction." Under this provision of Nevada law, a realtor has an  
14 absolute obligation to disclose to all parties to a realty transaction known material and relevant  
15 facts, data or information related to property being offered for sale. This provision of Nevada law  
16 also requires that a realtor disclose facts that the realtor should have known through the exercise of  
17 reasonable care and diligence.

18 a. If a realtor fails to disclose material and relevant facts that the realtor knew or that the  
19 realtor should have known, then the realtor has violated NRS 645.252(1)(a) and is responsible for  
20 damages proximately caused by this failure to disclose, as set forth under NRS 645.257(1).

21 b. In accordance with NRS 645.252(2), a real estate licensee must also "exercise  
22 reasonable skill and care with respect to all parties to the real estate transaction."

23 c. The obligations set forth in these two pertinent portions of NRS 645.252 apply to real  
24 estate agents and to real estate brokers who act as a licensee in a real estate transaction. Under the  
25 facts found above, both provisions of Nevada law noted above applied to Defendants A.J. Johnson  
26 and James E. Johns during this real estate transaction.  
27  
28

1       d. Under the facts adduced above, the Court hereby concludes that Defendants A.J.  
2 Johnson and James E. Johns violated both NRS 645.252(1)(a) and NRS 645.252(2) when they failed  
3 to disclose to Plaintiffs during this realty transaction material and relevant facts, data and information  
4 that these Defendants knew or that they should have known.

5       e. The Court concludes that the remaining Defendants knew the actual size of the septic  
6 system during this transaction, which was much smaller than previously disclosed. Because the size  
7 of the septic system was much smaller than previously disclosed, this Court concludes that the  
8 remaining Defendants should have exercised reasonable care to investigate the septic system further.  
9 In so doing, this Court concludes that these remaining Defendants should have known that the septic  
10 system was too small for the residential property in its existing state at the time of the sale. These  
11 remaining Defendants should have then disclosed this information to the Plaintiffs during this  
12 transaction. The failure to disclose information that the remaining Defendants should have known  
13 under the facts in this case constitutes a violation of NRS 645.252(1)(a) and NRS 645.252(2).  
14

15       f. The Court also concludes that Plaintiffs suffered damages proximately caused by the  
16 remaining Defendants' failure to disclose facts, data or information they should have known about  
17 the property in the form of spending significant amounts to enlarge the size of the septic system in  
18 this matter. Plaintiffs incurred \$27,663.95 to enlarge the septic system to conform to existing code  
19 requirements. Plaintiffs are entitled to recover this amount as damages against Defendants under  
20 NRS 645.257.

21       g. The Court concludes that Defendants incorrectly listed the property as "single-family  
22 residential," when the property clearly contained three structures and the zoning for this area allowed  
23 for one residential structure and one accessory structure (residential or not), for a total of two  
24 structures. Having three structures on the property therefore violates existing code. In order to have  
25 an accessory structure on the property, after it was learned that the second residential structure  
26 constructed without permits, Washoe County required Plaintiffs to install an updated septic system  
27 that was larger than the existing system on the property. As a result, Plaintiffs have been required  
28 to spend \$27,663.95 to install the larger system at the property. Plaintiffs, however, cannot recover

1 been required to spend \$27,663.95 to install the larger system at the property. Plaintiffs, however,  
2 cannot recover twice on this amount and since they have already been awarded this amount, as  
3 noted above, the Court will not award damages under this second theory of recovery, though such  
4 damages would be appropriate here if damages were not awarded to Plaintiffs under NRS 645.257.  
5 It also appears that the issue related to a third accessory structure on the property has been resolved  
6 with Washoe County without significant expense.

7       h. But for the Defendants' failure to disclose known facts, data and information, and  
8 but for the Defendants' failure to disclose facts, data and information that they should have known  
9 during this realty transaction, Plaintiffs would not have been forced to hire attorneys to pursue a  
10 recovery against these Defendants. The Court has reviewed the attorneys' invoices presented at  
11 the trial of this matter without objection and concludes that the attorney's fees and costs incurred  
12 by Plaintiffs in this matter are reasonable in amount and that the time spent by Plaintiffs' attorney  
13 in this matter was also reasonable. The Court also concludes that an award of attorney's fees and  
14 costs is necessary to make Plaintiffs whole under NRS 645.257, and hereby concludes that  
15 Defendants' actions proximately caused Plaintiffs to incur attorney's fees and costs in the amount  
16 of \$48,116.84 as damages in this matter.

17  
18       i. Plaintiffs had ample information to cause them to verify the square footage of the  
19 property and they acknowledged that it was their responsibility to do so when they signed the Offer  
20 and Acceptance Agreement. The Court does not find the defendants liable for the apparent  
21 shortage in the measurement.

22 ///

23 ///

24 ///

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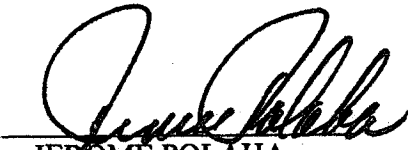
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**ORDER OF THE COURT**

THEREFORE, the Court hereby ORDERS and DECREES that Plaintiffs are entitled to a judgment against Defendants A.J. Johnson, James E. Johns (through his estate), and against J.E. Johns & Associates, jointly and severally, in the total amount of SEVENTY FIVE THOUSAND SEVEN HUNDRED EIGHTY DOLLARS AND SEVENTY NINE CENTS (\$75,780.79). Plaintiffs are also entitled to interest on this amount at the legal rate of interest from the date Plaintiffs served the summons and complaint on Defendants until paid in full.

Dated this 17th day of September, 2018.

  
JEROME POLAHA  
DISTRICT JUDGE

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

**AMINA JOHNS  
GLADE HALL, ESQ.  
JOHN MOORE, ESQ.**

Julius

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Moore Law Group, PC, and that on September 19, 2018, I caused the foregoing document to be served on all parties to this action by:

☐ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☐ personal delivery

☐ facsimile (fax)


☐ Federal Express/UPS or other overnight delivery

☐ Reno/Carson Messenger Service

☒ E-service via flex filing system

to the following:

- GLADE HALL, ESQ. for AMINA JOHNS; J.E. JOHNS & ASSOCIATES et al

  
\_\_\_\_\_  
An Employee of Moore Law Group, PC

1 3985  
2 John D. Moore, Esq.  
3 Nevada State Bar No. 8581  
4 MOORE LAW GROUP, PC  
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7 (775) 336-1600  
8 Attorney for Plaintiffs  
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10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

12 JOHN LINDBERG, an individual; MICHAL  
13 LINDBERG, an individual; and JUDITH L.  
14 LINDBERG, an individual,

15 Plaintiffs,

16 v.

17 HARRY RICHARD REYNOLDS, an  
18 individual; DEANN REYNOLDS, an  
19 individual; J.E. JOHNS & ASSOCIATES, a  
20 Nevada business entity; JAMES E. JOHNS,  
21 an individual; A.J. JOHNSON, an individual;  
22 KEN AMUNDSON, an individual; BRIAN  
23 F. KINCANNON, an individual; and DOES 1  
24 through 10, inclusive,

25 Defendants.

Case No. CV15-00281

Dept. No. 3

26 **STIPULATION AND ORDER FOR DISMISSAL OF DEFENDANTS HARRY RICHARD**  
27 **REYNOLDS AND DEANN REYNOLDS ONLY**

28 Plaintiffs, John Lindberg, Michal Lindberg, and Judith L. Lindberg, by and through their counsel  
John D. Moore, Esq., and Moore Law Group, PC, and Defendants Harry Richard Reynolds and Deann  
Reynolds, by and through their counsel Alicia G. Johnson and Johnson Law Practice, PLLC, hereby  
stipulate to the dismissal of Defendants Harry Richard Reynolds and Deann Reynolds only, with

1 prejudice, in the above-captioned matter, each party to bear their own attorney's fees and costs.

2 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

5 DATED this 1<sup>st</sup> day of May, 2017.

7 MOORE LAW GROUP, PC

8 By 

9 John D. Moore, Esq.

10 Nevada State Bar No. 8581

3715 Lakeside Drive, Suite A

11 Reno, NV 89509

(775) 336-1600 telephone

12 Attorney for Plaintiffs John Lindberg, Michal  
13 Lindberg, and Judith L. Lindberg,

14 DATED this 26 day of April, 2017.

16 JOHNSON LAW PRACTICE, PLLC

17 By: 

18 Alicia G. Johnson, Esq.

19 Nevada State Bar No. 10093

Johnson Law Practice

20 611 Sierra Rose Drive, Suite A

21 (775) 737-9927 telephone

22 Attorney for Defendants Harry Richard  
23 Reynolds and Deann Reynolds

24 **ORDER**

25 Upon the Stipulation of the parties, and good cause appearing,

26 IT IS SO ORDERED this 20<sup>th</sup> day of May, 2017.

27   
28 DISTRICT JUDGE



1 **4050**

2 Lori E. Siderman, Esq.  
3 Nevada State Bar No. 7515  
4 S. Seth Kershaw, Esq.  
5 Nevada State Bar No. 10639  
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9 Attorneys for Defendants/Cross-Claimants  
10 BRIAN F. KINCANNON, ROBERT CLEMENT,  
11 and GROUP ONE, INC. dba KELLER WILLIAMS  
12 REALTY

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

14 JOHN LINDBERG, an individual; MICHAL  
15 LINDBERG, an individual; and JUDITH L.  
16 LINDBERG, an individual,  
17 Plaintiffs,

18 v.

19 HARRY RICHARD REYNOLDS, an  
20 individual; DEANN REYNOLDS, an  
21 individual; J.E. JOHNS & ASSOCIATES, a  
22 Nevada business entity; JAMES E. JOHNS, an  
23 individual; A.J. JOHNSON, an individual;  
24 BRIAN F. KINCANNON, an individual;  
25 GROUP ONE, INC. dba KELLER  
26 WILLIAMS REALTY, a Nevada corporation;  
27 ROBERT CLEMENT, an individual; and  
28 DOES 3 through 10, inclusive,  
Defendants.

CASE NO. CV15-00281

DEPT. NO.: 3

**STIPULATION FOR DISMISSAL OF  
CROSS-CLAIM OF CROSS-CLAIMANTS  
BRIAN F. KINCANNON, ROBERT  
CLEMENT, AND GROUP ONE, INC. dba  
KELLER WILLIAMS REALTY IN ITS  
ENTIRETY**

**AND RELATED CROSS-ACTIONS.**

1 **STIPULATION FOR DISMISSAL OF CROSS-CLAIM OF CROSS-CLAIMANTS**  
2 **BRIAN F. KINCANNON, ROBERT CLEMENT, AND GROUP ONE, INC. dba KELLER**  
3 **WILLIAMS REALTY IN ITS ENTIRETY**

4 IT IS HEREBY STIPULATED, by and between Cross-Claimants BRIAN F.  
5 KINCANNON, ROBERT CLEMENT, and GROUP ONE, INC. dba KELLER WILLIAMS  
6 REALTY (collectively "Cross-Claimants") and Cross-Defendants HARRY RICHARD  
7 REYNOLD, DEANN REYNOLDS, J.E. JOHNS & ASSOCIATES, JAMES E. JOHNS, and A.J.  
8 JOHNSON (collectively "Cross-Defendants"), by and through their respective counsel of record,  
9 that Cross-Claimants' Cross-Claim against Cross-Defendants on file in the above-entitled action,  
10 including each and every cause of action therein, be dismissed in its entirety with prejudice and with  
11 each party to bear that party's own attorney's fees and costs.

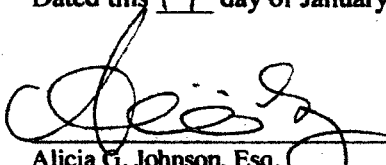
12 AFFIRMATION: Pursuant to NRS 239B.030, the undersigned do hereby affirm that this  
13 document does not contain the social security number of any person.

14 **IT IS SO STIPULATED.**

15 Dated this \_\_\_\_ day of January, 2017

Dated this 17 day of January, 2017

16  
17 Lori E. Siderman, Esq.  
18 S. Seth Kershaw, Esq.  
19 MEYERS McCONNELL REISZ SIDERMAN  
20 Attorneys for Cross-Claimants  
21 BRIAN F. KINCANNON, ROBERT  
22 CLEMENT, and GROUP ONE, INC. dba  
23 KELLER WILLIAMS REALTY

  
Alicia G. Johnson, Esq.  
JOHNSON LAW PRACTICE, PLLC  
Attorneys for Cross-Defendants  
HARRY RICHARD REYNOLDS and DEANN  
REYNOLDS

24 Dated this \_\_\_\_ day of January, 2017

25 C. Nicholas Pereos, Esq.  
26 C. NICHOLAS PEREOS, LTD.  
27 Attorneys for Cross-Defendants  
28 J.E. JOHNS & ASSOCIATES, JAMES E.  
JOHNS, and A.J. JOHNSON

1           **STIPULATION FOR DISMISSAL OF CROSS-CLAIM OF CROSS-CLAIMANTS**  
2           **BRIAN F. KINCANNON, ROBERT CLEMENT, AND GROUP ONE, INC. dba KELLER**  
3           **WILLIAMS REALTY IN ITS ENTIRETY**


4           IT IS HEREBY STIPULATED, by and between Cross-Claimants BRIAN F.  
5 KINCANNON, ROBERT CLEMENT, and GROUP ONE, INC. dba KELLER WILLIAMS  
6 REALTY (collectively "Cross-Claimants") and Cross-Defendants HARRY RICHARD  
7 REYNOLD, DEANN REYNOLDS, J.E. JOHNS & ASSOCIATES, JAMES E. JOHNS, and A.J.  
8 JOHNSON (collectively "Cross-Defendants"), by and through their respective counsel of record,  
9 that Cross-Claimants' Cross-Claim against Cross-Defendants on file in the above-entitled action,  
10 including each and every cause of action therein, be dismissed in its entirety with prejudice and with  
11 each party to bear that party's own attorney's fees and costs.

12           AFFIRMATION: Pursuant to NRS 239B.030, the undersigned do hereby affirm that this  
13 document does not contain the social security number of any person.

14           **IT IS SO STIPULATED.**

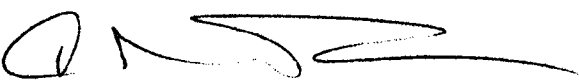
15           Dated this 31 day of January, 2017

16           Dated this \_\_\_\_ day of January, 2017

17             
18           Lori E. Siderman, Esq.  
19           S. Seth Kershaw, Esq.  
20           MEYERS McCONNELL REISZ SIDERMAN  
21           Attorneys for Cross-Claimants  
22           BRIAN F. KINCANNON, ROBERT  
23           CLEMENT, and GROUP ONE, INC. dba  
24           KELLER WILLIAMS REALTY

25           Alicia G. Johnson, Esq.  
26           JOHNSON LAW PRACTICE, PLLC  
27           Attorneys for Cross-Defendants  
28           HARRY RICHARD REYNOLDS and DEANN  
              REYNOLDS

29           Dated this \_\_\_\_ day of January, 2017

30             
31           C. Nicholas Pereos, Esq.  
32           C. NICHOLAS PEREOS, LTD.  
33           Attorneys for Cross-Defendants  
34           J.E. JOHNS & ASSOCIATES, ~~INC.~~  
35           ~~JOHNS~~ and A.J. JOHNSON

ORDER

IT IS ORDERED that Cross-Claimants' Cross-Claim on file in the above-entitled action, including each and every cause of action therein, be dismissed in its entirety with prejudice. Each will bear that party's own attorney's fees and costs.

Dated: 2-8-2017

  
DISTRICT COURT JUDGE

Submitted by:



Lori E. Sideman, Esq  
S. Seth Kershaw, Esq.  
Meyers McConnell Reisz Sideman  
Attorneys for Cross-Claimants  
BRIAN F. KINCANNON, ROBERT  
CLEMENT, and GROUP ONE, INC. dba  
KELLER WILLIAMS REALTY

4050

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Nevada State Bar No. 7515  
S. Seth Kershaw, Esq.  
Nevada State Bar No. 10639  
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Attorneys for Defendants/Cross-Claimants  
BRIAN F. KINCANNON, ROBERT CLEMENT,  
and GROUP ONE, INC. dba KELLER WILLIAMS  
REALTY

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

JOHN LINDBERG, an individual; MICHAL ) CASE NO. CV15-00281  
LINDBERG, an individual; and JUDITH L. )  
LINDBERG, an individual, ) DEPT. NO.: 3  
Plaintiffs, )

v.

HARRY RICHARD REYNOLDS, an )  
individual; DEANN REYNOLDS, an )  
individual; J.E. JOHNS & ASSOCIATES, a )  
Nevada business entity; JAMES E. JOHNS, an )  
individual; A.J. JOHNSON, an individual; )  
BRIAN F. KINCANNON, an individual; )  
GROUP ONE, INC. dba KELLER )  
WILLIAMS REALTY, a Nevada corporation; )  
ROBERT CLEMENT, an individual; and )  
DOES 3 through 10, inclusive, )  
Defendants. )

AND RELATED CROSS-ACTIONS.

1       **STIPULATION FOR DISMISSAL WITH PREJUDICE OF PLAINTIFFS' SECOND**  
2       **AMENDED COMPLAINT AS TO DEFENDANTS BRIAN F. KINCANNON, ROBERT**  
3       **CLEMENT, AND GROUP ONE, INC. dba KELLER WILLIAMS REALTY**


4       IT IS HEREBY STIPULATED, by and between Plaintiffs JOHN LINDBERG, MICHAL  
5       LINDBERG, and JUDITH L. LINDBERG ("Plaintiffs") and Defendants BRIAN F. KINCANNON,  
6       ROBERT CLEMENT, and GROUP ONE, INC. dba KELLER WILLIAMS REALTY, by and  
7       through their respective counsel of record, that Plaintiffs' Second Amended Complaint in the  
8       above-entitled action, bearing case number CV15-00281, including each and every cause of action  
9       therein, be **dismissed with prejudice** as to Defendants BRIAN F. KINCANNON, ROBERT  
10      CLEMENT, and GROUP ONE, INC. dba KELLER WILLIAMS REALTY, with each party to bear  
11      that party's own attorney's fees and costs.


12      AFFIRMATION: Pursuant to NRS 239B.030, the undersigned do hereby affirm that this  
13      document does not contain the social security number of any person.

14      **IT IS SO STIPULATED.**

15      Dated this 27<sup>th</sup> day of December, 2016

16      Dated this 21 day of December, 2016

17        
18      John D. Moore, Esq.  
19      MOORE LAW GROUP  
20      Attorneys for Plaintiffs  
21      JOHN LINDBERG, MICHAL LINDBERG,  
22      and JUDITH L. LINDBERG

23        
24      Lori E. Sideman, Esq.  
25      S. Seth Kershaw, Esq.  
26      MEYERS McCONNELL REISZ SIDERMAN  
27      Attorneys for Defendants  
28      BRIAN F. KINCANNON, ROBERT  
CLEMENT, and GROUP ONE, INC. dba  
KELLER WILLIAMS REALTY

**ORDER**

IT IS ORDERED that that Plaintiffs' Second Amended Complaint in the above-entitled action, bearing case number CV15-00281, including each and every cause of action therein, is **dismissed with prejudice** as to Defendants BRIAN F. KINCANNON, ROBERT CLEMENT, and GROUP ONE, INC. dba KELLER WILLIAMS REALTY, with each party to bear that party's own attorney's fees and costs.

Dated: Jan. 18, 2017

Juanita Solala  
DISTRICT COURT JUDGE

Submitted by:

\_\_\_\_\_  
Lori E. Sideman, Esq  
S. Seth Kershaw, Esq.  
Meyers McConnell Reisz Sideman  
Attorneys for Defendants  
BRIAN F. KINCANNON, ROBERT  
CLEMENT, and GROUP ONE, INC. dba  
KELLER WILLIAMS REALTY

1140

Lori e. Siderman, Esq.

Nevada State Bar No. 7515

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Attorneys for Defendants and Cross-Claimants

BRIAN F. KINCANNON, ROBERT CLEMENT,

and GROUP ONE, INC. dba KELLER WILLIAMS  
REALTY

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

**IN AND FOR THE COUNTY OF WASHOE**

JOHN LINDBERG, an individual; MICHAL

LINDBERG, an individual; and JUDITH L.

LINDBERG, an individual,

Plaintiffs,

v.

HARRY RICHARD REYNOLDS, an

individual; DEANN REYNOLDS, an

individual; J.E. JOHNS & ASSOCIATES, a

Nevada business entity; JAMES E. JOHNS, an

individual; A.J. JOHNSON, an individual;

BRIAN F. KINCANNON, an individual;

GROUP ONE, INC. dba KELLER

WILLIAMS REALTY, a Nevada corporation;

ROBERT CLEMENT, an individual; and

DOES 3 through 10, inclusive,

Defendants.

BRIAN F. KINCANNON, ROBERT

CLEMENT, and GROUP ONE, INC. dba

KELLER WILLIAMS REALTY,

Cross-Claimants,

v.

CASE NO. CV15-00281

DEPT. NO.: 3

**DEFENDANTS BRIAN F. KINCANNON,  
ROBERT CLEMENT, AND GROUP  
ONE, INC. dba KELLER WILLIAMS  
REALTY'S ANSWER TO PLAINTIFFS'  
SECOND AMENDED COMPLAINT AND  
CROSS-CLAIM**



1 HARRY RICHARD REYNOLDS, DEANN )  
2 REYNOLDS, J.E. JOHNS & ASSOCIATES, )  
3 JAMES E. JOHNS, and A.J. JOHNSON, and )  
4 MOES 1 - 10, inclusive, )  
5 Cross-Defendants. )

6 COMES NOW, Defendants BRIAN F. KINCANNON ("Kincannon"), ROBERT  
7 CLEMENT ("Clement"), and GROUP ONE, INC. dba KELLER WILLIAMS REALTY ("Keller  
8 Williams Realty") (collectively referred to herein as "Defendants") in the above-captioned action,  
9 by and through its attorneys of record of the law firm of Meyers McConnell Reisz Siderman, and  
10 for its Answer to Plaintiffs JOHN LINDBERG, MICHAEL LINDBERG, and JUDITH L.  
11 LINDBERG's (referred to herein as "Plaintiffs") Second Amended Complaint (the "SAC") on file  
12 herein, admits, denies and alleges as follows:

13 **GENERAL ALLEGATIONS**

14 1. Answering Paragraphs 1, 2, 3, 4, 5, and 6 of the SAC, Defendants state that they do  
15 not have sufficient knowledge or information upon which to base a belief as to the truth or falsity of  
16 the allegations contained therein.

17 2. Answering Paragraph 7 of the SAC, Defendants admit the allegations.

18 3. Answering Paragraph 8 of the SAC, Defendants admit the allegations.

19 4. Answering Paragraph 9 of the SAC, Defendants admit the allegations.

20 5. Answering Paragraph 10 of the SAC, Defendants state that they do not have  
21 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
22 allegations contained therein and therefore deny on that basis.

23 6. Answering Paragraph 11 of the SAC, Defendants state that they do not have  
24 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
25 allegations contained therein and therefore deny on that basis.

26 **FACTS**

27 7. In response to Paragraph 12 of the SAC, Defendants repeat and incorporate herein by  
28 reference their responses to the paragraphs alleged in Plaintiffs' SAC to the same extent Plaintiffs  
incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 12.

- 1           8.     Answering Paragraph 13 of the SAC, Defendants state that they do not have  
2 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
3 allegations contained therein and therefore deny on that basis.
- 4           9.     Answering Paragraph 14 of the SAC, Defendants state that they do not have  
5 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
6 allegations contained therein and therefore deny on that basis.
- 7           10.    Answering Paragraph 15 of the SAC, Defendants state that they do not have  
8 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
9 allegations contained therein and therefore deny on that basis.
- 10          11.    Answering Paragraph 16 of the SAC, Defendants admit that Kincannon was the real  
11 estate agent for John Lindberg and Michal Lindberg and engaged in negotiations for the purchase of  
12 the subject property on their behalf. Defendants deny the remainder of Paragraph 16.
- 13          12.    Answering Paragraph 17 of the SAC, Defendants state that they do not have  
14 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
15 allegations contained therein and therefore deny on that basis.
- 16          13.    Answering Paragraph 18 of the SAC, Defendants state that they do not have  
17 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
18 allegations contained therein and therefore deny on that basis.
- 19          14.    Answering Paragraph 19 of the SAC, Defendants state that they do not have  
20 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
21 allegations contained therein and therefore deny on that basis.
- 22          15.    Answering Paragraph 20 of the SAC, Defendants state that they do not have  
23 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
24 allegations contained therein and therefore deny on that basis.
- 25          16.    Answering Paragraph 21 of the SAC, Defendants state that they do not have  
26 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
27 allegations contained therein and therefore deny on that basis.

28     ///

1           17.     Answering Paragraph 22 of the SAC, Defendants state that they do not have  
2 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
3 allegations contained therein and therefore deny on that basis.

4           18.     Answering Paragraph 23 of the SAC, Defendants state that they do not have  
5 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
6 allegations contained therein and therefore deny on that basis.

7           19.     Answering Paragraph 24 of the SAC, Defendants state that they do not have  
8 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the  
9 allegations contained therein and therefore deny on that basis.

10          20.     Answering Paragraph 25 of the SAC, to the extent this Paragraph is directed at  
11 Defendants, the allegations are denied. As to the remainder of Paragraph 25, Defendants state that  
12 they do not have sufficient knowledge or information upon which to base a belief as to the truth or  
13 falsity of the allegations contained therein and therefore deny on that basis.

14          21.     Answering Paragraph 26 of the SAC, to the extent this Paragraph is directed at  
15 Defendants, the allegations are denied. As to the remainder of Paragraph 26, Defendants state that  
16 they do not have sufficient knowledge or information upon which to base a belief as to the truth or  
17 falsity of the allegations contained therein and therefore deny on that basis.

18          22.     Answering Paragraph 27 of the SAC, to the extent this Paragraph is directed at  
19 Defendants, the allegations are denied. As to the remainder of Paragraph 27, Defendants state that  
20 they do not have sufficient knowledge or information upon which to base a belief as to the truth or  
21 falsity of the allegations contained therein and therefore deny on that basis.

22          23.     Answering Paragraph 28 of the SAC, to the extent this Paragraph is directed at  
23 Defendants, the allegations are denied. As to the remainder of Paragraph 28, Defendants state that  
24 they do not have sufficient knowledge or information upon which to base a belief as to the truth or  
25 falsity of the allegations contained therein and therefore deny on that basis.

26          24.     Answering Paragraph 29 of the SAC, to the extent this Paragraph is directed at  
27 Defendants, the allegations are denied. As to the remainder of Paragraph 29, Defendants state that  
28 they do not have sufficient knowledge or information upon which to base a belief as to the truth or

1 falsity of the allegations contained therein and therefore deny on that basis.

2 **FIRST CAUSE OF ACTION**

3 (Action Pursuant to NRS 113.150 – Defendant Sellers)

4 25. In response to Paragraph 30 of the SAC, Defendants repeat and incorporate herein by  
5 reference their responses to the paragraphs alleged in Plaintiffs' SAC to the same extent Plaintiffs  
6 incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 30.

7 26. Answering Paragraph 31 of the SAC, Defendants state that no allegations contained  
8 in Paragraph 31 are directed toward Defendants and therefore no response by Defendants is  
9 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
10 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
11 and therefore deny on that basis.

12 27. Answering Paragraph 32 of the SAC, Defendants state that no allegations contained  
13 in Paragraph 32 are directed toward Defendants and therefore no response by Defendants is  
14 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
15 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
16 and therefore deny on that basis.

17 **SECOND CAUSE OF ACTION**

18 (Negligence – Defendant Sellers)

19 28. In response to Paragraph 33 of the SAC, Defendants repeat and incorporate herein by  
20 reference their responses to the paragraphs alleged in Plaintiffs' SAC to the same extent Plaintiffs  
21 incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 33.

22 29. Answering Paragraph 34 of the SAC, Defendants state that no allegations contained  
23 in Paragraph 34 are directed toward Defendants and therefore no response by Defendants is  
24 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
25 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
26 and therefore deny on that basis.

27 30. Answering Paragraph 35 of the SAC, Defendants state that no allegations contained  
28 in Paragraph 35 are directed toward Defendants and therefore no response by Defendants is

1 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
2 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
3 and therefore deny on that basis.

4 31. Answering Paragraph 36 of the SAC, Defendants state that no allegations contained  
5 in Paragraph 36 are directed toward Defendants and therefore no response by Defendants is  
6 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
7 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
8 and therefore deny on that basis.

9 **THIRD CAUSE OF ACTION**  
10 (Fraud – Defendant Sellers)

11 32. In response to Paragraph 37 of the SAC, Defendants repeat and incorporate herein by  
12 reference their responses to the paragraphs alleged in Plaintiffs' SAC to the same extent Plaintiffs  
13 incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 37.

14 33. Answering Paragraph 38 of the SAC, Defendants state that no allegations contained  
15 in Paragraph 38 are directed toward Defendants and therefore no response by Defendants is  
16 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
17 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
18 and therefore deny on that basis.

19 34. Answering Paragraph 39 of the SAC, Defendants state that no allegations contained  
20 in Paragraph 39 are directed toward Defendants and therefore no response by Defendants is  
21 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
22 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
23 and therefore deny on that basis.

24 35. Answering Paragraph 40 of the SAC, Defendants state that no allegations contained  
25 in Paragraph 40 are directed toward Defendants and therefore no response by Defendants is  
26 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
27 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
28 and therefore deny on that basis.

1           36.     Answering Paragraph 41 of the SAC, Defendants state that no allegations contained  
2 in Paragraph 41 are directed toward Defendants and therefore no response by Defendants is  
3 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
4 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
5 and therefore deny on that basis.

6           37.     Answering Paragraph 42 of the SAC, Defendants state that no allegations contained  
7 in Paragraph 42 are directed toward Defendants and therefore no response by Defendants is  
8 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
9 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
10 and therefore deny on that basis.

11           38.     Answering Paragraph 43 of the SAC, Defendants state that no allegations contained  
12 in Paragraph 43 are directed toward Defendants and therefore no response by Defendants is  
13 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
14 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
15 and therefore deny on that basis.

16                               **FOURTH CAUSE OF ACTION**

17                               (Action Pursuant to NRS 645.252 and NRS 645.257 –  
18                               Defendants Johns, Johnson, Clement, and Kincannon)

19           39.     In response to Paragraph 44 of the SAC, Defendants repeat and incorporate herein by  
20 reference their responses to the paragraphs alleged in Plaintiffs' SAC to the same extent Plaintiffs  
21 incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 44.

22           40.     Answering Paragraph 45 of the SAC, Defendants deny the allegations.

23           41.     Answering Paragraph 46 of the SAC, Defendants deny the allegations.

24           42.     Answering Paragraph 47 of the SAC, Defendants deny the allegations.

25           43.     Answering Paragraph 48 of the SAC, Defendants deny the allegations.

26                               **FIFTH CAUSE OF ACTION**

27                               (Action Pursuant to NRS 645.252, NAC 645.600, and NRS 645.257 –  
28                               Defendants Johns and Clement)

          44.     In response to Paragraph 49 of the SAC, Defendants repeat and incorporate herein by

1 reference their responses to the paragraphs alleged in Plaintiffs' SAC to the same extent Plaintiffs  
2 incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 49.

3 45. Answering Paragraph 50 of the SAC, Defendants deny the allegations.

4 46. Answering Paragraph 51 of the SAC, Defendants deny the allegations.

5 47. Answering Paragraph 52 of the SAC, Defendants deny the allegations.

6 48. Answering Paragraph 53 of the SAC, Defendants deny the allegations.

7 49. Answering Paragraph 54 of the SAC, Defendants state that no allegations contained  
8 in Paragraph 54 are directed toward Defendants and therefore no response by Defendants is  
9 required. If a response is required, Defendants state that they do not have sufficient knowledge or  
10 information upon which to base a belief as to the truth or falsity of the allegations contained therein  
11 and therefore deny on that basis.

12 50. Answering the payer of the SAC, Defendants state that the allegations contain legal  
13 conclusions, which require no response. Defendants deny that Plaintiffs are entitled to any relief  
14 whatsoever under any cause of action against Defendants and each of them.

15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

17 Defendants are informed, believe, and thereupon allege that the SAC filed by Plaintiffs fails  
18 to state facts sufficient to constitute a cause of action against these answering Defendants.

19 **SECOND AFFIRMATIVE DEFENSE**

20 Plaintiffs' claims are barred by the statute of limitations and/or repose, including each and  
21 every applicable statute of limitations, including but not limited to NRS §§ 11.010 through 11.500,  
22 as applicable.

23 **THIRD AFFIRMATIVE DEFENSE**

24 Plaintiffs, though under a duty to do so, have failed and neglected to mitigate their alleged  
25 damages and therefore cannot recover against these answering Defendants, whether as alleged or  
26 otherwise.

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**FOURTH AFFIRMATIVE DEFENSE**

The negligence, misconduct, and/or of Plaintiffs exceed that of these answering Defendants, if any, and Plaintiffs are thereby barred from any recovery against these answering Defendants.

**FIFTH AFFIRMATIVE DEFENSE**

The claims of Plaintiffs are barred by the equitable doctrines of estoppel, waiver, laches, and/or unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

The damages Plaintiffs allegedly sustained, if any, were caused by the negligent acts, errors, and/or omissions of third-parties over which these answering Defendants have no authority or control.

**SEVENTH AFFIRMATIVE DEFENSE**

These answering Defendants have complied with all applicable laws, regulations, ordinances, and codes.

**EIGHTH AFFIRMATIVE DEFENSE**

These answering Defendants performed all professional services and/or work in a professional manner and met or exceeded the standard of care at the time that services and/or work was performed.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs expressly, voluntarily, and knowingly assumed all risks about which they complain in their SAC and therefore are barred either totally or to the extent of said assumption from any damages.

**TENTH AFFIRMATIVE DEFENSE**

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

///  
///



1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 These answering Defendants deny any legal responsibility, in any manner, for the damages  
3 and injuries claimed by Plaintiffs in the SAC; however, if Defendants are subjected to any liability  
4 to Plaintiffs, it will be due, in whole or in part, to the conduct, acts, omissions, activities,  
5 carelessness, recklessness, and/or negligence of others. Accordingly, any recovery obtained by  
6 Plaintiffs against these answering Defendants should be reduced in proportion to the respective  
7 negligence, fault, and legal responsibility of all other parties, persons, and entities, their agents,  
8 servants, and employees who contributed to and/or caused the injury or damages, in accordance  
9 with the law of comparative negligence. The liability of these answering Defendants, if any, is  
10 limited in direct proportion to the percentage of fault actually attributed to these answering  
11 Defendants.

12 **TWELFTH AFFIRMATIVE DEFENSE**

13 Defendants allege that Plaintiffs' unreasonable delay in the filing of the SAC and the  
14 notifying of these answering Defendants of the alleged defects at the subject property, and the basis  
15 for the causes of action alleged against these answering Defendants, has unduly and severely  
16 prejudiced these answering Defendants in its defense of these action, thereby barring or diminishing  
17 Plaintiffs' recovery herein under the doctrine of stoppels.

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

19 These answering Defendants allege that Plaintiffs have failed to join all necessary and  
20 indispensable parties to this lawsuit.

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 These answering Defendants allege that Plaintiffs, or other persons or entities other than  
23 Defendants, without the knowledge or consent of Defendants, altered the subject property, and to  
24 the extent that Plaintiffs have incurred or suffered any damages, which Defendants deny, such  
25 alleged damages were solely and proximately caused by such alteration.

26 **FIFTEENTH AFFIRMATIVE DEFENSE**

27 These answering Defendants have retained the services of an attorney to defend this action  
28 and therefore are entitled to a reasonable sum for attorneys' fees together with the costs expended in

1 this action.

2 **SIXTEENTH AFFIRMATIVE DEFENSE**

3 These answering Defendants allege that the loss and damages, if any, which Plaintiffs allege  
4 were directly and proximately caused and/or contributed to by the negligence, carelessness or fault  
5 of Plaintiffs and, therefore, these answering Defendants are entitled to contribution apportioned to  
6 the percentage of negligence attributable to Plaintiffs.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 These answering Defendants allege that the damages and injuries, if any, incurred by  
9 Plaintiffs, are not attributable to any act, conduct, or omission on the part of these answering  
10 Defendants.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12 The damages sustained by Plaintiffs, if any, were proximately caused by the acts, omissions,  
13 negligence, fraud, and/or breach of obligations by persons other than these answering Defendants,  
14 including that of Plaintiffs, and beyond these answering Defendants' supervision and control.

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 These answering Defendants are informed and believe and thereupon allege that any claims  
17 or remedies alleged by the Plaintiffs have been waived in whole or in part.

18 **TWENTIETH AFFIRMATIVE DEFENSE**

19 To the extent that any communications were made to Plaintiffs by these answering  
20 Defendants, such communications were truthful and accurate, to the best of these answering  
21 Defendants' knowledge.

22 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

23 These answering Defendants deny that they made any misrepresentations; however, if it is  
24 found that these answering Defendants did so, any such misrepresentations were not material and/or  
25 relied upon.

26 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

27 These answering Defendants did not interfere, whether intentionally or negligently, with any  
28 contractual obligation to any party in this matter.

1                                    **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2            These answering Defendants are informed and believe, and thereon allege that Plaintiffs'  
3 damages, if any, were proximately caused by the intentional acts of persons or entities other than  
4 these answering Defendants that were not reasonably foreseeable. As a result, those reasonably  
5 unforeseeable intentional acts of others constitute a superseding, intervening act that operate to  
6 break the chain of causation of any negligent acts or omissions attributable to these answering  
7 Defendants, thereby relieving these answering Defendants of any liability to Plaintiffs.

8                                    **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

9            These answering Defendants have appropriately, completely, and fully performed and  
10 discharged any and all obligations and legal duties arising out of the matters alleged in the SAC.

11                                   **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

12           These answering Defendants are informed and believe, and on such information and belief  
13 allege, that these answering Defendants did not make any warranties or guaranties, expressed,  
14 implied, or apparent, upon which Plaintiffs may rely.

15                                   **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

16           These answering Defendants hereby incorporate by reference those affirmative defenses  
17 enumerated in Rule 11 of the Nevada Rules of Civil Procedure as fully set forth herein. In the event  
18 further investigation or discovery reveals the applicability of any such defenses, Defendants reserve  
19 the right to seek leave of court to amend its answer to specifically assert the same. These  
20 Defendants preserve such other affirmative defenses that may become available to them by this  
21 Answer and do not waive any such or subsequent defenses. Such defenses are herein incorporated  
22 by reference for the specific purpose of not waiving same.

23                                   **PRAYER**

24           **WHEREFORE**, Defendants pray for judgment as follows:

- 25           A.      That Plaintiffs take nothing by virtue of their SAC herein;  
26           B.      For costs of suit; and  
27           C.      For such other and further relief as these Court deems just and proper.

28           ///

1 **DEFENDANTS/CROSS-CLAIMANTS BRIAN F. KINCANNON AND GROUP ONE, INC.**  
2 **dba KELLER WILLIAMS REALTY'S CROSS-CLAIM AGAINST HARRY RICHARD**  
3 **REYNOLDS, DEANN REYNOLDS, J.E. JOHNS & ASSOCIATES, JAMES E. JOHNS, AND**  
4 **A.J. JOHNSON**

5 Defendants/Cross-Claimants BRIAN F. KINCANNON ("Kincannon"), ROBERT  
6 CLEMENT ("Clement"), and GROUP ONE, INC. dba KELLER WILLIAMS REALTY ("Keller  
7 Williams Realty") (collectively referred to herein as "Cross-Claimants"), by and through their  
8 attorneys of record of the law firm of Meyers McConnell Reisz Siderman, as and for their Cross-  
9 Claim against Defendants/Cross-Defendants HARRY RICHARD REYNOLDS, DEANN  
10 REYNOLDS, J.E. JOHNS & ASSOCIATES, JAMES E. JOHNS, and A.J. JOHNSON ("Cross-  
11 Defendants") alleges as follows:

12 1. At all times relevant hereto, Keller Williams Realty was a Nevada domestic  
13 corporation.

14 2. At all times relevant hereto, Kincannon was an individual and resident of Washoe  
15 County, Nevada, and a Nevada real estate salesperson associated with Keller Williams Realty.

16 3. At all times relevant hereto, Clement was an individual and resident of Minden  
17 County, Nevada, and a Nevada real estate broker associated with Keller Williams Realty.

18 4. On information and belief, at all times relevant hereto, Cross-Defendants HARRY  
19 RICHARD REYNOLDS and DEANN REYNOLDS (collectively "Reynolds") were individuals and  
20 residents of Washoe County, Nevada.

21 5. On information and belief, at all times relevant hereto, Cross-Defendant J.E. JOHNS  
22 & ASSOCIATES ("J.E. Johns & Associates") was a Nevada business entity of unknown time,  
23 doing business in Washoe County, Nevada.

24 6. On information and belief, at all times relevant hereto, Cross-Defendant JAMES E.  
25 JOHNS ("Johns") was an individual and resident of Washoe County and a Nevada licensed real  
26 estate broker associated with J.E. Johns & Associates.

27 7. On information and belief, at all times relevant hereto, Cross-Defendant A.J. Johnson  
28 ("Johnson") was an individual and resident of Washoe County and a Nevada licensed real estate  
salesperson associated with J.E. Johns & Associates

1 8. MOES 1 through 10 are fictitious names of Cross-Defendants, whether individuals,  
2 corporations, partnerships, or other business entities, whose names and capacities are not presently  
3 known to Cross-Claimants, and when said true names and capacities are ascertained, Cross-  
4 Claimants will seek leave of this Cross-Claim to allege their true names and capacities when and as  
5 ascertained, and will further ask leave to join said Cross-Defendants in these proceedings. MOES 1  
6 through 10 are are either fully or partly responsible for Plaintiffs' injuries and damages, if any, and,  
7 as such, would owe indemnity to Cross-Claimants. As more particularly alleged in Plaintiffs' SAC,  
8 and any amendments thereto, these fictitiously named Cross-Defendants are alleged to have  
9 negligently, fraudulently, carelessly, and/or recklessly engaged in some manner, or been involved,  
10 in the real estate transaction that is the subject of this action.

11 **GENERAL ALLEGATIONS**

12 9. On May 18, 2016, Plaintiffs filed a Second Amended Complaint in the County of  
13 Washoe, Nevada District Court, Case No. CV15-00281 against Cross-Claimants and Cross-  
14 Defendants. Said SAC is incorporated herein by reference for purposes of this Cross-Claim;  
15 however, Cross-Claimants do not adopt as true or correct any of the allegations of the SAC.

16 10. Plaintiffs alleged in the SAC that, in approximately September 2012, Cross-  
17 Defendants offered their residential real property for sale, which property was located at 20957  
18 Eaton Road, Pleasant Valley, Nevada 89521, and further described as Parcel 2 of parcel Map No.  
19 292 for John and Marie Brown, according to the map thereof, filed in the office of the County  
20 Recorder of Washoe County, State of Nevada, on July 27, 1976; (APN #045-337-11) (the  
21 "Property").

22 11. Plaintiffs alleged in the SAC that J.E. Johns & Associates, Johns, and Johnson listed  
23 the Property for sale under MLS # 120014058, stating that the Property's "Total Living Space" was  
24 3,880 square feet and included an "INLAW QUARTERS OR GUEST HOUSE."

25 12. Plaintiffs alleged in the SAC that the Reynolds affirmatively represented to them in  
26 the "Sellers Real Property Disclosure Form," and in other representations, that a detached two-story  
27 building at the Property could be used for residential living and a separate garage with an attached  
28 converted bonus room, could also be used for residential living or as a garage, and that both

1 structures were constructed, modified, altered, or repaired with required permits.

2 13. Plaintiffs alleged in the SAC that, after they purchased the Property, they discovered  
3 that the (i) the detached two-story building was not permitted for residential occupancy and (ii) the  
4 separate garage with a converted a bonus room was not permitted for residential occupancy or even  
5 for use as a garage. Plaintiffs alleged in the SAC that the square footage of living space was falsely  
6 overrepresented in as 3,880 square feet.

7 14. Plaintiffs' alleged injuries and damages, if any, have arisen out of  
8 misrepresentations, nondisclosures, acts, or omissions by Cross-Defendants, and not from any act,  
9 error, or omission of Cross-Claimants. Cross-Claimants have denied, and deny, any responsibility  
10 for Plaintiffs' alleged damages.

11 15. Cross-Claimants have incurred and are incurring attorneys' fees, court costs,  
12 investigative costs, and other costs in connection with defending against the SAC, the exact amount  
13 of which is unknown at this time.

#### 14 **FIRST CAUSE OF ACTION**

##### 15 **(Equitable Indemnity – All Cross-Defendants)**

16 16. Cross-Claimants repeat and reallege Paragraphs 1-15 of the Cross-Claim as though  
17 fully set forth herein.

18 17. Cross-Claimants allege that they are in no way legally responsible for the injuries or  
19 damages alleged by Plaintiffs in this action. If Cross-Claimants are held to be liable for all or any  
20 part of Plaintiffs' injuries and/or damages, as presently alleged in the SAC, such liability is solely  
21 due to the conduct of Cross-Defendants as herein alleged. Cross-Claimants are entitled to be fully  
22 indemnified and held harmless by Cross-Defendants should Cross-Claimants be so found liable.

23 18. If Cross-Claimants are held liable to Plaintiffs for their alleged injuries and/or  
24 damages, such liability of Cross-Claimants are secondary and passive whereas the liability of Cross-  
25 Defendants are primary and active and/or the direct and proximate result of their active and primary  
26 conduct.

27 19. It has been necessary for Cross-Claimants to defend against Plaintiffs' action. Cross-  
28 Claimants are entitled to recover from Cross-Defendants their attorneys' fees and costs incurred in

1 defense of Plaintiffs' action.

2 **SECOND CAUSE OF ACTION**

3 **(Express Indemnity – Cross-Defendants Reynolds)**

4 20. Cross-Claimants repeat and reallege Paragraphs 1-19 of the Cross-Claim as though  
5 fully set forth herein.

6 21. Cross-Claimants allege that a contract or agreement exists between Cross-Claimants  
7 and Cross-Defendants Reynolds wherein Cross-Defendants Reynolds agree to defend and  
8 indemnify Cross-Claimants from any claim, demand, action, or proceeding resulting from any  
9 omission or alleged omission by Cross-Defendants Reynolds in their representations about the  
10 Property. Cross-Claimants previously tendered the defense of Plaintiffs' claims to Cross-  
11 Defendants Reynolds, which Cross-Defendants Reynolds rejected.

12 22. If Cross-Claimants are held liable to Plaintiffs for all or any part of their alleged  
13 injuries and/or damages, then Cross-Claimants are entitled to full indemnity from Cross-  
14 Defendants Reynolds pursuant to the express terms of the contract or agreement.

15 23. By reason of the express terms of the contract or agreement between Cross-  
16 Claimants and Cross-Defendants Reynolds, Cross-Claimants are entitled to indemnity from Cross-  
17 Defendants for all costs, attorney's fees, expenses, settlements, and/or judgments paid and incurred  
18 by Cross-Claimants in connection with Plaintiffs' action.

19 **THIRD CAUSE OF ACTION**

20 **(Contribution and Apportionment – All Cross-Defendants)**

21 24. Cross-Claimants repeat and reallege Paragraph 1-23 of the Cross-Claim as though  
22 fully set forth herein.

23 25. Cross-Claimants allege that they are in no way legally responsible for the injuries or  
24 damages alleged by Plaintiffs in this action. If Cross-Claimants are held to be liable for all or any  
25 part of Plaintiffs' injuries and/or damages, as presently alleged in the SAC, then Cross-Claimants  
26 are entitled to contribution from Cross-Defendants in an amount proportionate to the negligence  
27 and/or fault attributable to Cross-Defendants.

28 ///





CERTIFICATE OF SERVICE

32.966

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Meyers, McConnell Reisz and Siderman and that on the 29th day of July, 2016, I caused the service of the foregoing to be served as follows:

**DEFENDANTS BRIAN F. KINCANNON, ROBERT CLEMENT, AND GROUP ONE, INC.  
dba KELLER WILLIAMS REALTY'S ANSWER TO PLAINTIFFS' SECOND AMENDED  
COMPLAINT AND CROSS-CLAIM**

☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Los Angeles, CA; and/or

☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or

☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Second Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and/or

☐ to be hand-delivered;

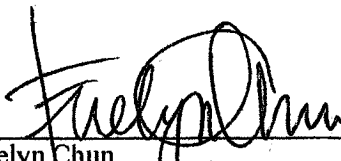
to the attorney(s) listed below at the address and/or facsimile number indicated below:

John D. Moore, Esq.  
**MOORE LAW GROUP, PC**  
3715 Lakeside Drive, Suite A  
Reno, Nevada 89509  
Tel: (775) 336-1600  
Fax: (775) 336-1601  
Email: john@moore-lawgroup.com

*Attorney for Plaintiffs JOHN LINDBERG,  
MICHAEL L. LINDBERG, and JUDITH L.  
LINDBERG*

C. Nicholas Pereos, Esq.  
**C. NICHOLAS PEREOS, LTD.**  
1610 Meadow lane, Suite 202  
Reno, Nevada 89502  
Tel: (775) 329-0678  
Fax: (775) 329-0678  
Email:

*Attorney for Defendants JAMES E. JOHNS and A.J.  
JOHNSON*

  
\_\_\_\_\_  
Evelyn Chun  
Employee of Meyers McConnell Reisz Siderman

1 1090  
2 John D. Moore, Esq.  
3 Nevada State Bar No. 8581  
4 MOORE LAW GROUP, PC  
5 3715 Lakeside Drive, Suite A  
6 Reno, NV 89509  
7 (775) 336-1600  
8 Attorney for Plaintiffs  
9 john@moore-lawgroup.com

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

12 JOHN LINDBERG, an individual; MICHAL  
13 LINDBERG, an individual; and JUDITH L.  
14 LINDBERG, an individual,

15 Plaintiffs,

16 v.

17 HARRY RICHARD REYNOLDS, an individual;  
18 DEANN REYNOLDS, an individual; J.E. JOHNS  
19 & ASSOCIATES, a Nevada business entity;  
20 JAMES E. JOHNS, an individual; A.J.  
21 JOHNSON, an individual; BRIAN F.  
22 KINCANNON, an individual; GROUP ONE,  
23 INC., a Nevada corporation dba Keller Williams  
24 Realty; ROBERT CLEMENT, an individual; and  
25 DOES 3 through 10, inclusive,

26 Defendants.

Case No. CV15-00281

Dept. No. 3

27 **SECOND AMENDED COMPLAINT**

28 Plaintiffs, JOHN LINDBERG, MICHAL LINDBERG, and JUDITH L. LINDBERG  
(collectively "Lindbergs"), by and through their counsel of record, John D. Moore, Esq., Moore Law  
Group, PC, for their Second Amended Complaint against Defendants, allege as follows:

**PARTIES**

1. At all times material to this Complaint, the Lindbergs were and are individuals and

1 residents of Washoe County, Nevada. JUDITH L. LINDBERG is JOHN LINDBERG's mother.  
2 JOHN LINDBERG and MICHAL LINDBERG were and are husband and wife.

3 2. At all times material to this Complaint, Defendants HARRY RICHARD REYNOLDS  
4 ("Harry Reynolds"), and DEANN REYNOLDS (collectively "Sellers"), were and are individuals and  
5 residents of Washoe County, Nevada.

6 3. On information and belief, at all times material to this Complaint, Defendant J.E.  
7 JOHNS & ASSOCIATES was and is a Nevada business entity of unknown type, not registered with  
8 the Nevada Secretary of State, doing business in Washoe County, Nevada.

9 4. On information and belief, at all times material to this Complaint, Defendant JAMES  
10 E. JOHNS was and is an individual and resident of Washoe County, Nevada, and was at all times  
11 pertinent hereto a Nevada licensed real estate broker. Defendants J.E. JOHNS & ASSOCIATES and  
12 JAMES E. JOHNS collectively are referred to herein as "Johns."

13 5. On information and belief, at all times material to this Complaint, Defendant A.J.  
14 JOHNSON ("Johnson") was and is an individual and resident of Washoe County, Nevada, and was at  
15 all times pertinent hereto a Nevada licensed real estate salesperson.

16 6. On information and belief, at all times material to this Complaint, Defendant Johnson  
17 acted as a salesperson subject to the supervision of his broker, JAMES E. JOHNS.

18 7. On information and belief, at all times material to this Complaint, Defendant GROUP  
19 ONE, INC., was a Nevada corporation doing business as KELLER WILLIAMS REALTY ("Keller  
20 Williams"), and ROBERT CLEMENT ("Clement") was and is an individual and resident of Minden  
21 County, Nevada, and was at all times pertinent hereto a Nevada licensed real estate broker.

22 8. On information and belief, at all times material to this Complaint, Defendant BRIAN  
23 F. KINCANNON ("Kincannon") was and is an individual and resident of Washoe County, Nevada,  
24 and was at all times pertinent hereto a Nevada licensed real estate salesperson.

25 9. On information and belief, at all times material to this Complaint, Defendant  
26 Kincannon acted as a salesperson subject to the supervision of his broker, Clement.

10. Defendants DOES 3 through 10 are sued herein under fictitious names because the true names and capacities of said Defendants are not known by the Lindbergs, who will ask leave of this Court to amend this Complaint to set forth the same at such time as they become known. The Lindbergs are informed and believe that Defendants DOES 3 through 10 were owners, real estate agents, real estate brokers, contractors, subcontractors, individuals, co-conspirators or third party beneficiaries with respect to the real property and/or sale referenced herein, and as such are responsible for the Lindbergs' injuries and damages.

11. At all times material to this Complaint, each of the Defendants was the agent, co-conspirator, employee, partner or affiliate of each of the remaining Defendants, and each was at all times acting within the purpose and scope and in furtherance of said agency, employment or conspiracy and for the benefit of each of the remaining Defendants.

## FACTS

12. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as if set forth at length herein.

13. In approximately September, 2012, Sellers offered their residential real property for sale, which property was located at 20957 Eaton Road, Pleasant Valley, Nevada 89521, and further described as Parcel 2 of Parcel Map No. 292 for John and Marie Brown, according to the map thereof, filed in the office of the County Recorder of Washoe County, State of Nevada, on July 27, 1976; (APN# 045-337-11) (the "Property").

14. In approximately late 2012, Johns and Johnson listed the Property for sale under MLS# 120014058, on behalf of their clients, the Sellers.

15. At least one listing for the Property stated that the Property "Total Living Space" was 3,880 square feet, and that the Property included an "INLAW QUARTERS OR GUEST HOUSE."

16. In approximately January, 2013, the Lindbergs became interested in the Property, and began negotiating the purchase price and other terms through their own real estate agent, Kincannon, and his broker, Clement.

1           17.     The Lindbergs read and relied on the information provided by Harry Richard Reynolds,  
2 Johns, and Johnson that the Property "Total Living Space" was 3,880 square feet, and that the Property  
3 included an "INLAW QUARTERS OR GUEST HOUSE."

4           18.     Defendant, Harry Richard Reynolds, showed Plaintiff, John Lindberg the Property, and  
5 specifically showed Mr. Lindberg a two-story building that was detached from the main house, and  
6 appeared to be a stand-alone guest house. Harry Richard Reynolds also showed John Lindberg a  
7 separate garage and attached converted bonus room. Harry Richard Reynolds affirmatively  
8 represented to John Lindberg that these buildings could be used for residential living, and that the  
9 apparent garage could be used as a typical garage.  
10

11           19.     Prior to the closing on the sale of the Property to the Lindbergs, the Sellers initialed  
12 and signed a form entitled, "Sellers Real Property Disclosure Form" (the "Form"). That form  
13 consisted in part of numbered questions regarding the status or condition of the Property, with columns  
14 of check-boxes to the right for Sellers to check, "YES," "NO," or "N/A" as to each numbered question.

15           20.     On page 2 of the Form, question number 1(c), asked, "Any construction, modification,  
16 alterations, or repairs made without required state, city, or county building permits?" The check-box  
17 to the right of that question indicates a "NO" answer.

18           21.     Both Sellers initialed page 2 of the Form, and both signed the Form on page 4. The  
19 hand-printed date September 21, 2012 appears next to both of the Sellers' signatures on the Form.

20           22.     In reliance on all of Defendants' representations regarding the Property, on or about  
21 February 28, 2013, the Lindbergs closed on the sale of the Property.

22           23.     The Lindbergs thereafter discovered (1) that the separate building at the Property that  
23 appeared to be (and was represented by Defendants to be) a detached two-story "In-Law" quarters, in  
24 fact had never been permitted for residential occupancy; and (2) that the separate building at the  
25 Property that appeared to be (and was represented by Defendants to be) a detached garage / bonus  
26 room, in fact had not been permitted for residential occupancy, or even for use as a garage. The  
27 Lindbergs discovered that Sellers had pulled a permit for certain construction of the separate buildings,  
28

1 but that no such construction had been finalized, and no permits were obtained.

2 24. The Lindbergs also discovered that the square footage of living space at the property  
3 was falsely overrepresented as 3,880 square feet, and that utilities such as the septic system and  
4 electrical system serving the Property, were undersized, and inadequate to properly serve the Property.

5 25. As a proximate and foreseeable result of the statements and other conduct of the  
6 Defendants, the Lindbergs have been required, and will in the future be required, to engage contractors,  
7 design professionals, inspectors, and other professionals to assess and determine the true status and  
8 condition of the Property, and to remediate and correct aspects of the condition of the Property. The  
9 Lindbergs have incurred other damages and injuries, subject to proof at trial.

10 26. As a proximate and foreseeable result of the statements and other conduct of  
11 Defendants, the Lindbergs have been required, and will in the future be required, to incur costs to  
12 repair or replace defective portions of the Property that were not disclosed by Defendants.

13 27. The conduct of the Defendants and the above-described damages sustained by the  
14 Lindbergs have caused a diminution in the market value of the Property, and a loss of use of the  
15 Property.

16 28. As a proximate and foreseeable result of the conduct of the Defendants, the Lindbergs  
17 foreseeably have become involved in litigation with third parties.

18 29. As a proximate and foreseeable result of the conduct of the Defendants, the Lindbergs  
19 have incurred attorney's fees as damages, in an amount subject to proof at trial.

#### 20 FIRST CAUSE OF ACTION

21 (Action Pursuant to NRS 113.150 –Defendant Sellers)

22 30. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as if set  
23 forth at length herein.

24 31. The Sellers failed to provide truthful and correct disclosures required by NRS 113.130,  
25 proximately causing damages to the Lindbergs as described herein.

26 32. As a result of the Sellers' failure to provide truthful and correct disclosures required by  
27  
28

1 NRS 113.130 to the Lindbergs, the Lindbergs have a cause of action against the Sellers under NRS  
2 113.150 to recover treble the costs of correcting the undisclosed defects in the Property, and for related  
3 court costs and reasonable attorney's fees.

4  
5 SECOND CAUSE OF ACTION  
(Negligence – Defendant Sellers)

6 33. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as if set  
7 forth at length herein.

8 34. In the communication of information to the Lindbergs, Sellers each had a duty to  
9 exercise such care, skill, prudence and diligence that a reasonably prudent person would exercise.

10 35. In the communication of information to the Lindbergs, Sellers breached their duty to  
11 exercise such care, skill, prudence and diligence that a reasonably prudent person would exercise.

12 36. The negligent conduct of the Sellers proximately caused damages to Plaintiffs, as more  
13 fully described herein, in an amount in excess of \$10,000, and subject to proof at trial.

14  
15 THIRD CAUSE OF ACTION  
(Fraud – Defendant Sellers)

16 37. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as  
17 if set forth at length herein.

18 38. The Sellers made the following false representations to the Lindbergs: (1) that the  
19 Property included an In-Law Quarters or Guest House; (2) that the Property included a detached garage  
20 / bonus room; (3) that Sellers were not aware of any "construction, modification, alterations, or repairs  
21 made without required state, city, or county building permits"; (4) that the property "Total Living  
22 Space" was 3,880 square feet; and (5) that the Property was free of known defects other than as stated  
23 in the Form. Additionally, Harry Richard Reynolds affirmatively represented to John Lindberg that  
24 the stand-alone building could be used as mother-in-law quarters.

25 39. The Sellers knew or believed that such representations were false, or had an  
26 insufficient basis of information for making the representations.  
27  
28

1       40.     The Sellers intended to induce the Lindbergs to forego further investigation of the  
2 condition of the Property, and to purchase the Property in reliance on the false representations.

3       41.     The Lindbergs in fact relied upon the Sellers' false representations by foregoing  
4 further investigation of the condition of the Property, and by purchasing the Property.

5       42.     The Sellers' false representations proximately caused damages to Plaintiffs, as more  
6 fully described herein, in an amount in excess of \$10,000, and subject to proof at trial.

7       43.     The Sellers' false representations were calculated, willful, oppressive and malicious  
8 and, therefore, Plaintiffs are entitled to punitive damages.  
9

10                               FOURTH CAUSE OF ACTION

11               (Action Pursuant to NRS 645.252 and NRS 645.257 – Defendants Johns, Johnson,  
12                               Clement, and Kincannon)

13       44.     Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as if set  
14 forth at length herein.

15       45.     Defendants Johns, Johnson, Clement, and Kincannon each owed a duty to the  
16 Lindbergs to comply with NRS 645.252 in the course of the above-described sale of the Property.

17       46.     Defendants Johns, Johnson, Clement, and Kincannon breached their duties to the  
18 Lindbergs to comply with NRS 645.252, in that they acted as agents in the above-described real estate  
19 transaction, and yet failed to exercise reasonable skill and care with respect to all parties to the  
20 transaction, and failed to disclose material and relevant facts, data, or information which they knew,  
21 or which by the exercise of reasonable care and diligence they should have known, relating to the  
22 Property.

23       47.     As a proximate and foreseeable result of Johns', Johnson's, Clement's, and  
24 Kincannon's breaches of their duties to comply with NRS 645.252, Plaintiffs have a cause of action  
25 against these Nevada real estate licensees, pursuant to NRS 645.257, to recover their actual damages.

26       48.     As a proximate and foreseeable result of Johns', Johnson's, Clement's, and  
27 Kincannon's breaches of their duties to comply with NRS 645.252, Plaintiffs have foreseeably become  
28 involved in litigation with Sellers, and consequently, Plaintiffs are entitled to recover their reasonable



1 attorney's fees, as damages.

2 FIFTH CAUSE OF ACTION

3 (Action Pursuant to NRS 645.252, NAC 645.600, and NRS 645.257 – Defendants Johns and  
4 Clement)

5 49. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as if set  
6 forth at length herein.

7 50. Defendants Johns and Clement owed an additional duty to the Lindbergs, in part  
8 pursuant to NRS 645.252 and NAC 645.600, to maintain adequate supervision of the agents practicing  
9 under them, and to use reasonable care in the supervision of their agents.

10 51. Defendants Johns and Clement breached their duties to the Lindbergs to maintain  
11 adequate supervision of their agents, and to use reasonable care in the supervision of their agents.

12 52. As a proximate and foreseeable result of Johns' and Clement's breaches of their duties  
13 to maintain adequate supervision of their agents, and to use reasonable care in the supervision of their  
14 agents, Plaintiffs have a cause of action against Johns and Clement, pursuant to NRS 645.257, to  
15 recover their actual damages.

16 53. As a proximate and foreseeable result of Defendants Johns' and Clement's breaches of  
17 their duties to maintain adequate supervision of their agents, and to use reasonable care in the  
18 supervision of their agents, Plaintiffs incurred damages as more fully described herein, in an amount  
19 in excess of \$10,000, and subject to proof at trial.

20 54. As a proximate and foreseeable result of Johns's breaches, Plaintiffs have foreseeably  
21 become involved in litigation with Sellers, and consequently, Plaintiffs are entitled to recover their  
22 reasonable attorney's fees, as damages.

23 WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

24 1. For compensatory general and special damages according to proof at trial in excess of  
25 \$10,000;  
26

27 2. For punitive damages against Sellers according to proof at trial in excess of \$10,000;  
28

1           3.     For contractual and/or statutory interest, reasonable attorney's fees, attorney's fees as  
2 damages, and costs of suit; and

3  
4           4.     For such other relief as the Court deems proper.

5                               **AFFIRMATION PURSUANT TO NRS 239B.030**

6           The undersigned does hereby affirm that the proceeding document does not contain the social  
7 security number of any persons.

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

9                               MOORE LAW GROUP, PC

10  
11                              By: 

12                              John D. Moore, Esq.  
13                              Nevada State Bar No. 8581  
14                              3715 Lakeside Drive, Suite A  
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17                              Attorney for Plaintiffs  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Moore Law Group, PC, and that on May 18, 2016, I caused the foregoing document to be served on all parties to this action by:

\_\_\_ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

\_\_\_ personal delivery

\_\_\_ facsimile (fax)

\_\_\_ Federal Express/UPS or other overnight delivery

\_\_\_ Reno/Carson Messenger Service

XX E-service via flex filing system

to the following:

- ALICIA JOHNSON, ESQ. for DEANN REYNOLDS, HARRY RICHARD REYNOLDS
- C. PEREOS, ESQ. for A. J. JOHNSON, JAMES E. JOHNS, J.E. JOHNS & ASSOCIATES



\_\_\_\_\_  
An Employee of Moore Law Group, PC