

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

J.E. JOHNS & ASSOCIATES, A NEVADA
BUSINESS ENTITY; AND A.J. JOHNSON, AN
INDIVIDUAL,

Appellants/Cross-Respondents,

vs.

JOHN LINDBERG, AN INDIVIDUAL; MICHAEL
LINDBERG, AN INDIVIDUAL; AND JUDITH L.
LINDBERG, AN INDIVIDUAL,

Respondents/Cross-Appellants. 

No. 78086

Electronically Filed
Mar 21 2019 05:01 p.m.

DOCKETING Elizabeth N. Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Second Judicial District Department 3

County Washoe Judge Hon. Jerome Polaha

District Ct. Case No. CV15-00281

2. Attorney filing this docketing statement:

Attorney John D. Moore Telephone (775) 336-1600

Firm Moore Law Group, PC

Address 3715 Lakeside Drive, Ste. A, Reno, Nevada 89509

Client(s) John Lindberg, Michal Lindberg, and Judith Lindberg

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 Glade L. Hall Telephone (775) 324-6447

Firm Glade L. Hall, Attorney

Address 105 Mt. Rose Street, Ste. B, Reno, Nevada 89509

Client(s) A.J. Johnson and J.E. Johns & Associates

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:

Respondents/Cross-appellants purchased residential real property. The Appellants/Cross-respondents acted as realtors for the sellers. The sellers failed to disclose that they never secured permits for various items of construction. The failure to disclose these items violated NRS 113.130, giving rise to an action in favor of the Respondents/Cross-appellants under NRS 113.150, which settled. Respondents/Cross-appellants also asserted that the Appellants/Cross-respondents knew or should have known that the septic system found at the property was inadequate for the size of the property, among other claims. The Appellants/Cross-respondents then violated various provisions of NRS 645 and NAC 645 that govern realtors when they failed to disclose this information that they knew or should have known. After trial the Court issued a judgment in favor of Respondents/Cross-appellants for approximately \$27,000.00, also awarding attorney's fees as special damages in the amount of approximately \$48,000.00. The Court then reduced the judgment upon motion to approximately \$3,000.00, with \$48,000.00 in attorney's fees as special damages.

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

The Court erred when it reduced the judgment in this case. The Court used as an off-set to reduce the judgment a portion of a settlement reached with the sellers prior to trial, even though the claim against the sellers was based on different facts and on the failure to disclose different issues. The sellers were also subject to treble damages by statute, making the claims against the sellers different in nature. The Court should not have reduced the judgment by any amount paid in settlement by the sellers.

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:

Respondents/Cross-appellants are not aware of any other proceedings before this Court that raise the same of similar issues.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

The Court applied the settlement reached prior to trial with the sellers of the property in this matter to reduce the judgment obtained against the realtors in this case, the Appellants/Cross-respondents. The claims against the sellers were based on different facts, arising under different statutes, which contemplated different damage awards. The Court should not have reduced the judgment by any amount paid in settlement by the sellers in this matter.

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 case appears to be one that is expressly assignable to the Nevada Court of Appeals under NRAP 17(b)(7) because it is an "[a]ppeal from a postjudgment order in civil case" in that the Court reduced the judgment under NRCP 59(e).

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 December 5, 2018

(c) Date written notice of entry of order resolving tolling motion was served 01/24/2019

Was service by:

☐ Delivery

☒ Mail

19. Date notice of appeal filed 02/04/2019 (Appellants); 02/25/2019 (Cross-appellants)

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 - A.J. Johnson and J.E. Johns & Associates

February 25, 2019 - John Lindberg, Michal Lindberg, and Judith Lindberg

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)(1)

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

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

NRS 108.2275(8) provides that "[a]n appeal may be taken from an order made pursuant to [NRS108.2275(6)]." In this matter, the Court denied the motion to expunge the lien in question under NRS 108.2275(6).

The amended judgment issued in response to a NRCP 59(e) motion is a final judgment from which an appeal can be taken.

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

(a) Parties:

Defendant Harry E. Reynolds, Deann Reynolds, J.E. Johns & Associates, James E. Johns (deceased), A.J. Johnson, Brian F. Kincannon, Group One, Inc., dba Keller Williams Realty, and Robert Clement.

Plaintiffs: John Lindberg, Michal Lindberg, and Judith Lindberg

(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 and Deann Reynolds were the sellers in this case and they have settled with the Plaintiffs. Claims against these sellers were formally dismissed. Brian Kincannon, Robert Clement, and Group One, Inc., dba Keller Williams Realty settled with the Plaintiffs. Claims against these realtors 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.

The sellers failed to disclose they did not secure permits for items of construction. This matter was settled upon dismissal of the sellers on 05/02/2017.

Plaintiffs' realtors failed to disclose information they knew or should have known about the septic system. This matter was settled upon dismissal of these realtors on 02/10/2017.

Appellants/Respondents failed to disclose information they knew or should have known about the septic system. This matter was resolved with a final judgment on 01/24/2019.

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:

The judgment did not rule against the parties that had settled out of this matter. All matters had been adjudicated, however, at the time of the final judgment by way of either a settlement or by the final judgment.

(b) Specify the parties remaining below:
N/A

(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)):

The Court's final judgment dated January 24, 2019 adjudicated all matters that remained before it at that time. The final judgment did not rule in favor of or against the parties that had previously settled out of this case, which was not required.

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.

John Lindberg, et al.

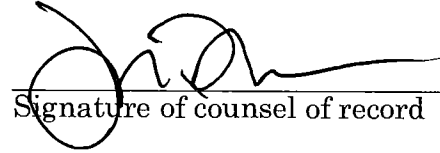
Name of appellant

John D. Moore

Name of counsel of record

03/21/2019

Date



Signature of counsel of record

Nevada, Washoe

State and county where signed

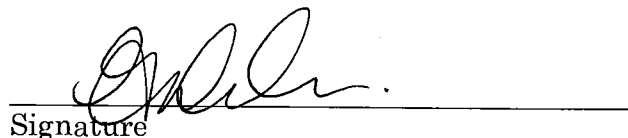
CERTIFICATE OF SERVICE

I certify that on the 21st day of March, 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.)

Glade L. Hall
105 Mt. Rose Street, Ste. B
Reno, Nevada 89509

Dated this 21st day of March, 2019



Signature

Attachment to Docketing Statement – Case No. 78086
Second Amended Complaint

Attachment to Docketing Statement – Case No. 78086
Second Amended Complaint

1090
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

SECOND AMENDED COMPLAINT

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

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

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

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

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

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

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

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

19 29. As a proximate and foreseeable result of the conduct of the Defendants, the Lindbergs
20 have incurred attorney's fees as damages, in an amount subject to proof at trial.
21

22 FIRST CAUSE OF ACTION

23 (Action Pursuant to NRS 113.150 –Defendant Sellers)

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

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

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

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 SECOND CAUSE OF ACTION
5 (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 THIRD CAUSE OF ACTION
15 (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
24 WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

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

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 17th 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
15 Reno, NV 89509
16 (775) 336-1600 telephone
17 Attorney for Plaintiffs
18
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20
21
22
23
24
25
26
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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)

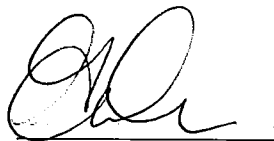
_____ Federal Express/UPS or other overnight delivery

_____ 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

Attachment to Docketing Statement – Case No. 78086
Defendants Brian F. Kincannon, Robert Clement, and Group
One, Inc. dba Keller Williams Realty’s Answer to Plaintiffs’
Second Amended Complaint and Cross-Claim

Attachment to Docketing Statement – Case No. 78086
Defendants Brian F. Kincannon, Robert Clement, and Group
One, Inc. dba Keller Williams Realty’s Answer to Plaintiffs’
Second Amended Complaint and Cross-Claim

1140
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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 Sideman, 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

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 49.

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

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1 **FOURTH AFFIRMATIVE DEFENSE**

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

4 **FIFTH AFFIRMATIVE DEFENSE**

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

7 **SIXTH AFFIRMATIVE DEFENSE**

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

11 **SEVENTH AFFIRMATIVE DEFENSE**

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

14 **EIGHTH AFFIRMATIVE DEFENSE**

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

18 **NINTH AFFIRMATIVE DEFENSE**

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

22 **TENTH AFFIRMATIVE DEFENSE**

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

27 ///

28 ///

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 ///

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

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

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

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

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

10. Plaintiffs alleged in the SAC that, in approximately September 2012, Cross-Defendants 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”).

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

12. Plaintiffs alleged in the SAC that the Reynolds affirmatively represented to them in the “Sellers Real Property Disclosure Form,” and in other representations, that a detached two-story building at the Property could be used for residential living and a separate garage with an attached 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 ///

26. It has been necessary for Cross-Claimants to defend against Plaintiffs' action. Cross-Claimants are entitled to reimbursement from Cross-Defendants to the extent of their proportionate share of liability.

WHEREFORE, Cross-Claimants pray for relief as follows:

1. That Cross-Defendants be required to fully indemnify Cross-Claimants for any and all amounts found to be due and owing;

2. That Cross-Defendants be required to contribute to the payment of any and all amounts adjudged by this Court to be due and owing to Plaintiffs herein;

3. For reasonable attorneys' fees and costs of suit incurred herein; and

4. For such other and further relief as this Court deems just and proper.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain the social security number of any person.

DATED: this 28th day of July, 2016.

MEYERS MCCONNELL REISZ SIDERMAN

By:

Lori E. Siderman, Esq.
Nevada Bar No. 007515
S. Seth Kershaw, Esq.
Nevada Bar No. 10639
11620 Wilshire Boulevard, Suite 800
Los Angeles, CA 90025
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Defendants and Cross-Claimants
BRIAN F. KINCANNON and GROUP ONE,
INC. dba KELLER WILLIAMS REALTY

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;

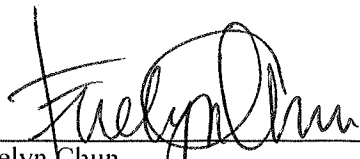
to the attorney(s) listed below at the address and/or facsimile number indicated below:

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

Attachment to Docketing Statement – Case No. 78086
Stipulation for Dismissal with Prejudice of Plaintiffs’ Second
Amended Complaint as to Defendants Brian F. Kincannon,
Robert Clement, and Group One, Inc. dba Keller Williams
Realty

Attachment to Docketing Statement – Case No. 78086
Stipulation for Dismissal with Prejudice of Plaintiffs’ Second
Amended Complaint as to Defendants Brian F. Kincannon,
Robert Clement, and Group One, Inc. dba Keller Williams
Realty

1 **4050**

Lori E. Siderman, Esq.

2 Nevada State Bar No. 7515

S. Seth Kershaw, Esq.

3 Nevada State Bar No. 10639

MEYERS McCONNELL REISZ SIDERMAN

4 A Professional Corporation

11620 Wilshire Boulevard, Suite 800

5 Los Angeles, California 90025

Tel: (310) 312-0772

6 Fax: (310) 312-0656

1745 Village Center Circle

7 Las Vegas, Nevada 89134

Tel: (702) 253-1377

8 Fax: (702) 248-6192

9 Attorneys for Defendants/Cross-Claimants

BRIAN F. KINCANNON, ROBERT CLEMENT,

10 and GROUP ONE, INC. dba KELLER WILLIAMS

REALTY

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

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

13
14 JOHN LINDBERG, an individual; MICHAL)

LINDBERG, an individual; and JUDITH L.)

15 LINDBERG, an individual,)

16 Plaintiffs,)

17 v.)

18 HARRY RICHARD REYNOLDS, an)

individual; DEANN REYNOLDS, an)

19 individual; J.E. JOHNS & ASSOCIATES, a)

Nevada business entity; JAMES E. JOHNS, an)

20 individual; A.J. JOHNSON, an individual;)

BRIAN F. KINCANNON, an individual;)

21 GROUP ONE, INC. dba KELLER)

WILLIAMS REALTY, a Nevada corporation;)

22 ROBERT CLEMENT, an individual; and)

DOES 3 through 10, inclusive,)

23 Defendants.)

24
25 AND RELATED CROSS-ACTIONS.)

CASE NO. CV15-00281

DEPT. NO.: 3

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

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**

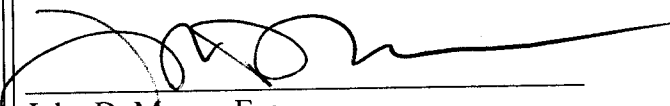
4 IT IS HEREBY STIPULATED, by and between Plaintiffs JOHN LINDBERG, MICHAL
5 LINDBERG, and JUDITH L. LINDBERG ("Plaintiffs") and Defendants BRIAN F. KINCANNON,
6 ROBERT CLEMENT, and GROUP ONE, INC. dba KELLER WILLIAMS REALTY, by and
7 through their respective counsel of record, that Plaintiffs' Second 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 27th 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


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

Attachment to Docketing Statement – Case No. 78086

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

Attachment to Docketing Statement – Case No. 78086

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

1 **4050**

Lori E. Sideman, Esq.

2 Nevada State Bar No. 7515

S. Seth Kershaw, Esq.

3 Nevada State Bar No. 10639

MEYERS McCONNELL REISZ SIDERMAN

4 A Professional Corporation

11620 Wilshire Boulevard, Suite 800

5 Los Angeles, California 90025

Tel: (310) 312-0772

6 Fax: (310) 312-0656

1745 Village Center Circle

7 Las Vegas, Nevada 89134

Tel: (702) 253-1377

8 Fax: (702) 248-6192

9 Attorneys for Defendants/Cross-Claimants

BRIAN F. KINCANNON, ROBERT CLEMENT,

10 and GROUP ONE, INC. dba KELLER WILLIAMS

REALTY

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

14 JOHN LINDBERG, an individual; MICHAL)
LINDBERG, an individual; and JUDITH L.)
15 LINDBERG, an individual,)

16 Plaintiffs,)

17 v.)

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

23 Defendants.)
24)

25 AND RELATED CROSS-ACTIONS.)
26)
27)
28)

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**

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.

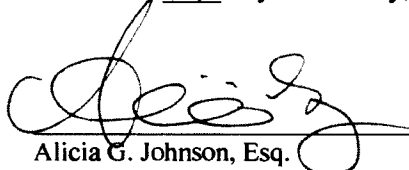
12 AFFIRMATION: Pursuant to NRS 239B.030, the undersigned do hereby affirm that this
13 document does not contain the social security number of any person.

14 **IT IS SO STIPULATED.**

15 Dated this ____ day of January, 2017

16 Dated this 17 day of January, 2017

17 _____
18 Lori E. Sideman, 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

15 _____
16 
17 Alicia G. Johnson, Esq.
18 JOHNSON LAW PRACTICE, PLLC
19 Attorneys for Cross-Defendants
20 HARRY RICHARD REYNOLDS and DEANN
21 REYNOLDS

22 Dated this ____ day of January, 2017

23 _____
24 C. Nicholas Pereos, Esq.
25 C. NICHOLAS PEREOS, LTD.
26 Attorneys for Cross-Defendants
27 J.E. JOHNS & ASSOCIATES, JAMES E.
28 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**

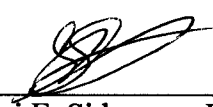
4 IT IS HEREBY STIPULATED, by and between Cross-Claimants BRIAN F.
5 KINCANNON, ROBERT CLEMENT, and GROUP ONE, INC. dba KELLER WILLIAMS
6 REALTY (collectively "Cross-Claimants") and Cross-Defendants HARRY RICHARD
7 REYNOLD, DEANN REYNOLDS, J.E. JOHNS & ASSOCIATES, JAMES E. JOHNS, and A.J.
8 JOHNSON (collectively "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.**

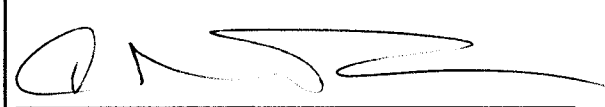
15 Dated this 31 day of January, 2017

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, ~~J.E. JOHNS & ASSOCIATES~~
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

Attachment to Docketing Statement – Case No. 78086
Stipulation and Order for Dismissal of Defendants Harry
Richard Reynolds and Deann Reynolds Only

Attachment to Docketing Statement – Case No. 78086
Stipulation and Order for Dismissal of Defendants Harry
Richard Reynolds and Deann Reynolds Only

3985
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;
KEN AMUNDSON, an individual; BRIAN
F. KINCANNON, an individual; and DOES 1
through 10, inclusive,

Defendants.

Case No. CV15-00281

Dept. No. 3

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

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 1st 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 20th day of May, 2017.

27 
28 DISTRICT JUDGE

Attachment to Docketing Statement – Case No. 78086
Findings of Fact and Conclusions of Law and Judgment

Attachment to Docketing Statement – Case No. 78086
Findings of Fact and Conclusions of Law and Judgment

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 13. 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 15. 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 16. 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 f. The Court also concludes that Plaintiffs suffered damages proximately caused by the
15 remaining Defendants' failure to disclose facts, data or information they should have known about
16 the property in the form of spending significant amounts to enlarge the size of the septic system in
17 this matter. Plaintiffs incurred **\$27,663.95** to enlarge the septic system to conform to existing code
18 requirements. Plaintiffs are entitled to recover this amount as damages against Defendants under
19 NRS 645.257.

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

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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

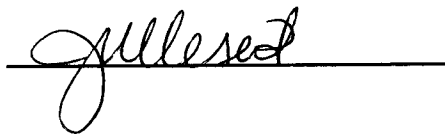
CERTIFICATE OF MAILING

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 18 day of September, 2018, I filed the Pretrial Order with the Clerk of the Court.

☒ 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

Agreement:

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

A handwritten signature in cursive script, appearing to read "J. L. Hall", is written over a horizontal line.

Attachment to Docketing Statement – Case No. 78086
Notice of Entry of Findings of Fact and Conclusions of Law and
Judgment

Attachment to Docketing Statement – Case No. 78086
Notice of Entry of Findings of Fact and Conclusions of Law and
Judgment

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.

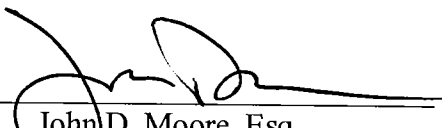
AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 19th day of September, 2018.

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

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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:
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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.
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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
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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.
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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.
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13 13. 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.
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23 15. The Court finds Defendants are responsible for the costs of repair and legal fees
24 necessitated by Defendants' failure to so notify the plaintiffs.
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26 16. 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 f. The Court also concludes that Plaintiffs suffered damages proximately caused by the
15 remaining Defendants' failure to disclose facts, data or information they should have known about
16 the property in the form of spending significant amounts to enlarge the size of the septic system in
17 this matter. Plaintiffs incurred **\$27,663.95** to enlarge the septic system to conform to existing code
18 requirements. Plaintiffs are entitled to recover this amount as damages against Defendants under
19 NRS 645.257.

20 g. The Court concludes that Defendants incorrectly listed the property as "single-family
21 residential," when the property clearly contained three structures and the zoning for this area allowed
22 for one residential structure and one accessory structure (residential or not), for a total of two
23 structures. Having three structures on the property therefore violates existing code. In order to have
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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.

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18 i. Plaintiffs had ample information to cause them to verify the square footage of the
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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

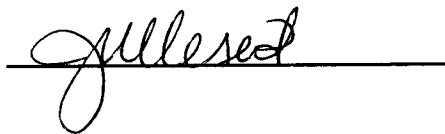
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Agreement:

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

A handwritten signature in cursive script, appearing to read "Jullene", is written over a horizontal line.

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)

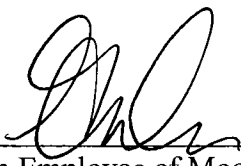
_____ Federal Express/UPS or other overnight delivery

_____ Reno/Carson Messenger Service

XX 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

Attachment to Docketing Statement – Case No. 78086
Judgment

Attachment to Docketing Statement – Case No. 78086
Judgment

1880

John D. Moore, Esq.
Nevada State Bar No. 8581
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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

JUDGMENT

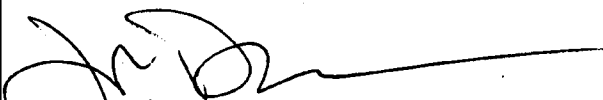
In accordance with this Court's Findings of Facts and Conclusions of Law and Judgment entered in this matter on September 18, 2018, Judgement is hereby entered in favor of Plaintiffs John Lindberg, Michal Lindberg, and Judith L. Lindberg ("Plaintiffs") against Defendants A.J. Johnson, James E. Johns (through his estate), and J.E. Johns & Associates ("Defendants"), jointly and several, in the total amount of SEVENTY FIVE THOURAND SEVEN HUNDRED EIGHTY

1 DOLLARS AND SEVENTY NINE CENTS (\$75,780.79). Because Plaintiffs are also entitled to
2 an award of pre-judgment interest against Defendants at the legal rate of interest (7% per annum)
3 from the date Plaintiffs filed their original complaint on February 10, 2015 until the date the Court
4 issued its Finding of Fact and Conclusions of Law and Judgment on September 18, 2018, which
5 totals 1,316 day, Plaintiffs are also hereby awarded pre-judgment interest in the amount of
6 \$19,121.48 ($\$75,780.79 \times .07 / 365$ days per year = \$14.53 per day x 1,316 days = \$19,121.48).
7 Plaintiffs are also entitled to post-judgment interest from September 18, 2018, until this judgment
8 is paid in full at the rate of \$14.53 per day ($\$75,780.79 \times .07 / 365$ days per year = \$14.53 per day).
9

10 JUDGMENT IS SO ENTERED this 25th day of September, 2018.
11

12 
13 District Judge
14

15 Submitted by:

16 
17
18 John D. Moore, Esq.
19 Nevada State Bar No. 8581
20 3715 Lakeside Drive, Suite A
21 Reno, NV 89509
22 (775) 336-1600 telephone
23 (775) 336-1601 fax
24 john@moore-lawgroup.com
25 Attorney for Plaintiffs
26
27
28

Attachment to Docketing Statement – Case No. 78086
Notice of Entry of Judgment

Attachment to Docketing Statement – Case No. 78086
Notice of Entry of Judgment

2535
John D. Moore, Esq.
Nevada State Bar No. 8581
MOORE LAW GROUP, PC
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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 JUDGMENT

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 26, 2018, the Court entered its Judgment in
favor of Plaintiffs and against Defendants J.E. Johns & Associates, James E. Johns (through his
estate), and A.J. Johnson in the above-noted matter. A copy of this Judgment is attached hereto as

1 Exhibit 1 and is incorporated herein by this reference.

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

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

5 DATED this 26th day of September, 2018.

7 MOORE LAW GROUP, PC

8
9 By 

10 John D. Moore, Esq.
11 Nevada State Bar No. 8581
12 3715 Lakeside Drive, Suite A
13 Reno, NV 89509
14 (775) 336-1600 telephone
15 (775) 336-1601 fax
16 john@moore-lawgroup.com
17 Attorney for Plaintiffs
18
19
20
21
22
23
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25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Moore Law Group, PC, and that on September 26, 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

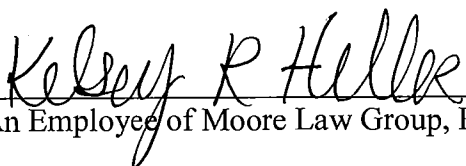

An Employee of Moore Law Group, PC

Exhibit 1

Exhibit 1

1880
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

JUDGMENT

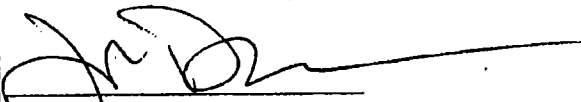
In accordance with this Court's Findings of Facts and Conclusions of Law and Judgment entered in this matter on September 18, 2018, Judgement is hereby entered in favor of Plaintiffs John Lindberg, Michal Lindberg, and Judith L. Lindberg ("Plaintiffs") against Defendants A.J. Johnson, James E. Johns (through his estate), and J.E. Johns & Associates ("Defendants"), jointly and several, in the total amount of SEVENTY FIVE THOURAND SEVEN HUNDRED EIGHTY

1 DOLLARS AND SEVENTY NINE CENTS (\$75,780.79). Because Plaintiffs are also entitled to
2 an award of pre-judgment interest against Defendants at the legal rate of interest (7% per annum)
3 from the date Plaintiffs filed their original complaint on February 10, 2015 until the date the Court
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5 totals 1,316 day, Plaintiffs are also hereby awarded pre-judgment interest in the amount of
6 \$19,121.48 ($\$75,780.79 \times .07 / 365 \text{ days per year} = \$14.53 \text{ per day} \times 1,316 \text{ days} = \$19,121.48$).
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9

10 JUDGMENT IS SO ENTERED this 25th day of September, 2018.
11

12 
13 District Judge
14

15 Submitted by:

16 
17

18 John D. Moore, Esq.
19 Nevada State Bar No. 8581
20 3715 Lakeside Drive, Suite A
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24 john@moore-lawgroup.com
25 Attorney for Plaintiffs
26
27
28

Attachment to Docketing Statement – Case No. 78086
Defendants' Motion to Amend or Alter Judgment Pursuant to
NRCP 59(e)

Attachment to Docketing Statement – Case No. 78086
Defendants' Motion to Amend or Alter Judgment Pursuant to
NRCP 59(e)

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

Attorney for Johns Defendants

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

* * * * *

**JOHN LINDBERG, MICHAL LINDBERG,
JUDITH L. LINDERG,**

Plaintiffs,

Case No. 15-00281

vs.

Dept. No. 3

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

Defendants.

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

_____/

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

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

FACTS, LAW and ARGUMENT

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 9th 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
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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
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INDEX OF EXHIBITS

\1	Affidavit to A. J. Johnson	1 Pf.
2	Offer of Judgment	3 pgs.

FILED
Electronically
CV15-00281
2018-10-09 05:26:26 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6919687 : pmsewell

EXHIBIT 1

EXHIBIT 1

AFFIDAVIT OF A. J. JOHNSON

STATE OF NEVADA)

) ss.

COUNTY OF WASHOE)

Amina J. Johnson, (Affiant) being duly sworn on oath, and under penalty of perjury, does hereby swear and affirm that she is over the age of eighteen years, makes this affidavit on her own personal knowledge and is otherwise competent to testify as to the truth of the matters set forth herein.

1. Affiant makes this affidavit in support of the Motion to Alter or Amend, to which this affidavit is affixed.

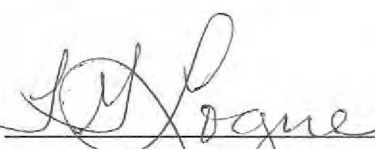
2. On or about March 2018, the remaining defendants in this action made an offer of judgment in favor of Plaintiffs in the amount of \$5,000.00. Said offer was not accepted by the Plaintiffs.

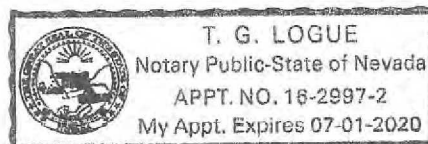
3. At the point in time when said Offer was made, Affiant is informed and believes that Plaintiffs had reached and received settlements from other defendants in the amount of \$57,500.

Futher affiant sayeth naught.


Amina J. Johnson

Subscribed and Sworn to before me, a Notary Public this 29th day of September, 2018.


NOTARY PUBLIC



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CV15-00281
2018-10-09 05:26:26 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6919687 : pmsewell

EXHIBIT 2

EXHIBIT 2

1 CODE: 2635
2 C. NICHOLAS PEREOS, ESQ.
3 Nevada Bar #0000013
4 1610 MEADOW WOOD LANE, STE. 202
5 RENO, NV 89502
(775) 329-0678
6 ATTORNEY FOR DEFENDANTS
7 J. E. JOHNS & ASSOCIATES
8 & A. J. JOHNSON

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

13 JOHN LINDBERG, MICHAL LINDBERG, JUDITH)
14 L. LINDBERG)

Case No. CV15-00281

11 Plaintiffs,

Dept. No. 3

12 vs.

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

15 Defendants.

16
17 **OFFER OF JUDGMENT**

18 TO: PLAINTIFFS, JOHN LINDBERG, MICHAEL LINDBERG, JUDITH L. LINDBERG,
19 AND ITS ATTORNEY OF RECORD:

20 Pursuant to Rule 68 of the Nevada Rules of Civil Procedure and Nevada
21 Revised Statutes 17.115, Defendants, J. E. JOHNS & ASSOCIATES and A. J.
22 JOHNSON, hereby offers to allow judgment to be entered in favor of Plaintiff, JOHN
23 LINDBERG, MICHAEL LINDBERG, JUDITH L. LINDBERG. on its case and against
24 J. E. JOHNS & ASSOCIATES and A. J. JOHNSON in this action in the amount of FIVE
25 THOUSAND and 00/100 DOLLARS (\$5,000.00) which sum is inclusive of all attorney's
26 fees, costs, interest and any other litigation related expenses accrued to date.

27 This Offer of Judgment is made for the purpose specified in Rule 68 and
28 Nevada Revised Statutes 17.115 and is not to be construed as an admission of any

1 kind whatsoever. By accepting this Offer, Plaintiff waives all rights to attorneys fees,
2 costs, interest and any other litigation related expense.


3 If you accept this offer and give written notice thereof, within ten (10) days, you
4 may file this Offer with proof of service of a Notice of Acceptance, and the Clerk of the
5 above-entitled Court is thereupon authorized to enter judgment in accordance with the
6 provisions of Rule 68 of the Nevada Rules of Civil Procedure and NRS 17.115.

7 You are further notified that if Notice of Acceptance is not given as provided in
8 Rule 68 of the Nevada Rules of Civil Procedure and NRS 17.115, this offer will be
9 withdrawn. As set forth in NRS 17.115 and Rule 68, you will then be responsible for the
10 Defendant's J.E. JOHNS & ASSOCIATES and A. J. JOHNSON, court costs and
11 attorney fees, if any be allowed, incurred from this date forward in the event you fail to
12 obtain a judgment in an amount greater than that offered herein.

13
14 **AFFIRMATION**

15 The undersigned affirms that the foregoing pleading does not contain a social
16 security number.

17 DATED this 30th day of November, 2017. C. NICHOLAS PEREOS, LTD.

18
19
20 By: 
21 C. NICHOLAS PEREOS, ESQ.
22 1610 MEADOW WOOD LANE, #202
23 RENO, NEVADA 89502
24 (775) 329-0678
25 ATTORNEY FOR DEFENDANTS
26 J.E. JOHNS & ASSOCIATES and
27 A.J. JOHNSON
28

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John D. Moore, Esq.
MOORE LAW GROUP, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Iris M. Norton
Iris M. Norton

Attachment to Docketing Statement – Case No. 78086
Order

Attachment to Docketing Statement – Case No. 78086
Order

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,

Case No. CV15-00281

Dept. No. 3

vs.

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.

ORDER

The remaining defendants in the above-entitled matter filed a MOTION TO AMEND OR
ALTER JUDGMENT PURSUANT TO NRCP 59(e) on October 9, 2018. On October 24, 2018,
Plaintiffs filed an OPPOSITION. Defendants filed a REPLY to the Opposition on November 21,
2018. The matter was submitted for the Court's consideration on November 7, 2018. The remaining
defendants requested an extension of time to file their Reply, which was filed after the matter was

1 submitted. That request was met with a NON-OPPOSITION filed by Plaintiffs on the same day,
2 November 21, 2018. Finding no opposition, the Court will consider the complete set of documents
3 filed in this matter.

4 **I. Background**

5 This Motion arises from a Judgment entered by this Court on September 26, 2018 pursuant
6 to Findings of Fact and Conclusions of Law and Judgment ("FFCLJ") filed on September 18, 2018.
7 The Court found the remaining defendants liable to Plaintiffs for \$27,663.95 in damages and
8 \$46,116.84 in attorney's fees and costs.
9

10 The underlying case arose from the sale of residential real property located at 20957 Eaton
11 Road, Reno, Nevada. Throughout the proceedings, Plaintiffs maintained tort actions against a
12 number of defendants for failing to disclose relevant and material facts, data, or information which
13 they knew, or by the exercise of reasonable care and diligence should have known. On information
14 and belief, the remaining defendants assert that Plaintiffs received settlements from settling
15 defendants in the amount of \$57,500. The Court heard the case against the remaining defendants on
16 August 20, 21, and 22, 2018. The Court found that the remaining defendants were at fault, that the
17 buyers were misled by the manner the property was listed, and that the remaining defendants should
18 have been aware that the septic system, which ended up needing costly repairs, was inadequate for
19 the buyers' purposes.
20

21 The remaining defendants do not contest the judgment insofar as the elements required for
22 liability were found present. Rather, they assert they are entitled to offsets against what they would
23 otherwise owe based on the settlement agreement between Plaintiffs and the settling defendants.
24 The remaining defendants claim, first, that pursuant to NRS 17.245(1)(a) their liability must be
25 reduced or set off by the amount of the settlement with the settling defendants. The remaining
26
27
28

1 defendants also argue that their settlement offer of \$5,000 would have brought Plaintiffs' total
2 settlement award to \$62,500, which is more than the Court's award of \$27,663.95 plus the
3 \$14,504.84 in attorney's fees and costs that had been incurred up to that point in the litigation. The
4 remaining defendants argue that because Plaintiffs did not obtain a judgment more favorable than
5 accepting the remaining defendants' offer, they are not entitled to recover attorney's fees; to the
6 contrary, the remaining defendants believe *they* are entitled to fees and costs.
7

8 **II. Legal Standards**

9 **A. The Motion**

10 The instant Motion is made pursuant to NRCP 59(e), which states that "[a] Motion to alter
11 or amend the judgment shall be filed no later than 10 days after service of written notice of entry of
12 the judgment." The remaining defendants have properly filed their Motion.
13

14 **B. Offsets**

15 NRS 17.245 states, in pertinent part,

16 1. When a release or a covenant not to sue or not to enforce judgment is given
17 in good faith to one of two or more persons liable in tort for the same injury or the
18 same wrongful death:

19 (a) It does not discharge any of the other tortfeasors from liability for the
20 injury or wrongful death unless its terms so provide, *but it reduces the claim against
the others to the extent of any amount stipulated by the release or the covenant*, or in
the amount of the consideration paid for it, whichever is the greater.

21 (Emphasis added). The purpose of NRS 17.245(1)(a) is to prevent double recovery. *See, e.g., Banks*
22 *v. Sunrise Hospital*, 120 Nev. 822, 843, 102 P.3d 52, 67 (2004). A settlement with one tortfeasor
23 does not extinguish claims against others unless explicitly provided for, but it does reduce the
24 amount a plaintiff can recover from a non-settling tortfeasor by the sum awarded in the settlement.
25

26 **C. Attorney's Fees**

27 NRCP 68(f) provides for penalties for rejecting an offer if the offeree fails to obtain a more
28

1 favorable judgment. Failing to obtain a more favorable judgment eliminates the offeree's ability to
2 recover attorney's fees or costs or interest for the time after the offer and before judgment. 68(f)(1).
3 Any after-offer costs and reasonable attorney's fees incurred by the offeror from the time of the
4 offer to the judgment must be paid by the offeree. 68(f)(2).

5 Given the foregoing standards, the Court will now consider the remaining defendants'
6 claims.
7

8 **III. Analysis**

9 **A. Offsets**

10 The remaining defendants argue they are entitled to offsets pursuant to NRS 17.245 based
11 on the settlement amount Plaintiffs were awarded from the settling defendants. They point out that
12 the basis of the claims leveled against them is the same as that for the claims leveled against the
13 settling defendants—that is, all defendants were liable for the same injury. If this is the case, the
14 relevant provision of NRS 17.245 requires that the amount of the remaining defendants' liability be
15 reduced by the amount of the settlement.
16

17 Plaintiffs counter that "this case does not deal with the determination and apportionment of
18 joint tort liability."¹ Opp. 4-5. To support their position, Plaintiffs primarily argue that the claims
19 against the settling defendants sounded in tort, while the claims against the remaining defendants
20 were grounded in statute.
21

22 The distinction between statutory and tort-based claims is not absolute, and Plaintiffs'
23 invocation of it here has no foundation in the law. While a statute can create a cause of action, civil
24 or criminal, distinct from the common law tort analysis, it can also create a duty that ultimately
25

26
27 ¹ Plaintiffs are certainly right that this case does not deal with apportionment. If NRS 17.245 does apply, the Court's
28 job is not to apportion the amount owed among the joint tortfeasors, but rather to reduce the amount owed by the
remaining defendants by the amount paid by the settling defendants.

1 comprises the basis of that analysis. If tort law were limited to common law causes of action,
2 negligence per se, to take one example, would be a concept fraught with contradiction. In the instant
3 case, the Court found the remaining defendants in violation of NRS 645.252(1)(a) and (2) for failing
4 to disclose to Plaintiffs material and relevant facts, data, and information they knew or should have
5 known. NRS 645.252 outlines “[d]uties of licensee acting as agent in real estate transaction.”
6 (Emphasis added). The provision is a classic example of a statute creating a duty, the breach of
7 which, if causing damages, constitutes a tort. The statute replaces any duties arising from common
8 law with those it specifically defines. *See generally Davis v. Beling*, 128 Nev. 301, 278 P.3d 501
9 (2012). Where a common law claim and a statutory claim overlap, the statute provides the cause of
10 action. *Id.* Statutory standards of care are generally higher than that of the reasonable person
11 standard demanded by common-law tort claims because we expect more from professionals, in this
12 case real estate agents. But just because a duty is codified does not mean its breach is re-categorized
13 as an offense not contemplated by tort law—that is, the statute does not change the tortious nature
14 of the conduct. The claims against the remaining defendants were appropriately treated as tort
15 claims. In its FFCLJ, this Court found that the remaining defendants had duties pursuant to NRS
16 645.252(1)(a) and (2), that they breached those duties, and that said breach was the proximate cause
17 of the injury suffered by Plaintiffs.

21 Even if Plaintiffs’ argument that its claims were distinguished by the sources of its causes of
22 action were convincing, they still would not be able to recover on both statutory and tort grounds.
23 There is a “general rule against double satisfaction for a single injury” in civil cases. *Grosjean v.*
24 *Imperial Palace, Inc.*, 125 Nev. 349, 212 P.3d 1068 (2009) (citing *Kassman v. American University*,
25 546 F.2d 1029, 1033–34 (D.C.Cir.1976) and *Zarcone v. Perry*, 78 A.D.2d 70, 434 N.Y.S.2d 437,
26 439–43 (1980)). In *Grosjean*, the Nevada Supreme Court upheld the dismissal of the plaintiff’s state
27
28

1 law tort claims because he had already recovered for the same injury on his statutory 42 U.S.C. §
2 1983 claim. Similarly, in the instant case, even if the Plaintiffs' statutory versus tort claims
3 distinction were persuasive, full recovery on both theories would violate the rule against double
4 satisfaction.² This Court, in its FFCLJ, has previously recognized the issue and precluded Plaintiffs
5 from recovering twice. FFCLJ 7-8.

6
7 Plaintiffs also argue that the claims against the settling and remaining defendants were based
8 on different facts. The statute in question, however, is concerned with double recovery for the same
9 injury. NRS 17.245(1). To a greater or lesser extent, different facts are going to apply to different
10 defendants in any case. The inquiry, therefore, is whether or not the different defendants were
11 responsible for the same injury. Here they were. But even if Plaintiffs were correct that factual
12 circumstances surrounding an injury are the dispositive factor in determining joint liability, they
13 have themselves alleged facts binding all the defendants, settling and remaining, together. In their
14 Second Amended Complaint (SAC), Plaintiffs allege, "[i]n reliance on all of Defendants'
15 representation regarding the Property ... the [Plaintiffs] closed on the sale." SAC 4. The Complaint
16 goes on to allege a number of facts concerning the conduct—of "Defendants" collectively—that
17 gave rise to the injury suffered. *See* SAC 5. These allegations link all defendants not only to the
18 same injury, but, contrary to Plaintiffs' assertion, to the same facts. Plaintiffs' argument that their
19 claims against the settling and remaining defendants were based on different facts is thus belied by
20 their own pleading. The relevant inquiry, however, is whether both settling and remaining
21 defendants were responsible for the same injury, and the answer is clearly that they were.

22
23 Plaintiffs' distinction between statutory and tort causes of action in this case is unavailing.
24
25 But even if the Court were to accept the distinction, Plaintiffs would still be unable to recover twice
26
27

28 ² Plaintiffs can, of course, recover on both theories *up to* the full amount of their damages. That is, if the amount
awarded on the "tort" claims is not sufficient, the balance can be made up by the judgment on the "statutory" claims.

1 for the same injury, as that would violate the general rule against double satisfaction. Furthermore,
2 the Court finds that all defendants, settling and remaining, were responsible for the same injury. As
3 such, the amount of the settlement with the settling defendants shall be deducted from the
4 \$75,780.79 judgment against the remaining defendants pursuant to NRS 17.245(1)(a).

5 **B. Attorney's Fees**

6
7 The remaining defendants next argue that, pursuant to NRCP 68(f)(1), Plaintiffs are not
8 entitled to recover attorney's fees because they refused a settlement offer and failed to receive a
9 more favorable judgment. They further argue that, pursuant to NRCP 68(f)(2), *they* are actually the
10 party entitled to attorney's fees, costs, and interest.

11
12 Plaintiffs respond simply that the \$75,780.79 awarded by this Court's judgment far exceeds
13 the \$5,000 offered by the remaining defendants to settle the case.

14 The difference between the remaining defendants' and the Plaintiffs' numbers is a matter of
15 which variables are factored into the equation. Defendants take the sum total of their \$5,000 offer
16 and the \$57,500 they believe constitutes the settlement amount with the settling defendants. That
17 \$62,500 total exceeds the total of \$27,663.95 in damages plus \$14,504.84 in attorney's fees and
18 costs at the time of the settlement offer. There are two errors in the remaining defendants' novel but
19 unavailing reasoning. First, at the time of the settlement as well as the settlement offer, none of the
20 parties could have known what the Court would ultimately determine the damages to be. Second,
21 the remaining defendants generously—and erroneously—attach to *their own* settlement offer
22 (\$5,000) the offers of the settling defendants (\$57,500).
23
24

25 Plaintiffs have the better of the argument by calculating the difference according to the
26 judgment received. Plaintiffs received judgment in the amount of \$75,780.79, which obviously
27 exceeds the remaining defendants' offer of \$5,000. (NB: Plaintiffs were forced to hire attorneys and
28

1 litigate *because* of defendants' tortious conduct. Thus, attorney's fees and costs, which were found
2 reasonable, were a part of the Plaintiffs' damages. See FFCLJ 8.) Though this Order has determined
3 that Plaintiffs must deduct from the judgment the settlement amount, the amount of the judgment
4 remains the same. Because Plaintiffs' were awarded judgment in an amount greater than the amount
5 offered in settlement, the judgment granting them attorney's fees and costs must stand.
6

7 **IV. Conclusion**

8 IT IS HEREBY ORDERED that the remaining defendants' Motion to Amend or Alter
9 Judgment Pursuant to NRCP 59(e) is GRANTED in part and DENIED in part.

10 Because Plaintiffs are precluded from recovering twice for the same injury, IT IS HEREBY
11 ORDERED that the remaining defendants' request to have the amount for which they are liable in
12 judgment reduced by the amount of the settlement is GRANTED. As the Court cannot, based on the
13 record, determine what the remaining defendants are left owing, counsel for Plaintiffs and the
14 remaining defendants are HEREBY ORDERED to contact the judicial assistant in department 3
15 within ten (10) days of the filing of this Order to set the matter for hearing.
16

17 IT IS HEREBY FURTHER ORDERED that the remaining defendants' request to amend the
18 judgment to deny Plaintiffs attorney's fees and grant the same to the remaining defendants is
19 DENIED.
20

21 Dated this 5th day of December, 2018.

22 
23 JEROME POLAHA
24 DISTRICT JUDGE
25
26
27
28

CERTIFICATE OF MAILING

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 5 day of December, 2018 I did the following:

☐ 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

Agreement:

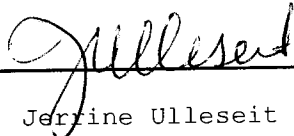
GLADE L. HALL, ESQ. for J.E. JOHNS & ASSOCIATES

C. NICHOLAS PEREOS, ESQ. for AMINA JOHNS

JOHN DAVID MOORE, ESQ. for JUDITH LINDBERG et al

☐ Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States

Postal Service in Reno, Nevada:


Jerrine Ulleseit

Attachment to Docketing Statement – Case No. 78086
Amended Judgment Following Hearing

Attachment to Docketing Statement – Case No. 78086
Amended Judgment Following Hearing

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
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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
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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).
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18

19 JUDGMENT IS SO ENTERED this 24th day of January, 2019.
20

21 
22 District Judge
23

24 Submitted by:

25 /s/ John D. Moore

26 John D. Moore, Esq.

27 Nevada State Bar No. 8581

3715 Lakeside Drive, Suite A

Reno, NV 89509

john@moore-lawgroup.com

Attorney for Plaintiffs
28

Attachment to Docketing Statement – Case No. 78086
Notice of Entry of Amended Judgment Following Hearing

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2535
John D. Moore, Esq.
Nevada State Bar No. 8581
MOORE LAW GROUP, PC
3715 Lakeside Drive, Suite A
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(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

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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 24th 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

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Attorney for Plaintiffs

1105

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21 
22 District Judge
23

24 Submitted by:

25 /s/ John D. Moore

26 John D. Moore, Esq.

27 Nevada State Bar No. 8581

3715 Lakeside Drive, Suite A

Reno, NV 89509

john@moore-lawgroup.com

Attorney for Plaintiffs
28

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