

IN THE SUPREME COURT OF THE STATE OF NEVADA

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  
District Court Case No. CV15-00281  
Aug 08 2019 10:58 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Appeal from the Second Judicial District Court  
of the State of Nevada In and For Washoe County

The Honorable Jerome Polaha, District Judge Presiding

---

RESPONDENTS'/CROSS-APPELLANTS' APPENDIX – VOLUME I

---

Attorney for Respondents/Cross-Appellants John Lindberg,  
Michal Lindberg, and Judith L. Lindberg  
John D. Moore, SBN 8581  
Moore Law Group, PC  
3715 Lakeside Drive, Suite A  
Reno, NV 89509  
Tele: (775) 336-1600  
Fax: (775) 336-1601

**RESPONDENTS'/CROSS-APPELLANTS' APPENDIX<sup>1</sup>**

<b>DOCUMENT TITLE</b>	<b>DATE</b>	<b>VOLUME</b>	<b>RA BEGIN</b>	<b>RA END</b>
Answer to Second Amended Complaint	1/10/18	1	RA 0015	RA 0020
Default	3/1/18	1	RA 0195	RA 0196
Defendants' Motion in Limine No. 3	2/13/18	1	RA 0037	RA 0059
Defendants' Opposition to Plaintiffs' Motion in Limine No. 2	2/22/18	1	RA 0063	RA 0070
Motion to Substitute Party	4/15/16	1	RA 0001	RA 0005
Notice of Intent to Take Default	2/14/18	1	RA 0060	RA 0062
Opposition to Motion <sup>2</sup> to Amend or Alter Judgment Pursuant to NRCP 59(e)	10/24/18	2	RA 0219	RA 0279
Order (Grant Motion to Substitute Party)	6/1/16	1	RA 0013	RA 0014
Order (on Plaintiffs' Motions in Limine 1 – 3)	3/20/18	1	RA 0212	RA 0218
Plaintiffs' Combined Opposition to Defendants' Motions in Limine Numbers Two and Three	2/23/18	1	RA 0071	RA 0185

---

<sup>1</sup> The listed pleadings were requested to be added to the Joint Appendix when the parties conferred on the contents of the Joint Appendix and were not included in the final Joint Appendix. The listed transcripts were to be included in the Joint Appendix but were not added to the final Joint Appendix.

<sup>2</sup> The Opposition to Motion to Amend or Alter Judgment Pursuant to NRCP 59(e) was included in the Joint Appendix as requested, however, the exhibits to the Opposition were not included in the Joint Appendix.

<b>DOCUMENT TITLE</b>	<b>DATE</b>	<b>VOLUME</b>	<b>RA BEGIN</b>	<b>RA END</b>
Plaintiffs' Motion in Limine No. 2 to Exclude Offer of Evidence or Argument Related to Settlements Reached with Other Defendants	2/9/18	1	RA 0021	RA 0036
Plaintiffs' Reply in Support of Motion in Limine No. 2	3/5/18	1	RA 0197	RA 0211
Reply Argument in Support of Defendants' Motion in Limine Number Two and Motion in Limine Number Three	2/27/18	1	RA 0186	RA 0194
Request for Submission	5/4/16	1	RA 0006	RA 0012
Transcript - Trial Day 1	8/20/18	2	RA 0280	RA 0449
Transcript – Trial Day 2	8/21/18	3	RA 0450	RA 0591
Transcript – Trial Day 3	8/22/18	3	RA 0592	RA 0674
Transcript - Post-Trial Motion Hearing	1/9/19	3	RA 0675	RA 0693

**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(d), I certify that I am an employee of Moore Law Group, PC, and that on August 8, 2019, I caused the foregoing document to be served on all parties to this action by:

  X   E-service via Nevada Supreme Court eflex filing system

to the following:

Glade Hall, Esq.

/s/ Genevieve DeLucchi

An employee of Moore Law Group, PC



2490  
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

**MOTION TO SUBSTITUTE PARTY**

COME NOW Plaintiffs John Lindberg, Michal Lindberg, and Judith L. Lindberg ("Plaintiffs"),  
and move this Court for an order substituting in the place and stead of James E. Johns, deceased, an  
appropriate representative of Mr. Johns's estate, whether that be a personal representative of Mr. Johns  
or the successors to Mr. Johns's estate, whether that be next of kin, a personal representative, or an  
executor of Mr. Johns's estate. Because the action against Mr. Johns did not abate upon his death,

1 which was suggested on the record by counsel on March 8, 2016, an appropriate representative of Mr.  
2 Johns's estate must be properly substituted into this matter in accordance with NRCP 25. Plaintiffs  
3 are not aware of the creation of a probate estate on behalf of Mr. Johns, but Plaintiffs are aware that  
4 Mr. Johns, prior to his death, jointly owned with his wife and co-defendant, Amina M. Johns aka A.J.  
5 Johnson, real estate located at 12565 Stillwater Way in Reno, Nevada 89511. (Declaration of Counsel  
6 filed concurrently herewith). As such, Plaintiffs suggest that Amina M. Johns aka A.J. Johnson be  
7 substituted in the place and stead of James E. Johns, in accordance with NRCP 25. If the Court  
8 concludes that Mrs. Johns should not be substituted in the place and stead of her deceased husband,  
9 then Plaintiffs request assistance from the Court to appoint an appropriate successor to Mr. Johns in  
10 this matter.  
11  
12

## 13 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 14 **I. BRIEF FACTUAL BACKGROUND**

15 Plaintiffs, by and through previous counsel of record Sean L. Brohawn, Esq., initiated the  
16 above-captioned lawsuit on February 10, 2015 with the filing of a complaint. On or about February  
17 10, 2016, Plaintiffs engaged the undersigned as their new counsel requesting the undersigned to notify  
18 all parties of this new representation and to formally substitute John D. Moore, Esq., as their counsel  
19 in place and stead of Sean L. Brohawn, Esq. The undersigned filed his notice of appearance in this  
20 matter on February 10, 2016, and has acted as counsel in all matters involving this case since that date.  
21  
22

23 Thereafter, on or about March 8, 2016, Mr. Johns's attorney notified the Court of Mr. Johns's  
24 death. Knowing of the suggestion of death on the record, during the early case conference that the  
25 parties held in this matter on March 16, 2016, Plaintiffs' attorney asked Mr. Johns's attorney if a  
26 probate estate would be established on behalf of Mr. Johns's estate and/or if a personal representative  
27 would be assigned to oversee Mr. Johns's estate. Mr. Johns's attorney stated that he did not believe  
28

1 that a probate would be opened and that a representative likely would not be assigned to oversee Mr.  
2 Johns's estate. (Declaration of Counsel). Even if a probate is not opened on behalf of Mr. Johns's  
3 estate and even if a personal representative is not assigned to oversee Mr. Johns's estate, NRCP 25  
4 requires the substitution of a living party in the place and stead of Mr. Johns. As a result, Plaintiffs  
5 find it necessary to file this Motion to Substitute Party at this time, to name a successor party to Mr.  
6 Johns, who is deceased.

## 8 **II. LEGAL AUTHORITY**

9 Under NRCP 25(a)(1), "[i]f a party dies and the claim is not thereby extinguished, the court  
10 may order substitution of the proper parties. The motion for substitution may be made by any party  
11 or by the successors or representatives of the deceased party. . . Unless the motion for substitution is  
12 made not later than 90 days after the death is suggested upon the record by service of a statement of  
13 the fact of the death as provide herein for service of the motion, the action shall be dismissed as to the  
14 deceased party."

15  
16 Here, to avoid the dismissal of Plaintiffs' valid claims against Mr. Johns, NRCP 25 requires  
17 the substitution of a successor or representative of Mr. Johns into this lawsuit. Because it appears that  
18 Mr. Johns was married at the time of his death to Amina M. Johns also known as A.J. Johnson, a co-  
19 defendant in this matter, it seems only appropriate that Mrs. Johns be substituted into this matter in  
20 the place and stead of Mr. Johns. Absent some other appropriate representative or successor, Plaintiffs  
21 hereby request the substitution of Amina M. Johns into this matter in the place and stead of James E.  
22 Johns.

## 25 **III. CONCLUSION**

26 For the reasons stated herein, the Court should substitute Amina M. Johns also known as A.J.  
27 Johnson, a co-defendant herein, into this matter, in the place and stead of the deceased Defendant,  
28

1 James E. Johns.

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

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

5 DATED this 15<sup>th</sup> day of April, 2016.

7 MOORE LAW GROUP, PC

8 By 

9 John D. Moore, Esq.  
10 Nevada State Bar No. 8581  
11 3715 Lakeside Drive, Suite A  
12 Reno, NV 89509  
13 (775) 336-1600 telephone  
14 john@moore-lawgroup.com  
15 Attorney for Plaintiffs  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2 **CERTIFICATE OF SERVICE**

3 Pursuant to NRCP 5(b), I certify that I am an employee of Moore Law Group, PC, and that  
4 on April 15, 2016, I caused the foregoing document to be served on all parties to this action by:

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

7 \_\_\_ personal delivery

8 \_\_\_ facsimile (fax)


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

10 \_\_\_ Reno/Carson Messenger Service

11 XX E-service via flex filing system

12 to the following:

- 13
- 14 • SEAN BROHAWN, ESQ. for JUDITH LINDBERG et al
  - 15 • ALICIA JOHNSON, ESQ. for DEANN REYNOLDS, HARRY RICHARD REYNOLDS
  - 16 • C. PEREOS, ESQ. for A. J. JOHNSON, JAMES E. JOHNS, J.E. JOHNS & ASSOCIATES

17  
18   
19 \_\_\_\_\_  
An Employee of Moore Law Group, PC

3860  
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

**REQUEST FOR SUBMISSION**

It is requested that the Motion to Substitute Party, filed on April 15, 2016, be submitted to the  
court for decision. No opposition has been filed. A proposed Order is attached hereto as Exhibit 1.

///

///

///

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

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

5 DATED this 4<sup>th</sup> day of May, 2016.  
6

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 john@moore-lawgroup.com  
16 Attorney for Plaintiffs  
17  
18  
19  
20  
21  
22  
23  
24  
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 May 4, 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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INDEX OF EXHIBITS		
Exhibit Number	Description of Exhibit	No. of Pages
1	Proposed Order	2

# EXHIBIT 1

# EXHIBIT 1

3370

**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

**ORDER SUBSTITUTING PARTY**

Currently before the Court is the MOTION TO SUBSTITUTE PARTY (the "Motion")  
filed by Plaintiffs JOHN LINDBERG, MICHAL LINDBERG, and JUDITH L. LINDBERG  
(collectively, "the Plaintiffs") on April 15, 2016. No opposition to the Motion was filed and the  
matter was submitted for consideration on May 4, 2016.

DCR 13(3) states, in pertinent part, that the "[f]ailure of the opposing party to serve and

1 file his written opposition may be construed as an admission that the motion is meritorious and a  
2 consent to granting the same.”

3 The Court having considered the Motion filed and submitted by the Plaintiffs, no  
4 opposition having been filed, and good cause appearing,

5 IT IS HEREBY ORDERED that Amina M. Johns also known as A.J. Johnson, a co-defendant  
6 herein, is substituted into this matter, in the place and stead of the deceased Defendant, James E. Johns.  
7

8 DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.  
9

10  
11 \_\_\_\_\_  
12 JEROME POLAHA  
13 DISTRICT JUDGE

14 Submitted by:

15  
16 MOORE LAW GROUP, PC

17  
18 By \_\_\_\_\_

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

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

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

Case No. CV15-00281

Dept. No. 3

Plaintiffs,

v.

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

Defendants.

ORDER


Currently before the Court is the MOTION TO SUBSTITUTE PARTY ("the Motion").  
Plaintiffs JOHN LINDBERG, MICHAEL LINDBERG, and JUDITH L. LINDBERG (*collectively*,  
"the Plaintiffs") filed the Motion on April 15, 2016. No party filed any opposition to the Motion.  
The Plaintiffs submitted the matter for consideration on May 4, 2016.

1 D.C.R. 13(3) states, in pertinent part, the “[f]ailure of the opposing party to serve and file his  
2 written opposition may be construed as an admission that the motion is meritorious and a consent to  
3 granting the same.”

4 The Court, having considered the Motion and supporting documents filed and submitted by  
5 the Plaintiffs, no opposition having been filed, and good cause appearing,  
6

7 IT IS HEREBY ORDERED that AMINA M. JOHNS, also known as A.J. JOHNSON, a co-  
8 defendant herein, is substituted into the matter, in the place and stead of the deceased defendant,  
9 JAMES E. JOHNS.

10 Dated this 31st day of May, 2016.

11   
12 JEROME POLAHA  
13 DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 CODE: 1140  
2 C. NICHOLAS PEREOS, ESQ.  
3 Nevada Bar #0000013  
4 1610 MEADOW WOOD LANE, STE. 202  
5 RENO, NV 89502  
6 (775) 329-0678  
7 ATTORNEY FOR DEFENDANTS  
8 J. E. JOHNS & ASSOCIATES  
9 & A. J. JOHNSON

6  
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**

9  
10 JOHN LINDBERG, MICHAL LINDBERG,  
11 JUDITH L. LINDBERG

12 Plaintiffs,

13 vs.

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

18 Defendants.

Case No. CV15-00281

Dept. No. 3

19  
20 **ANSWER TO SECOND AMENDED COMPLAINT**

21 Defendants, James E. Johns and A.J. Johnson answering the Second Amended  
22 Complaint, admits, denies and avers as follows:

23 **THE PARTIES**

24 I

25 Defendants answering the "Parties" allegations of the Second Amended  
26 Complaint on file herein admits, denies and avers as follows:

27 1. Admit that Reynolds were residents of Washoe County, Nevada. Admit  
that James E. Johns was a resident of Washoe County, Nevada. These Defendants  
are without knowledge or information sufficient to form a belief as to the truth of the

1 averments contained in paragraphs 2, 4, 7 through 11, inclusive to the Second  
2 Amended Complaint.

3 **FACTS**

4 I

5 Defendants answering the "Facts" of the Second Amended Complaint on file  
6 herein admits, denies and avers as follows:

7 1. Adopt by reference and make a part hereof each and all the admissions,  
8 denials contained hereinabove.

9 2. Admit that J.E. Johns & Associates listed the property for sale on behalf of  
10 the sellers. Deny each, and every and other averments contained in paragraphs 14,  
11 17, 18, 20 through 29, inclusive.

12 **FIRST CAUSE OF ACTION**

13 I

14 Answering the "First Cause of Action" of the Second Amended Complaint, these  
15 Defendants admits, denies and avers as follows:

16 1. Insofar as said first cause of action is not applicable to these Defendants,  
17 Defendants denies the same.

18 **SECOND CAUSE OF ACTION**

19 I

20 Answering the "Second Cause of Action" of the Second Amended Complaint,  
21 these Defendants admits, denies and avers as follows:

22 1. Insofar as the second cause of action is not applicable to these  
23 Defendants, these Defendants denies the same.

24 **THIRD CAUSE OF ACTION**

25 I

26 Answering the "Third Cause of Action" of the Second Amended Complaint, these  
27 Defendants admits, denies and avers as follows:



1. Insofar as this third cause of action is not applicable to these Defendants, these Defendants denies the same.

#### FOURTH CAUSE OF ACTION

1

Answering the "Fourth Cause of Action" of the Second Amended Complaint, these Defendants admits, denies and avers as follows:

1. Adopt by reference and make a part hereof each and all the admissions, denials contained hereinabove.

2. Deny each, and every and all of the averments contained in paragraphs 46 through 48 of the fourth cause of action.

## FIFTH CAUSE OF ACTION

1

Answering the "Fifth Cause of Action" of the Second Amended Complaint, these Defendants admits, denies and avers as follows:

1. Adopt by reference and make a part hereof each and all the admissions, denials contained hereinabove.

2. Deny each, and every and all of the averments contained in paragraphs 50 through 54, inclusive of the fifth cause of action.

## FIRST AFFIRMATIVE DEFENSE

Defendant James E. Johns is now deceased and this Court lacks jurisdiction.

## SECOND AFFIRMATIVE DEFENSE

Plaintiffs have resolved its claim with regard to the remaining Defendants and these Defendants is entitled to a credit therefore.

### THIRD AFFIRMATIVE DEFENSE

Plaintiffs were provided reports indicating problems with regard to the subject property and proceeded to close the escrow and assumed the risks by reason of the same.

III

1 **FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiffs received compensation for the losses alleged to have been sustained in  
3 the purchase of the property and the claim has been satisfied.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 Plaintiffs has waived any rights to collect for issues as to these Defendants by  
6 reason of the notice of deficiencies.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Said complaint fails to state a claim upon which relief can be granted.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 At all times herein mentioned, Plaintiffs negligently and carelessly conducted  
11 themselves in and about the matters averred in said complaint which said negligence  
12 and carelessness attributed to any and all lawsuits allegedly to be sustained by them.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 Plaintiffs engaged independent contractors and consultants and relied on the  
15 materials provided to them.

16 **NINTH AFFIRMATIVE DEFENSE**

17 The duties owed to the Plaintiffs to adequately investigate and counsel the  
18 Plaintiffs were not by these Defendants.

19 **TENTH AFFIRMATIVE DEFENSE**

20 The claims of the complaint are barred by justification.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 The claims of the complaint are barred by unjust enrichment.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 The claims of the complaint are barred by failure to act in a commercially  
25 reasonable manner.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 The claims of the complaint are barred by lack of consideration.



1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 The claims of the complaint are barred in whole or in part by waiver  
3 acquiescence and/or estoppel.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 The claims of the complaint are barred by unclean hands and bad faith.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

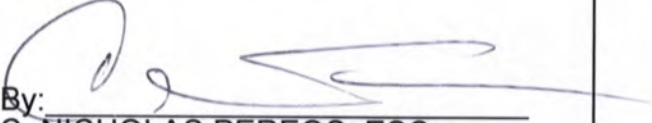
7 Recession is the remedy available to the Plaintiff.

8 Wherefore, these Defendants pray that Plaintiffs take nothing from said  
9 Complaint and that these Defendants have judgment against Plaintiffs for costs of suit  
10 and reasonable attorneys fees.  
11

12 **AFFIRMATION**

13 The undersigned affirms that the foregoing pleading does not contain a social  
14 security number.

15  
16 DATED this 17<sup>th</sup> day of JANUARY, 2018 C. NICHOLAS PEREOS, LTD.

17  
18  
19 By:   
20 C. NICHOLAS PEREOS, ESQ.  
21 1610 MEADOW WOOD LANE, STE.202  
22 RENO, NV 89502  
23 ATTORNEY FOR DEFENDANTS  
24  
25  
26  
27  
28


**CERTIFICATE OF SERVICE BY ELECTRONIC FILING**

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I caused to be served a true copy of the foregoing pleading on all parties to this action by electronically filing the foregoing with the Clerk of the Court by using the CM/ECF system which served the following parties electronically:

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

DATED: \_\_\_\_\_

1/18/18

  
\_\_\_\_\_  
Iris M. Norton

2245  
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

**MOTION IN LIMINE NO. 2 TO EXCLUDE THE  
OFFER OF EVIDENCE OR ARGUMENT RELATED  
TO SETTLEMENTS REACHED WITH OTHER DEFENDANTS**

Plaintiffs, John Lindberg, Michal Lindberg, and Judith L. Lindberg, ("Plaintiffs") hereby file  
this Motion in Limine No. 2 to Exclude the Offer of Evidence or Argument Related to Settlements  
Reached with Other Defendants. ("Motion"). In recent filings with this Court, including in the answer

1 that James E. Johns<sup>1</sup> and A.J. Johnson<sup>2</sup> filed to Plaintiffs' Second Amended Complaint in this matter  
2 on January 10, 2018, these Defendants have asserted that "Plaintiffs have resolved its [sic] claim with  
3 regard to the remaining Defendants and these Defendants is [sic] entitled to a credit therefore."  
4 Answer to Second Amended Complaint at Second Affirmative Defense, attached hereto as **Exhibit 1**.  
5 Defendants also claim in their Fourth Affirmative Defense that "Plaintiffs received compensation for  
6 the losses alleged to have been sustained in the purchase of the property and the claim has been  
7 satisfied." *Id.* In these affirmative defenses, these Defendants appear to be attempting to apply  
8 principles of contribution in an effort to create a credit for settlements already reached with other  
9 defendants that are no longer parties to this dispute. The Court should not allow Defendants to present  
10 evidence or argument of these other settlements with other defendants because such evidence or  
11 argument is not admissible to prove or disprove liability under NRS 48.105, Defendants have no right  
12 of contribution under a plain reading of NRS 17.255, the disclosure of such evidence is irrelevant, and  
13 the disclosure of such evidence or argument, if relevant, would be overly prejudicial to Plaintiffs. For  
14 these various reasons, the Court should exclude evidence or argument of any settlements reached with  
15 any other defendants in this dispute.  
16

## 18 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 19 **I. FACTUAL BACKGROUND**

20 Plaintiffs filed a complaint on February 10, 2015 to vindicate their rights arising from the sale  
21 of property to Plaintiffs that took place on or about February 28, 2013. These claims arise under NRS  
22 113.150 against the sellers of the property, Harry Richard Reynolds and Deann Reynolds, for their  
23

---

25 <sup>1</sup> Unfortunately, James E. Johns died on February 10, 2016. Mr. Johns' death was the subject of a suggestion of  
26 death on the record in or about March of 2016 and a motion to substitute party filed in or about April of 2016. The motion  
27 to substitute party was not opposed and in June of 2016, A.J. Johnson was substitute into this matter as the representative  
28 of the deceased James E. Johns.

<sup>2</sup> JE Johns & Associates has not yet answered Plaintiffs' Second Amended Complaint and Plaintiffs are seeking to  
understand this entity's position on this issue. Plaintiffs expect either an answer from this Defendant soon or Plaintiffs  
will file a default against this Defendant prior to trial.

1 failure to disclose various issues with the property in violation of NRS 113.130. Plaintiffs also asserted  
2 claims of negligent and fraudulent misrepresentation against the sellers. Plaintiffs' claims also arise  
3 under NRS 645.251, et seq., against the seller's realty agent and broker, A.J. Johnson, James E. Johns,  
4 and J.E. Johns & Associates and against the buyer's realty agent and broker, Brian Kincannon, Robert  
5 Clement, and Group One, Inc., dba Keller Williams Realty for their failure to disclose information  
6 that they knew or that they should have known and because these realtor defendants did not act with  
7 reasonable skill and care in this transaction, which constitute statutory violations of NRS 645.252,  
8 NAC 645.600, and NRS 645.257.

9  
10 For purposes of informing the Court only, the sellers and the buyers' realty agent and broker  
11 have resolved all claims Plaintiffs raised against them. The only remaining defendants in this case are  
12 the sellers' realty agents and broker, A.J. Johnson, James E. Johns and J.E. Johns & Associates  
13 ("Defendants"). The claims against these remaining Defendants are statutory in nature, there are no  
14 joint tortfeasors, there is no alleged injury to person or property associated with these claims, there is  
15 no single injury alleged under any of the applicable statutes, and there is no right of contribution  
16 existing in favor of these Defendants. As such, these Defendants cannot lawfully point the finger at  
17 any other defendant to this case and cannot reduce their liability by any settlement reached with any  
18 other defendant.

19 Approximately one year after purchasing the property in question, John Lindberg discovered  
20 that two structures found on the property were not constructed with building permits, which is a fact  
21 Plaintiffs allege was known to the sellers of the property at the time of the sale. Accordingly, Plaintiffs  
22 sued the sellers under NRS 113.150 for their failure to disclose in a Seller's Real Property Disclosure  
23 form the fact that two of the buildings on the property were not permitted. Plaintiffs also sued the  
24 sellers for negligent and fraudulent misrepresentation. Plaintiffs also sued the remaining Defendants  
25 in this matter asserting that these Defendants knew or should have known that the septic system and  
26 well at the property were undersized, that the listing of the property as a single family residence was  
27 improper, and that the listing of the property as having 3,880 square feet was made in error, even  
28

1 though the remaining Defendants knew the size of the combined living space found at the property  
2 and the remaining Defendants knew or should have known that the septic system and well were  
3 inadequate. Plaintiffs alleged that Defendants violated NRS 645.252, NAC 645.600 and NRS 645.257  
4 because of these many failures. The remaining Defendants are not subject to the common law, as set  
5 forth under NRS 645.251, and their liability is based in statute.

6         If Plaintiffs proved their claims against the sellers of the property, their damages would be  
7 based in statute under NRS 113.150(4) in that Plaintiffs would be entitled to “recover from the seller  
8 treble the amount necessary to repair or replace the defective part of the property, together with court  
9 costs and reasonable attorney’s fees.” These damages are specific to the seller of real property and  
10 the seller’s agent is not responsible to pay these damages arising from a seller’s failure to disclose,  
11 unless the agent knew of the failure to disclose. If Plaintiffs prove their claims against the Defendants  
12 in this case, then liability and damages are established by a different statute, NRS 645.257. Under that  
13 statute, the Plaintiffs would be entitled to recover damages that are the “proximate result of a licensee’s  
14 failure to perform any duties required by NRS 645.252, 645.253, or 645.254, or the regulations  
15 adopted to carry out these sections. . .” and these damages would be limited to the “actual damages”  
16 suffered by the Plaintiffs.

17  
18         Under these two separate statutes, the seller’s liability and damages that may be assessed  
19 against the seller are not the same as those that may be assessed against the Defendants in this case,  
20 meaning that there is no single injury that would entitle the Defendants to contribution in this case.  
21 There is also not a right to contribution in this case because the injury is not to the Plaintiffs’ person  
22 or property. The liability of the seller (for possible treble damages) and the liability of the Defendants  
23 (for actual damages) are statutory in nature. Because the damages that Plaintiffs may recover from  
24 each group of defendants in this case are different and are based in different statutes, there is no joint  
25 and several liability of two or more joint tortfeasors from which a single injury to person or property  
26 has been sustained, meaning that there is no right of contribution in favor of the Defendants against  
27 any other defendant in this dispute. NRS 17.225. Without such a right of contribution, the Defendants  
28



1 cannot offset any amounts paid in settlement by any other defendant who paid to settle statutory claims  
2 that include statutory damages payable by that defendant only.

## 3 **II. LEGAL ARGUMENT**

### 4 **a. There is no Right of Contribution that favors these Defendants.**

5 Defendants' affirmative defenses outlining that they believe they are entitled to a credit for  
6 settlements from defendants who have resolved their statutory liability already in this case represents  
7 a fundamental misunderstanding of the right of contribution in Nevada. For a party to be entitled to  
8 contribution to offset a settlement from another defendant in any case, it must be shown that "two or  
9 more persons [became] jointly or severally liable *in tort* for the *same injury to person or property or*  
10 *for the same wrongful death. . .*" NRS 17.225. Absent from this case are any allegations that any  
11 party to this dispute is a joint tortfeasor, as the claims are statutorily based and are unique to each  
12 defendant, or that there has been a single injury to person or to property resulting from any defendants'  
13 violation of the specific statutes referenced in this matter. There simply is no right of contribution  
14 between the Defendants and any defendant that has settled its statutory liability to the Plaintiffs. In  
15 their second and fourth affirmative defenses, these Defendants do not suggest any other way they  
16 would be entitled to a credit for a settlement between the Plaintiffs and any other defendant. There  
17 simply is not a right to a credit under the circumstances in this case. Accordingly, evidence of these  
18 settlements should not be introduced at trial.

### 20 **b. Evidence of a Settlement of Any Kind is inadmissible to Disprove or to Prove Liability.**

21  
22 In accordance with NRS 48.105, "[e]vidence of. . . furnishing. . . or accepting a valuable  
23 consideration in compromising. . . a claim which was disputed as to either validity or amount, is not  
24 admissible to prove liability for *or invalidity of* the claim or its amount." (Emphasis added). The  
25 Defendants here are seeking to offer evidence of settlements with other defendants to this matter to  
26 offset their own liability, and thereby disprove that they are liable for Plaintiffs' damages. The  
27 introduction of evidence of a settlement to disprove the Defendants' liability is impermissible. The  
28 Court should not allow the Defendants to offer any evidence of settlement at any stage of this case or

1 to argue that the Defendants' liability is somehow offset or credited with any amounts arising from  
2 settlements from other defendants. Such evidence and argument would be improper.

3 **c. Evidence of Settlements reached by Other Defendants in this Case is Irrelevant.**

4 Under NRS 48.015, "relevant evidence" is defined as "evidence having any tendency to make  
5 the existence of any fact that is of consequence to the determination of the action more or less probable  
6 than it would be without the evidence." Under NRS 48.025, "relevant evidence" is admissible at trial  
7 while irrelevant evidence is inadmissible. In this case, evidence of a settlement of statutory claims  
8 that created a unique set of statutory damages against a singular defendant prove nothing regarding  
9 the claims raised against these Defendants. The claims raised against the Defendants are based solely  
10 upon what these Defendants knew or should have known or whether these Defendants exercised  
11 reasonable care under the provisions of NRS 645.252. A settlement with a defendant seller of property  
12 whose liability is premised on NRS 113.150 proves nothing of consequence in the separate statutory  
13 claims raised against these Defendants. There simply is no relevance supporting the admission of  
14 evidence or argument related to any of the settlements reached with any other defendants in this matter.  
15 Accordingly, the Court should exclude such evidence at trial.  
16

17 **d. The Danger of Undue Prejudice outweighs any Probative Value found in the**  
18 **Admission of Evidence or Argument related to Settlements with other Defendants.**

19 Plaintiffs can see only three reasons to submit evidence or argument related to settlements  
20 reached with other defendants in this case, which include; (1) to unfairly prejudice the Plaintiffs; (2)  
21 to confuse the issues; and (3) to mislead the jury. As such, evidence or argument related to settlements  
22 reached with other defendants in this case should be inadmissible under NRS 48.035, because the  
23 probative value of such evidence is outweighed by the three concerns associated with this evidence.  
24 Evidence of a settlement with the Plaintiffs would unfairly prejudice the Plaintiffs because the jury  
25 may determine that the Plaintiffs have received enough money because of these settlements, which is  
26 not a proper basis to deny Plaintiffs' claims if Defendants violated NRS 645.252. The introduction of  
27  
28

1 this evidence would confuse the issues, in that the jury might believe that they must determine if the  
2 Plaintiffs are entitled to any additional damages other than what they have received through  
3 settlements, which is also not a proper basis for denying liability. Finally, the jury would be misled  
4 by the introduction of evidence of settlements with other Defendants because the presentation of this  
5 evidence serves no purposes but to make it appear as though Plaintiffs have been made whole, when  
6 the damages that arise from Defendants' violations of NRS 645.252 are unique to these Defendants  
7 and arise solely from their misdeeds and not from the misdeed of any other Defendant. Accordingly,  
8 even if relevant (which it is not), evidence of settlements with other Defendants in this matter should  
9 be excluded as overly prejudicial, confusing, and misleading.  
10  
11

### 12 **III. CONCLUSION**

13 For the reasons stated herein, the Court should not allow the introduction at trial of evidence  
14 or argument that Defendants' liability may be credited or offset by any settlements reached with other  
15 defendants in this matter. Evidence of such settlements also should not be introduced at trial.  
16

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

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

20 DATED this 9th day of February, 2018.

21 MOORE LAW GROUP, PC

22  
23 By 

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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Moore Law Group, PC, and that on  
3 February 9, 2018, I caused the foregoing document to be served on all parties to this action by:

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

6 ☐ personal delivery

7 ☐ facsimile (fax)

8 ☐ Federal Express/UPS or other overnight delivery

9 ☐ Reno/Carson Messenger Service

10 ☒ E-service via flex filing system

11 to the following:

12 C. Nicholas Pereos  
13 1610 Meadow Wood Lane, Suite 202  
14 Reno, NV 89502  
15

16 

17  
18 An Employee of Moore Law Group, PC  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INDEX OF EXHIBITS		
Exhibit Number	Description of Exhibit	No. of Pages
1	Answer to Second Amended Complaint	6

FILED  
Electronically  
CV15-00281  
2018-02-09 03:07:00 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6525748 : yvilorla

# EXHIBIT 1

# EXHIBIT 1

1 CODE: 1140  
2 C. NICHOLAS PEREOS, ESQ.  
3 Nevada Bar #0000013  
4 1610 MEADOW WOOD LANE, STE. 202  
5 RENO, NV 89502  
6 (775) 329-0678  
7 ATTORNEY FOR DEFENDANTS  
8 J. E. JOHNS & ASSOCIATES  
9 & A. J. JOHNSON

6  
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**

9  
10 JOHN LINDBERG, MICHAL LINDBERG,  
11 JUDITH L. LINDBERG

12 Plaintiffs,

13 vs.

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

18 Defendants.

Case No. CV15-00281

Dept. No. 3

19  
20 **ANSWER TO SECOND AMENDED COMPLAINT**

21 Defendants, James E. Johns and A.J. Johnson answering the Second Amended  
22 Complaint, admits, denies and avers as follows:

23 **THE PARTIES**

24 I

25 Defendants answering the "Parties" allegations of the Second Amended  
26 Complaint on file herein admits, denies and avers as follows:

27 1. Admit that Reynolds were residents of Washoe County, Nevada. Admit  
that James E. Johns was a resident of Washoe County, Nevada. These Defendants  
are without knowledge or information sufficient to form a belief as to the truth of the

1 averments contained in paragraphs 2, 4, 7 through 11, inclusive to the Second  
2 Amended Complaint.

3 **FACTS**

4 I

5 Defendants answering the "Facts" of the Second Amended Complaint on file  
6 herein admits, denies and avers as follows:

7 1. Adopt by reference and make a part hereof each and all the admissions,  
8 denials contained hereinabove.

9 2. Admit that J.E. Johns & Associates listed the property for sale on behalf of  
10 the sellers. Deny each, and every and other averments contained in paragraphs 14,  
11 17, 18, 20 through 29, inclusive.

12 **FIRST CAUSE OF ACTION**

13 I

14 Answering the "First Cause of Action" of the Second Amended Complaint, these  
15 Defendants admits, denies and avers as follows:

16 1. Insofar as said first cause of action is not applicable to these Defendants,  
17 Defendants denies the same.

18 **SECOND CAUSE OF ACTION**

19 I

20 Answering the "Second Cause of Action" of the Second Amended Complaint,  
21 these Defendants admits, denies and avers as follows:

22 1. Insofar as the second cause of action is not applicable to these  
23 Defendants, these Defendants denies the same.

24 **THIRD CAUSE OF ACTION**

25 I

26 Answering the "Third Cause of Action" of the Second Amended Complaint, these  
27 Defendants admits, denies and avers as follows:



1. Insofar as this third cause of action is not applicable to these Defendants, these Defendants denies the same.

#### FOURTH CAUSE OF ACTION

1

Answering the "Fourth Cause of Action" of the Second Amended Complaint, these Defendants admits, denies and avers as follows:

1. Adopt by reference and make a part hereof each and all the admissions, denials contained hereinabove.

2. Deny each, and every and all of the averments contained in paragraphs 46 through 48 of the fourth cause of action.

## FIFTH CAUSE OF ACTION

1

Answering the "Fifth Cause of Action" of the Second Amended Complaint, these Defendants admits, denies and avers as follows:

1. Adopt by reference and make a part hereof each and all the admissions, denials contained hereinabove.

2. Deny each, and every and all of the averments contained in paragraphs 50 through 54, inclusive of the fifth cause of action.

## FIRST AFFIRMATIVE DEFENSE

Defendant James E. Johns is now deceased and this Court lacks jurisdiction.

## SECOND AFFIRMATIVE DEFENSE

Plaintiffs have resolved its claim with regard to the remaining Defendants and these Defendants is entitled to a credit therefore.

### THIRD AFFIRMATIVE DEFENSE

Plaintiffs were provided reports indicating problems with regard to the subject property and proceeded to close the escrow and assumed the risks by reason of the same.

III

1 **FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiffs received compensation for the losses alleged to have been sustained in  
3 the purchase of the property and the claim has been satisfied.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 Plaintiffs has waived any rights to collect for issues as to these Defendants by  
6 reason of the notice of deficiencies.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Said complaint fails to state a claim upon which relief can be granted.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 At all times herein mentioned, Plaintiffs negligently and carelessly conducted  
11 themselves in and about the matters averred in said complaint which said negligence  
12 and carelessness attributed to any and all lawsuits allegedly to be sustained by them.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 Plaintiffs engaged independent contractors and consultants and relied on the  
15 materials provided to them.

16 **NINTH AFFIRMATIVE DEFENSE**

17 The duties owed to the Plaintiffs to adequately investigate and counsel the  
18 Plaintiffs were not by these Defendants.

19 **TENTH AFFIRMATIVE DEFENSE**

20 The claims of the complaint are barred by justification.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 The claims of the complaint are barred by unjust enrichment.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 The claims of the complaint are barred by failure to act in a commercially  
25 reasonable manner.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 The claims of the complaint are barred by lack of consideration.



1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 The claims of the complaint are barred in whole or in part by waiver  
3 acquiescence and/or estoppel.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 The claims of the complaint are barred by unclean hands and bad faith.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**


7 Recession is the remedy available to the Plaintiff.

8 Wherefore, these Defendants pray that Plaintiffs take nothing from said  
9 Complaint and that these Defendants have judgment against Plaintiffs for costs of suit  
10 and reasonable attorneys fees.  
11

12 **AFFIRMATION**

13 The undersigned affirms that the foregoing pleading does not contain a social  
14 security number.

15  
16 DATED this 17<sup>th</sup> day of JANUARY, 2018 C. NICHOLAS PEREOS, LTD.

17  
18  
19 By:   
20 C. NICHOLAS PEREOS, ESQ.  
21 1610 MEADOW WOOD LANE, STE.202  
22 RENO, NV 89502  
23 ATTORNEY FOR DEFENDANTS  
24  
25  
26  
27  
28


**CERTIFICATE OF SERVICE BY ELECTRONIC FILING**

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I caused to be served a true copy of the foregoing pleading on all parties to this action by electronically filing the foregoing with the Clerk of the Court by using the CM/ECF system which served the following parties electronically:

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

DATED: \_\_\_\_\_

1/18/18

  
\_\_\_\_\_  
Iris M. Norton

CODE:  
C. NICHOLAS PEREOS, ESQ.  
Nevada Bar #0000013  
1610 MEADOW WOOD LANE, STE. 202  
RENO, NV 89502  
(775) 329-0678  
ATTORNEY FOR DEFENDANTS  
J. E. JOHNS & ASSOCIATES,  
JAMES E. JOHNS & A. J. JOHNSON

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

JOHN LINDBERG, MICHAL LINDBERG,  
JUDITH L. LINDBERG

Plaintiffs,

vs.

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

Defendants.

Case No. CV15-00281

Dept. No. 3

Trial Date: March 26, 2018

**DEFENDANT'S MOTION IN LIMINE NUMBER THREE**

Defendants James E. Johns and A. J. Johnson moves in limine in connection  
with the following:

1. To strike the report of Sherrie Cartinella which was disclosed on Plaintiff's  
Disclosure of Expert Witness filed with this Court on November 27, 2017. This motion  
is made and based upon the fact that the report of Sherrie Cartinella does not comply  
with the statutory edict required in connection with testimony of a real estate expert  
testifying against A. J. Johnson.

2. To exclude any evidence in connection with misdeeds of A. J. Johnson  
that are beyond the opinion of the expert as not in compliance with the statutes



1 requiring proof of violation of the standard of care as said evidence would be irrelevant  
2 and prejudicial to this Defendant.

### 3 **POINTS AND AUTHORITIES**

#### 4 **A. STATEMENT OF FACTS**

5 The property at issue is a single family residence located in Washoe County on  
6 one plus acre of land. It consists of primary residence, a two bay garage, one bay of  
7 which was converted into a living area, and a barn of which part of the barn was  
8 converted into an office area. For purposes of simplicity, living area in the garage will  
9 be referred to as living area. The living area is a conversion of one of the bays of the  
10 two bay garage. It was in place and in existence at the time that the seller (Reynolds)  
11 purchased the property from the prior owner. They were not involved in the conversion  
12 of the garage to a living area. The Reynolds (seller) purchased the property in 1995  
13 and continued to use the living area as a mother in law quarters.

14 The Second Amended Complaint alleges that these defendants were the listing  
15 broker of this property. (Paragraph 14) As the listing broker of the property, these  
16 defendants did not represent the interest of the buyer. The agency disclosure forms  
17 prepared by these defendants clearly demonstrate that they are representing the seller  
18 and did not represent the buyer. In fact, the buyer never met these defendants.  
19 According to the Second Amended Complaint, the buyer had their own real estate  
20 agent representing their interest. The claims against James E. Johns arise from an  
21 allegation that James E. Johns is the broker (Paragraph 6) and should have monitored  
22 the listing agent. The claims against A. J. Johnson arise from the marketing and listing  
23 of the property in the Multiple Listing Service. (Paragraph 5)

24 The buyer purchased the property and later discovered that the "in law quarters"  
25 were not permitted. As a result, plaintiff filed a claim against the seller and the real  
26 estate agents.

27 Before making the offer on the property, the buyer submitted questions to their

1 broker concerning the property to include the size of the tank serving the house and  
2 structures and other amenities regarding the property. Obviously, the buyer was  
3 sensitive to certain issues concerning waste disposal precipitating the subject  
4 communications to the listing agents by means of the buyer's broker.

5 **B. STATEMENT OF PROCEDURAL FACTS**

6 This action was commenced on February 10, 2015. On February 10, 2016,  
7 James E. Johns passed on. A Notice of Death was filed with the Court on March 9,  
8 2016.

9 In connection with Defendant Reynolds, Plaintiffs settled the case with  
10 Defendant Reynolds for the sum of Fifty Thousand Dollars (\$50,000). In connection  
11 with the claims as to Defendants Brian F. Kincannon and Group One Inc. Keller Realty  
12 (buyers' broker), Defendants settled those claims for Seventy Five Hundred Dollars  
13 (\$7,500). The only remaining Defendants are James E. Johns and A.J. Johnson.

14 **C. ARGUMENT**

15 **1. STANDARD OF REVIEW**

16 Motions in limine are designed to seek the Court's ruling on the admissibility of  
17 arguments, assertions and evidence in advance of trial and outside the presence of the  
18 jury. The authority for consideration of a motion in limine arises out of NRCP 16 (c) (3)  
19 and this Court's discretionary authority for making advance rulings on the admissibility  
20 of evidence. See *State ex rel. Dept. of Hwys, v Nevada aggregates of Asphalt Co.*, 92  
21 Nev 370, 551 P.2d 1095 (1976) (holding that motions in limine are within the District  
22 Court's discretionary powers).

23 Motions in limine are the traditional vehicle for determining the admissibility of  
24 evidence and for pre-determination of the relevance of testimony or evidence. Under  
25 Nevada law, the admissibility of evidence must be determined outside the presence of  
26 the jury in order to prevent the jury from exposure or suggestion from or regarding the  
27 inadmissible evidence or the Court's decision. See NRS 47.080.



1 A motion in limine is "any motion, whether made before or during trial, to exclude  
2 anticipated prejudicial evidence before the evidence is actually offered." *Luce v. United*  
3 *States*, 469 U.S. 38, 40 105 S. Ct. 460, 462, fn. 2 (1984). The purpose of a motion in  
4 limine is to avoid the obviously futile attempt to "unring the bell" when highly prejudicial  
5 evidence is offered and then stricken at trial. See *McEwen v. Norman Oklahoma*, F. 2d  
6 1539, 1548 (10<sup>th</sup> Cir. 1991); See also *People v. Morris*, 53 Cal. 3d 152, 188 [279  
7 Cal.Rptr. 720, 739] (1991). The consideration of a motion in limine is recognized as  
8 part of the trial Court's inherent power to administer justice and to conduct the  
9 proceedings efficiently and effectively. See *State ex. rel Department of Highways v.*  
10 *Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 551 P. 2d 1095 (1976); See generally,  
11 *Eberhand Mfg. Co. v. Baldwin*, 97 Nev. 271, 273, 628, P. 2d 681, 682 (1981). The  
12 decision to admit evidence after balancing its prejudice against its probative value is  
13 one addressed to the discretion of the trial judge. *Martin v. State*, 80 Nev. 307, 393 P.  
14 2d 141 (1964); *State v. Nystedt*, 79 Nev. 24, 377 P. 2d 929 (1963); cf. *Anderson v.*  
15 *State*, 92 Nev. 21 544 2d 1200 (1976).

16 Motions in limine serve to permit more careful consideration of evidentiary issues  
17 that would take place in the heat of battle during trial and minimize sidebar conferences  
18 and disruptions. By resolving critical evidentiary issues at the outset, they enhance  
19 efficiency of the trial process and promote settlements. *People v. Morris*, supra, 53 Cal.  
20 3d at 188.

21 A motion in limine allows the Court to rule on the admissibility of arguments,  
22 assertions and evidences in advance of trial and outside the presence of the jury.  
23 NRCP 16(c)(3); WDCR 5(2); *State ex. rel. Department of Highways v. Nevada*  
24 *Aggregates & Asphalt Co.*, 92 Nev. 370, 551 P. 2d 1095 (1976). Motions in limine are  
25 most appropriate in jury trial.

## 26 2. EXPERT REPORT DEFICIENT

27 This action involves a claim for a real estate transaction that occurred in 2013



1 wherein J. E. Johns & Associates (the broker) secured a listing on a single family  
2 residence and advertised the listing in the Multiple Listing Service (MLS). The broker of  
3 was James E. Johns. The property consisted of a single family residence and a  
4 separate unit known as the Mother in Law Quarters. The claim in the Second  
5 Amended Complaint filed May 18, 2016 states that the septic system servicing the  
6 property were inadequate to serve the property. That Defendant Johnson failed to  
7 comply with NRS 645.252 breached their duties by reason of NRS 645.257.

8 NRS 645.252 provides that a licensee acting in a real estate transaction shall  
9 disclose to each party to the real estate transaction material fact, data or information  
10 which the licensee knows or should have know upon the exercise of reasonable care  
11 and diligence. It also provides that the licensee is not under any obligation to conduct  
12 an investigation on the condition of the property whcih is the subject of the real estate  
13 transaction. (Subsection 4 (c)) NRS 645.257 provides that a person who has suffered  
14 damages as a result of a licensee's failure perform his duty in NRS 645.252 may bring  
15 an action against the licensee. However, it goes on to provide in Subsection 3:

16 "In an action brought by a person against a licensee pursuant to  
17 Subsection 1, the standard of care by a licensee is the degree of care that  
18 a reasonably prudent real estate licensee would exercise and is measured  
19 by the degree of knowledge required to be obtained by a real estate  
20 licensee pursuant to NRS 645.343 and NRS 645.345."

21 NRS 645.343 and NRS 645.345 discuss the requirement that an applicant to  
22 become a licensee in real estate must complete a course of instruction on principles,  
23 practices and procedures, law and ethics of real estate. In other words, the standard of  
24 care that would be violated by a licensee under NRS 645.257 is the degree of care the  
25 licensee should exercise measured by that being instructed to applicants to become  
26 licensees. The expert report of Sherrie Cartinella also fails to meet any of these  
27 requirements.



1 This is one of the few places in the Nevada Statutes wherein the statute  
2 mandates that you have to engage an expert that opines that the Defendant real estate  
3 agent violated the standard of care. That is a statutory mandate! The expert must  
4 opine that the degree of care required of licensee is the subject of the instructions  
5 under NRS 645.343. Review of the report of Sherrie Cartinella simply states:

6 "In my opinion the aforementioned fact should have been known by a real  
7 estate agent and disclosed to a potential buyer. Failure to disclose these  
8 facts in my opinion was detrimental to the Lindbergs."

9 The Standard of care that needs to be violated by the licensee is not that which  
10 would be detrimental to the Lindbergs but the "degree of care that a reasonable prudent  
11 real estate licensee would exercise". That degree of care is measured by that which  
12 is instructed at the time of this real estate transaction, 2013. The Plaintiff's expert  
13 report is totally deficient in meeting any of these standards. There are a lot of things  
14 that are detrimental to the buyer. The home inspection report had numerous  
15 deficiencies in connection with problems with the house and the mother in law quarters.  
16 These are detrimental to the buyer. However, the real estate licensee is not  
17 responsible by statute unless it constitutes the "degree of care that a reasonable  
18 prudent real estate licensee would exercise". The Plaintiff's expert report does not even  
19 address this issue. When asked at her deposition if she has an opinion other than that  
20 has been reflected in the expert report, she responded no. (Deposition of Sherrie  
21 Cartinella, Page 134-135  
22 attached as Exhibit 2) No where in the deposition did she express an opinion that this  
23 licensee fell below the standard of care and Plaintiff's counsel is challenged to find any  
24 such testimony in her deposition. In other words, her report coupled with her testimony  
25 failed to comply with the mandate of NRS 645.257. The reason will become obvious to  
26 the Court if this case proceeds to trial. Her remark that it was detrimental to the buyer  
27 is void of any substance that the actions of A. J. Johnson violated any standard of care



1 for a licensee since no one in the industry shares that viewpoint. Furthermore, the  
2 expert was served with a subpoena. The subpoena requested that the expert present  
3 any papers documents or materials used by her in connection with the instruction or  
4 teaching any applicant seeking to secure a license as a Nevada real estate agent in the  
5 last seven years past (Exhibit 3). The witness presented no such documents in support  
6 thereof. This expert never instructed applicants that were seeking an opportunity to be  
7 licensed. Page 24 (Exhibit 2) As a result, she never delivered any documents  
8 consistent with the subpoena. In other words, the expert can not comply with the  
9 mandate of the statute that the degree of knowledge required to be obtained by a real  
10 estate licensee pursuant to NRS 645.343 and NRS 645.345 as she was never an  
11 instructor in this arena, nor does her report indicate it is in compliance with this aspect  
12 of the statute.

13 In other words, the expert has failed to opine that A. J. Johnson failed to meet  
14 the standard of care that was obligated by her in a real estate transaction. The expert  
15 also testified that she had no other opinions other than were set forth in the report. The  
16 expert report does not comply with the mandate of the statute. The expert report is the  
17 basis of the testimony of the expert which NRCP 16.1 mandates a disclosure.

### 18 3. COMMON LAW ABROGATED

19 NRS 645.251 clearly delineates and defines that a licensee is not required to  
20 comply with any principles of common law. It has now been replaced by statutes, more  
21 specifically NRS 645.252. The Nevada Supreme Court in the case of *Davis v Boeing*,  
22 128 Nev. 301, 278 P.3d 501 (2012) specifically ruled and held that the common law has  
23 been abrogated as it pertains to responsibilities and duties of a licensee when the type  
24 of conduct complained of is covered by NRS 645.252, 645.253 or 645.254. The  
25 exceptions to this claim involve fraud and concealment, both of which are not plead or  
26 applicable to the case at hand. The Plaintiff's expert report fails to identify the nature of  
27 the duty that was violated. The significance of the enactment of these statutes



1 abrogated any common law claims. Accordingly, any evidence or testimony concerning  
2 any claims of misdeed by A. J. Johnson that do not involve the septic system is beyond  
3 the statutory exposure of A. J. Johnson under the Second Amended Complaint and  
4 inadmissible.

5 In *Prigge v South Seventh Realty*, Id. 97 Nev. 640, 637 P. 2d 1222 (1981) the  
6 Nevada Supreme Court upheld an Order for Summary Judgment against the listing  
7 broker. It observed that the listing broker had a right to rely upon representations of the  
8 seller although false and the purchaser's remedy was against the seller not the listing  
9 broker. The Court went on to observe:

10 "An agent who makes untrue statements based upon information given to  
11 him by the principle is not liable because of the fact that the principle knew  
12 the information to be untrue. An agent can properly rely upon the  
13 statements of a principle to the same extent as upon statements from any  
14 other reputable source." Id it Page 641.

15 In the case of *Land Baron Invs. Inc. v Bonnie Springs Family LP*, 131 Nev. Adv. Op. 69  
16 (2015) the buyer sought to rescind the deal based upon a mutual mistake. The  
17 Supreme Court went on to observe that a buyer bears the risk of loss when he is aware  
18 at the time the contract is made that he had only limited knowledge with respect to the  
19 facts to which the mistakes relates and seeks to use that limited knowledge as an  
20 escape. In other words, the buyer made inquiry prior to the purchase concerning the  
21 septic system. The information disclosed by the listing agent was that the size of the  
22 septic system was 15,000 gallons. The information was secured from the seller. It was  
23 incorrect. The buyer made no further inquiry and investigation on this issue even  
24 though the buyer also had a copy of the septic report that was referred to by the  
25 Plaintiff's expert. Accordingly, the buyer can not claim that the fault now lies with the  
26 listing broker. In *Hallmark v Elridge*, 124 Nev. 492, 189 P.3d 646 (2008) the Supreme  
27 Court observed the following:


1 "To testify as an expert witness under NRS 50.275, the witness must  
2 satisfy the following three requirements: (1) He or she must be qualified in  
3 an area of scientific, technical or other specialized knowledge  
4 (qualification requirement); (2) His or her specialized knowledge must  
5 "assist the trier of fact to understand the evidence to determine a fact in  
6 issue" (assistance requirement); (3) His or her testimony must be limited  
7 "to matters within the scope of knowledge" (limited scope requirement).

8 The Supreme Court went on to observe that Dr. Boyle's testimony did meet the  
9 "assistance requirement" and held that he should not have testified as an expert. In the  
10 case at bar, the report of the Plaintiff's expert that the lack of disclosure of the correct  
11 size of the septic tank was detrimentally harmful is not of assistance to this Court in  
12 determining if the Plaintiff has met its burden under NRS 645.252. Furthermore, any  
13 other evidence of alleged misdeeds by A. J. Johnson as to square footage of the  
14 property, zoning, etc., is not subject to the experts report.

15  
16 **AFFIRMATION**

17 The undersigned affirms that the foregoing pleading does not contain a social  
18 security number.

19 DATED this 13 day of February, 2018 C. NICHOLAS PEREOS, LTD.  
20

21  
22 By:   
23 C. NICHOLAS PEREOS, ESQ.  
24 1610 MEADOW WOOD LANE, STE. 202  
25 RENO, NV 89502  
26 ATTORNEY FOR DEFENDANTS  
27



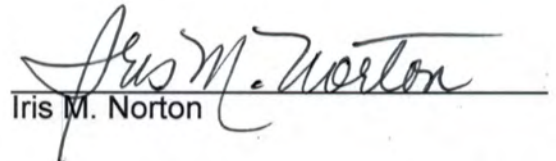
1                                    **CERTIFICATE OF SERVICE BY ELECTRONIC FILING**

2                    PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I  
3 am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I  
4 caused to be served a true copy of the foregoing pleading on all parties to this action by  
5 electronically filing the foregoing with the Clerk of the Court by using the CM/ECF  
6 system which served the following parties electronically:

7  
8                    John D. Moore, Esq.  
9                    MOORE LAW GROUP, PC  
                     3715 Lakeside Drive, Suite A  
                     Reno, NV 89509

10                   DATED: \_\_\_\_\_

11                   2/13/18

12                     
13                   Iris M. Norton

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SCHEDULE OF EXHIBITS

Exhibit "1" ..... Cartinella Expert Report  
Exhibit "2" ..... Cartinella Transcript Pages  
Exhibit "3" ..... Cartinella Subpoena Duces Tecum

Exhibit 1

Exhibit 1

RA 0048



November 20, 2017  
Sherrie Cartinella  
RE: Lindberg v Richards et al

I have been retained to offer my opinion regarding the seller's agent's failure to adhere to established standards of REALTORS in the case of Lindberg v. Richards, et al. In fulfilling this task, I reviewed the SECOND AMENDED COMPLAINT prepared by John D. Moore, Esq., the offer and supporting documents from the buyers side of the real estate transaction, zoning code documents from Washoe County and Health department regulations.

20957 Eaton Road was listed in the "Residential/Stick built" category through the Multiple Listing Service on September 12, 2012 according to the property history detail report (Exhibit 1). The MLS listing remarks (listing detail report included as Exhibit 2) states there were 3 separate units on the property including "inlaw quarters or guest house, office or studio or tack room or office." Also, the listing states the actual zoning of the property is single family and the source of that information was from the assessor (listing detail report included as Exhibit 2).

In addition to providing information to other Realtor members, the MLS listing remarks are seen by countless potential buyers through syndication to real estate web sites including the top 4, Zillow, Homes.com, Trulia and realtor.com which account for over 90% of all real estate traffic.

A real estate licensee has duty to adhere to NRS 645.252 which states:

**NRS 645.252 Duties of licensee acting as agent in real estate transaction.** A licensee who acts as an agent in a real estate transaction:

1. Shall disclose to each party to the real estate transaction as soon as is practicable:

(a) *Any material and relevant facts, data or information which the licensee knows, or which by the exercise of reasonable care and diligence should have known, relating to the property which is the subject of the transaction.*

While it is also expected that the seller will disclose material facts, the agent is expected to be informed. In this case, a one acre parcel is allowed one septic in Washoe County according to District of Health regulations. Advertising 3 units on the 1.12 acre lot would elicit the question of how many septic tanks exist on the property. In my opinion, this should have raised a red flag for the listing agent.

In the MLS listing (Exhibit 2) septic is listed in the "utilities" section.

According to The Regulations of the Washoe County District of Health governing sewage, waste water and sanitation (amended and approved on May 23, 2013 by the Washoe County district board of health) the requirements for septic are as follows:

SECTION 060  
SEPTIC TANKS

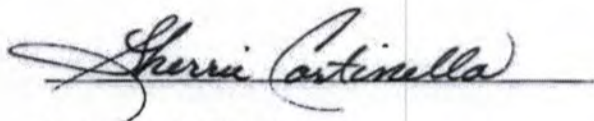
060.005 Any single family dwelling requires the following minimum septic tank capacity:

1. Up to three bedrooms - 1,000 gallons.
2. Four (4) bedrooms - 1,200 gallons.
3. Five (5) to six (6) bedrooms - 1,500 gallons.
4. Seven (7) to eight (8) bedrooms - 2,000 gallons.
5. Additional sizing requirements to be determined by the Health Authority.

According to the septic inspection performed by Waters Vacuum Truck Service on January 16, 2013 the property has a 1,000 gallon tank.

In my opinion, the aforementioned facts should have been known by a Real Estate agent and disclosed to a potential buyer. Failure to disclose these facts, in my opinion, was detrimental to the Lindbergs.

Sincerely,

A handwritten signature in cursive script, reading "Sherrie Cartinella", written over a horizontal line.

Sherrie Cartinella  
Realtor  
License #BS29532

Exhibit 2

Exhibit 2



Q Structured classes, where you were sitting in a classroom setting, sitting in a chair and listening to an instructor.

A For credit, no. As a volunteer class there were -- we had a number of classes that you can attend. But to specifically say it was a structured class for educational credits, I would say no.

Q How about a specific class, even on a volunteer basis, that discussed the building codes in place in Washoe County, Nevada, whether it be City of Reno, City of Sparks?

A Specifically talked about the building codes?

Q Yes, specifically --

A Yes.

Q -- talked about the building codes?

A Yes.

Q And what were the nature of those classes?

A It was -- they're put on typically by a title company or a -- EDRAWN or a class. I can't honestly answer you specifically.

Q Okay.

A I don't know.

Q Did they mention building codes in a class structure, or were they specifically focused on the building codes?

1 A Did they -- I'm sorry?

2 Q Mention the building codes in the course of the class instruction, or were they specifically focused to educate you on the building codes?

3 A I would say that they specifically referred to certain building codes.

4 Q Okay. Did the class --

5 A And --

6 Q -- focus totally on the building codes, or did it focus on other topic areas and mention the building codes?

7 A I'm sure there were other things mentioned in the class other than just building codes.

8 Q When you signed up for the class did you sign up to secure specific instructions with regard to the building code?

9 A No.

10 Q Okay. The same question. Did you ever attend any type of classes after becoming licensed as a real estate licensee with regard to planning codes in Washoe County, Nevada, which include Reno and Sparks, as well?

11 A I would answer the question the same as before.

12 Q Okay.

13 A There are several opportunities for continuing education with the different planning codes, things like

1 that, that you would go to if you were involved for -- in a certain area, something like a specific township or an area that you would be interested in what's going to be happening in that area, or what the plan is.

2 As an example, Lemmon Valley when -- that makes sense if you had a specific need to know about the future plans of a specific area.

3 Q Did you attend such classes?

4 A I have over the years, yes.

5 Q Okay. Did you attend the classes with the specific intent of learning what the planning code was?

6 A Yes.

7 Q Okay. Did you ever instruct applicants to be licensees? In other words, applicants that wanted to take the license exam, did you ever do -- were you ever an instructor?

8 A No.

9 Q Did you ever participate in any type of instructions that were put on by instructors for licensees, that were applicants that wanted to become licensees?

10 A I'm not sure I understand what the question is.

11 Q Sure. I'll rephrase the question.

12 A Okay.

13 Q I'll rephrase it. Did you ever, at any time in

1 your entire career, ever attend any type of class as an observer, okay, or in any other capacity, whereby you came to learn what the instructor was teaching applicants who wanted to sit for the licensing exam to become a real estate licensee?

2 A Yes.

3 Q Okay. You have?

4 A I have.

5 Q Okay. And when is the last time that you've done that, where you observed that situation? Approximate year is good enough.

6 A Last year.

7 Q Okay. Did you do so in 2013?

8 A I'm relatively certain I did.

9 Q Okay. And did the instructors instruct the applicants that they should become familiar with the building codes that were in place in their jurisdictional area that they were going to practice their license in?

10 A I want to make sure that I'm clear on what I'm answering.

11 Q Um-hum.

12 A Are you specifically talking about my continuing education classes or --

13 Q No. I'm talking about the classes that are conducted by instructors --



<p style="text-align: right;">Page 134</p> <p>1 A Correct.</p> <p>2 Q All right. Are there any other facts that</p> <p>3 should have been known to the listing agent that you</p> <p>4 didn't identify that we've discussed so far? I don't</p> <p>5 want you to repeat what you've already told me. We'll</p> <p>6 never get out of here.</p> <p>7 A There's -- other than what we've talked about so</p> <p>8 far, no.</p> <p>9 Q Yeah.</p> <p>10 A No.</p> <p>11 Q Okay. Did you know what the value -- what the</p> <p>12 amounts were that were on the appraisals?</p> <p>13 A No, I didn't.</p> <p>14 Q Okay. I will tell that you both appraisals</p> <p>15 appraised the property at \$400,000 or better. Do you</p> <p>16 understand that?</p> <p>17 A Yes.</p> <p>18 Q Okay. You went on to say in your report:</p> <p>19 "In my opinion, the aforementioned facts should have</p> <p>20 been known by a Real Estate agent and disclosed to a</p> <p>21 potential buyer. Failure to disclose these facts, in my</p> <p>22 opinion, was detrimental to the Lindbergs."</p> <p>23 That's your language in the report; is that correct?</p> <p>24 A That's correct.</p> <p>25 Q Do you have any other opinions, other than that</p>	<p style="text-align: right;">Page 135</p> <p>1 language that I've just read and other than what we've</p> <p>2 discussed so far?</p> <p>3 A No.</p> <p>4 Q Okay. How is that being detrimental to the</p> <p>5 buyer, when he bought a property -- do you know what his</p> <p>6 purchase price was, by the way?</p> <p>7 A No.</p> <p>8 Q 375,000. The property is appraised at 400,000.</p> <p>9 MR. MOORE: I believe it was purchased for 385-.</p> <p>10 MR. PEREOS: All right. That's fine. I'll accept</p> <p>11 the 385-. He testified 375-. I'll accept the attorney's</p> <p>12 representation that it was 385-, because I don't have it</p> <p>13 committed to memory, on that. Okay?</p> <p>14 BY MR. PEREOS:</p> <p>15 Q All right. Do you know what the cost was to</p> <p>16 correct the problem with regard to the septic system so</p> <p>17 that he could get a certificate of occupancy on the</p> <p>18 mother-in-law quarters?</p> <p>19 A No, I don't.</p> <p>20 Q What happens if it was less than \$15,000?</p> <p>21 A What happens?</p> <p>22 MR. MOORE: It calls for a legal conclusion.</p> <p>23 BY MR. PEREOS:</p> <p>24 Q Well, I'm asking. I want you to assume it's</p> <p>25 less than \$15,000.</p>
<p style="text-align: right;">Page 136</p> <p>1 A Less than 15-?</p> <p>2 Q Is it still detrimental to the buyer that he</p> <p>3 bought this property?</p> <p>4 A Oh. Are you comparing it to what the appraised</p> <p>5 value was?</p> <p>6 Q Yes.</p> <p>7 A I can't answer that question. Because the</p> <p>8 appraised value -- clearly, the two appraisals are</p> <p>9 different. And me not knowing the property or any of the</p> <p>10 other information about it, I don't know that 15,000</p> <p>11 would be detrimental or not. I can't really answer that</p> <p>12 question.</p> <p>13 Q So as it relates to this particular property,</p> <p>14 you don't know if it was detrimental whether or not he</p> <p>15 got a good deal on the buy of the property, do you?</p> <p>16 MR. MOORE: Same objection.</p> <p>17 THE WITNESS: I don't. I don't know if he got a good</p> <p>18 buy. Depending on the market conditions at that time and</p> <p>19 everything -- I'm sorry. I can't answer that.</p> <p>20 BY MR. PEREOS:</p> <p>21 Q Do you know what the value of that property is</p> <p>22 today?</p> <p>23 A No.</p> <p>24 Q Okay. Now, your answer is still the same, even</p> <p>25 though I've told you both appraisals are in excess of</p>	<p style="text-align: right;">Page 137</p> <p>1 400,000? In fact, one is at 400-, the other is at</p> <p>2 approximately \$406,000. Your answer is still the same;</p> <p>3 is that correct?</p> <p>4 A Yes.</p> <p>5 Q Is it, in your opinion, the responsibility of a</p> <p>6 listing broker to pay for other repairs that the buyer</p> <p>7 experienced on the property, other than the issue of</p> <p>8 getting the certificate of occupancy for the</p> <p>9 mother-in-law quarters based upon the septic size?</p> <p>10 A The listing agent is paying for the --</p> <p>11 Q I'm asking you. Is it the responsibility of the</p> <p>12 listing agent to pay for other repairs?</p> <p>13 MR. MOORE: It calls for a legal conclusion.</p> <p>14 BY MR. PEREOS:</p> <p>15 Q Such as the cost to install a water heater on</p> <p>16 the property, as an example.</p> <p>17 MR. MOORE: Same objection.</p> <p>18 BY MR. PEREOS:</p> <p>19 Q Do you have an opinion as to whether a listing</p> <p>20 agent should be responsible for those repairs?</p> <p>21 MR. MOORE: Same objection.</p> <p>22 THE WITNESS: A listing agent to pay for the repairs</p> <p>23 of a hot water heater? No.</p> <p>24 BY MR. PEREOS:</p> <p>25 Q It should not be?</p>

**Exhibit 3**

**Exhibit 3**



IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF WASHOEFILED  
Electronically  
CV15-00281  
2017-12-11 09:18:58 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6432079 : yvilloriaJOHN LINDBERG; ET AL,  
Plaintiff(s),

VS.

CASE NO: CV15-00281

HARRY RICHARD REYNOLDS; ET AL,  
Defendant(s),DECLARATION OF SERVICESTATE OF NEVADA  
COUNTY OF WASHOE

ss:

JENLEE KNIGHT PARKER R -067702, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the SUBPOENA DUCES TECUM RE: DEPOSITION OF SHERRIE CARTINELLA; CHECK \$50.00 On 12/7/2017 and served the same on 12/9/2017 at 11:58 AM by delivery and leaving a copy with:

1. Delivering and leaving a copy with SHERRIE CARTINELLA at 2330 Sequoia Ln Reno, NV 895029556

A description of SHERRIE CARTINELLA is as follows

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	White	Blond	41-45	5'0 - 5'6	100-120 Lbs
Other Features: eyeglasses					

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

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 12/11/2017

by JENLEE KNIGHT PARKER R -067702  
Registration: R-067702

No notary is required per NRS 53.045

X

JENLEE KNIGHT PARKER R -067702  
Registration: R-067702  
Reno Carson Messenger Service, Inc #322  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com



Order#: R22688 NVPRF411

RA 0055



1 CODE: 4065  
2 C. NICHOLAS PEREOS, ESQ.  
3 Nevada Bar #0000013  
4 1610 MEADOW WOOD LANE, STE. 202  
5 RENO, NV 89502  
6 (775) 329-0678  
7 ATTORNEY FOR DEFENDANTS  
8 J. E. JOHNS & ASSOCIATES  
9 & A. J. JOHNSON

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

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

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

Case No. CV15-00281

Plaintiffs,

Dept. No. 3

vs.

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

Defendants.

**SUBPOENA DUCES TECUM**  
**RE: DEPOSITION OF SHERRIE CARTINELLA**

THE STATE OF NEVADA SENDS GREETINGS TO:

Sherrie Cartinella  
Ferrari Lund  
3700 Lakeside Drive, Suite 100  
Reno, Nevada 89509  
775-688-4000

Sherrie Cartinella  
2330 Sequoia Lane  
Reno, Nevada 89503  
775-762-2323

YOU ARE COMMANDED TO APPEAR at the offices of C. Nicholas Pereos, Ltd.,  
1610 Meadow Wood Lane, Suite 202, Reno, Nevada 89502, on the 19<sup>th</sup> day of December,  
2017 at 10:00 a.m. for the taking of your deposition and to produce documents. Please  
check with the offices of C. Nicholas Pereos, Ltd. before appearing, 775/329-0678.



1 YOU ARE TO BRING WITH YOU in hard copy form the following:

2 1. Any and all notes, papers, documents, tangible items or any other document  
3 or item examined by you, and/or relied upon you in connection with the preparation  
4 of the report dated November 20, 2017 regarding the above entitled matter. An  
5 attached copy of which is marked Exhibit A.

6 2. Any paper, documents or materials in hard copy form used by you in  
7 connection with the instruction, teaching of any applicant seeking to secure license  
8 as a Nevada Real Estate Agent for the last seven (7) years past.


9 Any person failing to attend may be deemed in contempt of court, and shall be liable  
10 to the party injured in the sum of \$100, and for such damages as may be sustained by him  
11 on account of such neglect or refusal.

12 Served herewith is a notice under Rule 45 as required by statute.

13 **AFFIRMATION**

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

16 DATED this 7<sup>th</sup> day of DECEMBER, 2017. C. NICHOLAS PEREOS, LTD.

17  
18 By:   
19 C. NICHOLAS PEREOS, ESQ.  
20 1610 MEADOW WOOD LANE, #202  
21 RENO, NEVADA 89502  
22 (775) 329-0678  
23 ATTORNEY FOR DEFENDANTS  
24 J.E. JOHNS & ASSOCIATES and  
25 A.J. JOHNSON  
26  
27  
28



NEVADA RULES OF CIVIL PROCEDURE, RULE 45(c) AND 45 (d)

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENA.

(1) A party or any attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the document, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**CERTIFICATE OF SERVICE BY MAIL**

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for USPS regular mail at Reno, Nevada, a true copy of the foregoing document addressed to:

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

DATED: \_\_\_\_\_

12/7/17

Iris M. Norton  
Iris M. Norton



2610  
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 INTENT TO TAKE DEFAULT**

TO: J.E. JOHNS & ASSOCIATES AND ITS ATTORNEY OF RECORD, C.

NICHOLAS PEREOS:

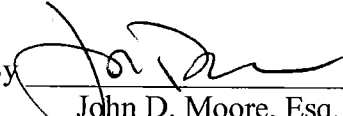
PLEASE TAKE NOTICE that Plaintiffs intend to take your default unless an Answer or other  
responsive pleading to the Second Amended Complaint is filed with the Court and served on Plaintiffs'  
counsel on or before February 23, 2018.

**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 14<sup>th</sup> day of February, 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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Moore Law Group, PC, and that on  
3 February 14, 2018, I caused the foregoing document to be served on all parties to this action by:

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

6 — personal delivery

7 — facsimile (fax)

8 — Federal Express/UPS or other overnight delivery

9 — Reno/Carson Messenger Service

10 XX E-service via flex filing system

11 to the following:

12 C. Nicholas Percos  
13 1610 Meadow Wood Lane, Suite 202  
14 Reno, NV 89502  
15

16  
17   
18

19 An Employee of Moore Law Group, PC  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000  
1001  
1002  
1003  
1004  
1005  
1006  
1007  
1008  
1009  
1010  
1011  
1012  
1013  
1014  
1015  
1016  
1017  
1018  
1019  
1020  
1021  
1022  
1023  
1024  
1025  
1026  
1027  
1028  
1029  
1030  
1031  
1032  
1033  
1034  
1035  
1036  
1037  
1038  
1039  
1040  
1041  
1042  
1043  
1044  
1045  
1046  
1047  
1048  
1049  
1050  
1051  
1052  
1053  
1054  
1055  
1056  
1057  
1058  
1059  
1060  
1061  
1062  
1063  
1064  
1065  
1066  
1067  
1068  
1069  
1070  
1071  
1072  
1073  
1074  
1075  
1076  
1077  
1078  
1079  
1080  
1081  
1082  
1083  
1084  
1085  
1086  
1087  
1088  
1089  
1090  
1091  
1092  
1093  
1094  
1095  
1096  
1097  
1098  
1099  
1100  
1101  
1102  
1103  
1104  
1105  
1106  
1107  
1108  
1109  
1110  
1111  
1112  
1113  
1114  
1115  
1116  
1117  
1118  
1119  
1120  
1121  
1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1150  
1151  
1152  
1153  
1154  
1155  
1156  
1157  
1158  
1159  
1160  
1161  
1162  
1163  
1164  
1165  
1166  
1167  
1168  
1169  
1170  
1171  
1172  
1173  
1174  
1175  
1176  
1177  
1178  
1179  
1180  
1181  
1182  
1183  
1184  
1185  
1186  
1187  
1188  
1189  
1190  
1191  
1192  
1193  
1194  
1195  
1196  
1197  
1198  
1199  
1200  
1201  
1202  
1203  
1204  
1205  
1206  
1207  
1208  
1209  
1210  
1211  
1212  
1213  
1214  
1215  
1216  
1217  
1218  
1219  
1220  
1221  
1222  
1223  
1224  
1225  
1226  
1227  
1228  
1229  
1230  
1231  
1232  
1233  
1234  
1235  
1236  
1237  
1238  
1239  
1240  
1241  
1242  
1243  
1244  
1245  
1246  
1247  
1248  
1249  
1250  
1251  
1252  
1253  
1254  
1255  
1256  
1257  
1258  
1259  
1260  
1261  
1262  
1263  
1264  
1265  
1266  
1267  
1268  
1269  
1270  
1271  
1272  
1273  
1274  
1275  
1276  
1277  
1278  
1279  
1280  
1281  
1282  
1283  
1284  
1285  
1286  
1287  
1288  
1289  
1290  
1291  
1292  
1293  
1294  
1295  
1296  
1297  
1298  
1299  
1300  
1301  
1302  
1303  
1304  
1305  
1306  
1307  
1308  
1309  
1310  
1311  
1312  
1313  
1314  
1315  
1316  
1317  
1318  
1319  
1320  
1321  
1322  
1323  
1324  
1325  
1326  
1327  
1328  
1329  
1330  
1331  
1332  
1333  
1334  
1335  
1336  
1337  
1338  
1339  
1340  
1341  
1342  
1343  
1344  
1345  
1346  
1347  
1348  
1349  
1350  
1351  
1352  
1353  
1354  
1355  
1356  
1357  
1358  
1359  
1360  
1361  
1362  
1363  
1364  
1365  
1366  
1367  
1368  
1369  
1370  
1371  
1372  
1373  
1374  
1375  
1376  
1377  
1378  
1379  
1380  
1381  
1382  
1383  
1384  
1385  
1386  
1387  
1388  
1389  
1390  
1391  
1392  
1393  
1394  
1395  
1396  
1397  
1398  
1399  
1400  
1401  
1402  
1403  
1404  
1405  
1406  
1407  
1408  
1409  
1410  
1411  
1412  
1413  
1414  
1415  
1416  
1417  
1418  
1419  
1420  
1421  
1422  
1423  
1424  
1425  
1426  
1427  
1428  
1429  
1430  
1431  
1432  
1433  
1434  
1435  
1436  
1437  
1438  
1439  
1440  
1441  
1442  
1443  
1444  
1445  
1446  
1447  
1448  
1449  
1450  
1451  
1452  
1453  
1454  
1455  
1456  
1457  
1458  
1459  
1460  
1461  
1462  
1463  
1464  
1465  
1466  
1467  
1468  
1469  
1470  
1471  
1472  
1473  
1474  
1475  
1476  
1477  
1478  
1479  
1480  
1481  
1482  
1483  
1484  
1485  
1486  
1487  
1488  
1489  
1490  
1491  
1492  
1493  
1494  
1495  
1496  
1497  
1498  
1499  
1500  
1501  
1502  
1503  
1504  
1505  
1506  
1507  
1508  
1509  
1510  
1511  
1512  
1513  
1514  
1515  
1516  
1517  
1518  
1519  
1520  
1521  
1522  
1523  
1524  
1525  
1526  
1527  
1528  
1529  
1530  
1531  
1532  
1533  
1534  
1535  
1536  
1537  
1538  
1539  
1540  
1541  
1542  
1543  
1544  
1545  
1546  
1547  
1548  
1549  
1550  
1551  
1552  
1553  
1554  
1555  
1556  
1557  
1558  
1559  
1560  
1561  
1562  
1563  
1564  
1565  
1566  
1567  
1568  
1569  
1570  
1571  
1572  
1573  
1574  
1575  
1576  
1577  
1578  
1579  
1580  
1581  
1582  
1583  
1584  
1585  
1586  
1587  
1588  
1589  
1590  
1591  
1592  
1593  
1594  
1595  
1596  
1597  
1598  
1599  
1600  
1601  
1602  
1603  
1604  
1605  
1606  
1607  
1608  
1609  
1610  
1611  
1612  
1613  
1614  
1615  
1616  
1617  
1618  
1619  
1620  
1621  
1622  
1623  
1624  
1625  
1626  
1627  
1628  
1629  
1630  
1631  
1632  
1633  
1634  
1635  
1636  
1637  
1638  
1639  
1640  
1641  
1642  
1643  
1644  
1645  
1646  
1647  
1648  
1649  
1650  
1651  
1652  
1653  
1654  
1655  
1656  
1657  
1658  
1659  
1660  
1661  
1662  
1663  
1664  
1665  
1666  
1667  
1668  
1669  
1670  
1671  
1672  
1673  
1674  
1675  
1676  
1677  
1678  
1679  
1680  
1681  
1682  
1683  
1684  
1685  
1686  
1687  
1688  
1689  
1690  
1691  
1692  
1693  
1694  
1695  
1696  
1697  
1698  
1699  
1700  
1701  
1702  
1703  
1704  
1705  
1706  
1707  
1708  
1709  
1710  
1711  
1712  
1713  
1714  
1715  
1716  
1717  
1718  
1719  
1720  
1721  
1722  
1723  
1724  
1725  
1726  
1727  
1728  
1729  
1730  
1731  
1732  
1733  
1734  
1735  
1736  
1737  
1738  
1739  
1740  
1741  
1742  
1743  
1744  
1745  
1746  
1747  
1748  
1749  
1750  
1751  
1752  
1753  
1754  
1755  
1756  
1757  
1758  
1759  
1760  
1761  
1762  
1763  
1764  
1765  
1766  
1767  
1768  
1769  
1770  
1771  
1772  
1773  
1774  
1775  
1776  
1777  
1778  
1779  
1780  
1781  
1782  
1783  
1784  
1785  
1786  
1787  
1788  
1789  
1790  
1791  
1792  
1793  
1794  
1795  
1796  
1797  
1798  
1799  
1800  
1801  
1802  
1803  
1804  
1805  
1806  
1807  
1808  
1809  
1810  
1811  
1812  
1813  
1814  
1815  
1816  
1817  
1818  
1819  
1820  
1821  
1822  
1823  
1824  
1825  
1826  
1827  
1828  
1829  
1830  
1831  
1832  
1833  
1834  
1835  
1836  
1837  
1838  
1839  
1840  
1841  
1842  
1843  
1844  
1845  
1846  
1847  
1848  
1849  
1850  
1851  
1852  
1853  
1854  
1855  
1856  
1857  
1858  
1859  
1860  
1861  
1862  
1863  
1864  
1865  
1866  
1867  
1868  
1869  
1870  
1871  
1872  
1873  
1874  
1875  
1876  
1877  
1878  
1879  
1880  
1881  
1882  
1883  
1884  
1885  
1886  
1887  
1888  
1889  
1890  
1891  
1892  
1893  
1894  
1895  
1896  
1897  
1898  
1899  
1900  
1901  
1902  
1903  
1904  
1905  
1906  
1907  
1908  
1909  
1910  
1911  
1912  
1913  
1914  
1915  
1916  
1917  
1918  
1919  
1920  
1921  
1922  
1923  
1924  
1925  
1926  
1927  
1928  
1929  
1930  
1931  
1932  
1933  
1934  
1935  
1936  
1937  
1938  
1939  
1940  
1941  
1942  
1943  
1944  
1945  
1946  
1947  
1948  
1949  
1950  
1951  
1952  
1953  
1954  
1955  
1956  
1957  
1958  
1959  
1960  
1961  
1962  
1963  
1964  
1965  
1966  
1967  
1968  
1969  
1970  
1971  
1972  
1973  
1974  
1975  
1976  
1977  
1978  
1979  
1980  
1981  
1982  
1983  
1984  
1985  
1986  
1987  
1988  
1989  
1990  
1991  
1992  
1993  
1994  
1995  
1996  
1997  
1998  
1999  
2000  
2001  
2002  
2003  
2004  
2005  
2006  
2007  
2008  
2009  
2010  
2011  
2012  
2013  
2014  
2015  
2016  
2017  
2018  
2019  
2020  
2021  
2022  
2023  
2024  
2025  
2026  
2027  
2028  
2029  
2030  
2031  
2032  
2033  
2034  
2035  
2036  
2037  
2038  
2039  
2040  
2041  
2042  
2043  
2044  
2045  
2046  
2047  
2048  
2049  
2050  
2051  
2052  
2053  
2054  
2055  
2056  
2057  
2058  
2059  
2060  
2061  
2062  
2063  
2064  
2065  
2066  
2067  
2068  
2069  
2070  
2071  
2072  
2073  
2074  
2075  
2076  
2077  
2078  
2079  
2080  
2081  
2082  
2083  
2084  
2085  
2086  
2087  
2088  
2089  
2090  
2091  
2092  
2093  
2094  
2095  
2096  
2097  
2098  
2099  
2100  
2101  
2102  
2103  
2104  
2105  
2106  
2107  
2108  
2109  
2110  
2111  
2112  
2113  
2114  
2115  
2116  
2117  
2118  
2119  
2120  
2121  
2122  
2123  
2124  
2125  
2126  
2127  
2128  
2129  
2130  
2131  
2132  
2133  
2134  
2135  
2136  
2137  
2138  
2139  
2140  
2141  
2142  
2143  
2144  
2145  
2146  
2147  
2148  
2149  
2150  
2151  
2152  
2153  
2154  
2155  
2156  
2157  
2158  
2159  
2160  
2161  
2162  
2163  
2164  
2165  
2166  
2167  
2168  
2169  
2170  
2171  
2172  
2173  
2174  
2175  
2176  
2177  
2178  
2179  
2180  
2181  
2182  
2183  
2184  
2185  
2186  
2187  
2188  
2189  
2190  
2191  
2192  
2193  
2194  
2195  
2196  
2197  
2198  
2199  
2200  
2201  
2202  
2203  
2204  
2205

1 one plus acre of land. It consists of primary residence, a two bay garage, one bay of  
2 which was converted into a living area, and a barn of which part of the barn was  
3 converted into an office area. For purposes of simplicity, living area in the garage will  
4 be referred to as living area. The living area is a conversion of one of the bays of the  
5 two bay garage. It was in place and in existence at the time that the seller (Reynolds)  
6 purchased the property from the prior owner. They were not involved in the conversion  
7 of the garage to a living area. The Reynolds (seller) purchased the property in 1995  
8 and continued to use the living area as a mother in law quarters.

9 The Second Amended Complaint alleges that these defendants were the listing  
10 broker of this property. (Paragraph 14) As the listing broker of the property, these  
11 defendants did not represent the interest of the buyer. The agency disclosure forms  
12 prepared by these defendants clearly demonstrate that they are representing the seller  
13 and did not represent the buyer. In fact, the buyer never met these defendants.  
14 According to the Second Amended Complaint, the buyer had their own real estate  
15 agent representing their interest. The claims against James E. Johns arise from an  
16 allegation that James E. Johns is the broker (Paragraph 6) and should have monitored  
17 the listing agent. The claims against A. J. Johnson arise from the marketing and listing  
18 of the property in the Multiple Listing Service. (Paragraph 5)

19 The buyer purchased the property and later discovered that the "in law quarters"  
20 were not permitted. As a result, plaintiff filed a claim against the seller and the real  
21 estate agents.

22 Before making the offer on the property, the buyer submitted questions to their  
23 broker concerning the property to include the size of the tank serving the house and  
24 structures and other amenities regarding the property. The buyer received the septic  
25 report referred to by Plaintiff's expert. Obviously, the buyer was sensitive to certain  
26 issues concerning waste disposal precipitating the subject communications to the  
27 listing agents by means of the buyer's broker. Plaintiff's counsel conveniently ignores



1 the fact that this lawsuit was started on contentions of many misdeeds of the listing  
2 broker beyond that which was identified in Plaintiff's expert report. A review of her  
3 expert report is self-explanatory. It limits a claim of misdeed by failing to recognize that  
4 the septic report which identified a 1,000 gallon tank would have been insufficient to  
5 service all the living units on the property (which assumes this Defendant had access to  
6 the septic report before close of escrow). Additionally, Plaintiff wants the Court to  
7 ignore the affirmative defenses raised in the Second Amended Complaint. The facts  
8 will demonstrate that the Plaintiff owns properties serviced by a septic system before  
9 purchasing this property. He had access to the septic report identifying only a 1,000  
10 gallon tank. He had access to the appraisal reports which identified the square footage  
11 of the structures on the property and the lack of value placed on the mother in law  
12 quarters from the caveat of the appraisers that they did not know if the mother in law  
13 quarters were permitted. Buyer had both the septic report and appraisal before close of  
14 escrow. He had access to the inspection reports before close of escrow that identified  
15 code violations with the mother in law quarters. In other words, the Plaintiff is asking  
16 that this Court predetermine how the facts in this case are going to be solicited in  
17 making its ruling on this motion.

18 **B. ARGUMENT**

19 The only evidence this Court will ever receive concerning the violation of duties  
20 of a real estate licensee whether it be the buyer's agent or seller's agent is the  
21 testimony (if admitted) of Sherrie Cartinella. In other words, this Court will hear no other  
22 evidence of any expert that a real estate licensee violated a duty pursuant to NRS  
23 645.252 other than from Plaintiff's expert and that assumes that you read and interpret  
24 her report as being a breach of the standard of care required of realtors pursuant to  
25 NRS 645.252. Similarly, this Court will receive no evidence that the buyers broker  
26 accepted any other responsibilities or duties than those that have been imposed upon a  
27 real estate agent representing a buyer falling under the umbrella of NRS 645.252. If

1 Plaintiff wanted to show a misdeed of the buyer's broker, it failed to do so in this case.  
2 They can only rely upon their expert's report that discusses the septic system. As  
3 discussed in the briefing in this Defendant's Motion in Limine #3, there are no common  
4 law remedies that exist by the buyer against the buyer's agent. NRS 645.251. *Davis v*  
5 *Boeing*, 128 Nev. 301, 278 P.3d 501 (2012) Accordingly, the only claims that exist  
6 against the real estate agents, whether it be the buyer's agent or the seller's agent, is a  
7 violation of NRS 645.252. Plaintiff has already settled with the buyer's real estate agent  
8 for \$7,500. The only claim that exists against the listing agent for a violation of NRS  
9 645.252 addresses the septic system according to the Plaintiff's expert. There is no  
10 other evidence from an expert indicating any misdeeds of the listing agent other than  
11 the issue pertaining to the septic system. Accordingly, any violation of NRS 645.252 by  
12 either the listing agent or the selling agent pertains to the septic system. As discussed  
13 in the Motion in Limine #3, NRS 645.257 mandates the necessity to receive an expert  
14 opinion concerning the standard of care. Therefore, the damages attributable to any  
15 action of a real estate licensee, whether it be the listing broker or the selling broker, for  
16 a violation of NRS 645.252 addresses the septic system and the listing broker is not  
17 liable for any other claim for damages (See this Defendant's Motion in Limine #2). The  
18 claim of damages in connection with installing a new septic system to service the  
19 mother in law quarters has now been reduced by receipt of \$7,500 from the buyer's  
20 broker and this Defendant is entitled to a credit for the same. In fact, the Plaintiff will  
21 literally get a double recovery as one can be relatively assured that part of the  
22 settlement with the seller included the septic system but the legal argument in  
23 connection with seeking a credit for receipt of proceeds in connection with the  
24 settlement against the buyer's broker is black and white given the law concerning the  
25 licensees responsibilities under NRS 645.252 whether it be the selling agent or buyer's  
26 agent. In fact, Plaintiff acknowledges this dual claim against seller's agent and buyer's  
27 agent in its Motion when it states on Page 3, Line 4 "and against the buyer's realty



1 agent and broker, Brian Kincannon . . . for their failure to disclose information that they  
2 knew or should they have known and because these realtor Defendants did not act with  
3 reasonable and care with this transantion, which constitutes statutory violation of NRS  
4 645.252, NAC 645.600 and NRS 645.257".

5 The argument concerning contribution by Plaintiff's counsel is misplaced. It is an  
6 argument predicated in tort. Tort is a common law remedy. The common law remedies  
7 have been abrogated as acknowledged by Plaintiff's counsel. (Page 4, Line 5 of its  
8 brief). The only basis for any liability for all the licensees is NRS 645.252 and the  
9 Plaintiff has already received \$7,500 towards paying of its claim for violation of that duty  
10 from its broker and the evidence demonstrates that \$7,500 goes towards the septic  
11 system. Rather than focus on the concept of contribution, this Defendant suggests the  
12 Court focus on the concept of damages. Has the Plaintiff been reimbursed for  
13 damages (whether in part or in full) in connection with septic issues since that is the  
14 basis for the violation of NRS 645.252? If so, his damage claim is reduced as it relates  
15 to this Defendant. There is no collateral source rule here wherein the Plaintiff can claim  
16 a double recovery. Unlike the collateral source rule, the Plaintiff did not pay insurance  
17 premium for coverage.

18 In *Davis v Boeing*, 128 Nev. 301, 278 P.3d 501 (2012) the Supreme Court not  
19 only addressed the issue of the common law being pre-empted by NRS 645.252, but  
20 they also addressed the issue of damages in connection with violation of that statute.  
21 The Supreme Court holds that the measure of damages is a question of law. *Id* at  
22 Page 316. The Supreme Court goes on to observe:

23 "Actual damages are defined as an amount awarded to a complainant to  
24 compensate for proven injury or loss . . . the term is often also termed  
25 compensatory damages. Thus, actual damages is another way of stating  
26 compensatory damages." *Id* at Page 316

27 The Supreme Court goes on to observe:

28 "We also note that in order to prevent a double recovery, any damages

1       Doughertys are awarded should be reduced by the amount of payment  
2       they received from renting property . . . a Plaintiff can recover only once  
3       from a single injury". Id at Page 319

4       In other words, there can not be a double recovery. In the case of *Elyousef v O'Riley*  
5       *and Ferrario LLC*, 126 Nev. 441, 245 P. 3d 547 (2010) The Supreme Court went on to  
6       observe:

7       "Although we have applied the double recovery option in prior cases, we  
8       have not expressly adopted it. We now take this opportunity to do so.  
9       Accordingly, we hold that Plaintiff can recover only once for a single injury  
10       even if the Plaintiff asserts multiple legal theories. Thus, satisfaction of a  
11       Plaintiff's damages for an injury bars further recovery for that injury.  
12       Applying the doctrine to this case, Elyousef can not recovery from O'Riley  
13       because he has already fully recovered through his settlement through  
14       Homayouni. Elyousef however argues that his judgement has not been  
15       fully satisfied because he only received \$50,000 from his settlement. He  
16       therefore claims that he should be able to recover the remainder of his  
17       judgment and attorneys fees from O'Riley . . . accordingly, the settlement  
18       with Homayouni fully satisfied the judgment and Elyousef's further  
19       recovery would violate the double recovery doctrine". Id at Page 444

20       In the case of *Deyssi Janneth Prado-Guajardo v Martin Guzman Perez & El Rayo*, U. S.  
21       D. Nev. September 8, 2017, the Plaintiff and third party Defendant reached a  
22       settlement for good faith under NRS 17.245 and secured a release and covenant not to  
23       sue. The Court went on to observe that this action does not discharge the other tort  
24       feasor but it reduces the claim against the others to the extent of any amount stipulated  
25       by the release and the covenant for the amount of consideration paid for it. In the case  
26       of *Levy v the 8<sup>th</sup> Judicial District Court*, 130 Nev. Adv. Op. 38 (2014) the Nevada  
27       Supreme Court observed that the lender's foreclosure (BB&T) on property precluded its

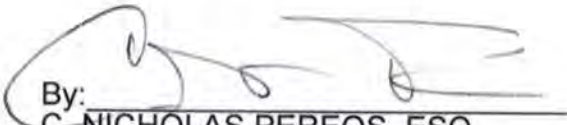
1 ability to pursue an action against the guarantor as such activity would constitute a  
2 double recovery. *Elyousef v O'Riley and Ferrario LLC*, 126 Nev. 441 the Supreme  
3 Court went on to observe that under the double recovery doctrine, there can only be  
4 one recovery of damages for one wrong or injury. (Citing 25 CJS Damages Section 5  
5 and Other Authorities) Id at Page 443.

6 The desperate argument of Plaintiff is demonstrated when they contend that this  
7 Defendant is seeking to introduce such evidence in order to avoid liability. On the  
8 contrary, this Defendant is seeking to introduce the evidence to demonstrate that there  
9 can not be a double recovery. The nature of the desperate argument made by Plaintiff  
10 is demonstrated when they contend that the Defendant is seeking to introduce such  
11 evidence to avoid liability. How absurd! On the contrary, this Defendant is seeking to  
12 introduce evidence to demonstrate that there is not to be a double recovery.

13  
14 **AFFIRMATION**

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

17 DATED this 22<sup>nd</sup> day of February, 2018 C. NICHOLAS PEREOS, LTD.  
18

19  
20 By:   
21 C. NICHOLAS PEREOS, ESQ.  
22 1610 MEADOW WOOD LANE, STE. 202  
23 RENO, NV 89502  
24 ATTORNEY FOR DEFENDANTS  
25  
26  
27



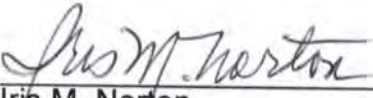
1                                    **CERTIFICATE OF SERVICE BY ELECTRONIC FILING**

2                    PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I  
3 am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I  
4 caused to be served a true copy of the foregoing pleading on all parties to this action by  
5 electronically filing the foregoing with the Clerk of the Court by using the CM/ECF  
6 system which served the following parties electronically:

7                    John D. Moore, Esq.  
8                    MOORE LAW GROUP, PC  
9                    3715 Lakeside Drive, Suite A  
                     Reno, NV 89509

10                   DATED: \_\_\_\_\_

                     2/22/18

  
                     Iris M. Norton

2645  
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

**PLAINTIFFS' COMBINED OPPOSITION TO DEFENDANTS'**  
**MOTIONS IN LIMINE NUMBERS TWO AND THREE<sup>1</sup>**

Plaintiffs John Lindberg, Michal Lindberg, and Judith L. Lindberg, ("Plaintiffs") hereby file  
this combined Opposition to Defendants' Motions in Limine Numbers Two and Three ("Opposition").

<sup>1</sup> Defendants' Motions in Limine Numbers Two and Three argue almost the same exact point, primarily that expert testimony is required in every instance when a realtor is sued under NRS 645.251, et seq. Accordingly, Plaintiffs will address both Motions in this combined Opposition.

1 With the filing of this Opposition, Plaintiffs request that this Court deny Defendants' Motions in  
2 Limine Numbers Two and Three ("Motions"). In these Motions, Defendants falsely claim that  
3 Plaintiffs have only presented evidence of one misdeed against these Defendants, i.e., that the  
4 Defendants as realtors failed to disclose known facts related to the septic system found at this property  
5 that Plaintiffs purchased in early 2013. While it is true that Plaintiffs have alleged this misdeed  
6 associated with the septic system, discovery in this case has shown that these Defendants failed to  
7 disclose known facts related to the correct square footage of the living space found at the property and  
8 that these Defendants listed the property as a "single-family residence" when it obviously contained  
9 more than one residential living structure. From these three misdeeds, the Plaintiffs seek to recover  
10 damages against the remaining Defendants under, NRS 645.251, et seq., with specific reference to  
11 NRS 645.252 and NAC 645.600, which set forth applicable standards for realtors in Nevada.  
12

13 The remaining Defendants also falsely claim in both Motions that NRS 645.257(3) requires  
14 expert testimony in every instance when there is a claim brought against a realtor under NRS 645.251,  
15 et seq. The remaining Defendants have cited not a single case from the state of Nevada that supports  
16 this contention because, quite frankly, no such case exists. Other jurisdictions, as will be set forth in  
17 more detail below, provide that expert testimony to establish the misdeeds of a realtor, whether  
18 established by statute or otherwise, is not required in all instances, especially in situations where the  
19 misdeeds are of such a nature that they are easily understood by the ordinary juror. The Defendants'  
20 misdeeds in this case established through discovery are so obvious and the damages flowing from  
21 these failures are so clearly identifiable that expert testimony is not required because these failures are  
22 well within the understanding of the ordinary juror. Moreover, in Nevada, there is case law that  
23 supports a finding that a realtor can be held liable for listing the size of real property incorrectly and  
24 that the remedy associated with such a failure is an abatement of the price paid for the property.<sup>2</sup> For  
25  
26  
27

---

28 <sup>2</sup> *Ewing v. Bissel*, 105 Nev. 488, 492, 777 P.2d 1320, 1323 (1989)(noting that the seller of real estate and the seller's agent are responsible to disclose material facts related to the property, such as its size, prior to closing and finding that an

1 these reasons, the Court should deny Defendants' Motions in Limine Numbers Two and Three, which  
2 both make the same basic argument. This Opposition is supported by the attached Memorandum of  
3 Points and Authorities, the cases and evidence cited herein, and any argument permitted by the Court.

#### 4 **MEMORANDUM OF POINTS AND AUTHORITIES**

#### 5 **I. FACTUAL BACKGROUND<sup>3</sup>**

##### 6 **a. Pertinent Factual Allegations raised against various Defendants**

7  
8 Plaintiffs filed a complaint on February 10, 2015 to vindicate their rights arising from the sale  
9 of property to Plaintiffs that took place on or about February 28, 2013. These claims arose under NRS  
10 113.150 against the sellers of the property, Harry Reynolds and Deann Reynolds, for their failure to  
11 disclose various issues with the property in violation of NRS 113.130. Plaintiffs also asserted claims  
12 of negligent and fraudulent misrepresentation against the sellers. Plaintiffs' claims also arose under  
13 NRS 645.251, et seq., against the sellers' realty agent and broker, A.J. Johnson, James E. Johns, and  
14 J.E. Johns & Associates and against the buyers' realty agent and broker, Brian Kincannon, Robert  
15 Clement, and Group One, Inc., dba Keller Williams Realty for their failure to disclose information  
16 that they knew or that they should have known related to the property and because these realtor  
17 defendants violated specific statutes related to all realty transaction found at NRS 645.252, NAC  
18 645.600, and NRS 645.257.

19 For purposes of informing the Court only, the buyers' realty agent and broker and the sellers  
20 have resolved all claims Plaintiffs raised against them at a settlement conference with Judge Bridget  
21

22  
23  
24 abatement of the sales price as damages against the seller and seller's agent to reflect the actual size of the property, not  
its advertised size, was appropriate).

25 <sup>3</sup> Plaintiffs object to the Statement of Facts set forth in Defendants' Motions because the Statement contains several  
26 inaccuracies. For example, the mother-in-law's quarters is not a "converted garage" but a separate building with two  
27 levels, the top level of which was converted into a mother-in-law's quarters with a kitchen, bedroom, and bathroom and  
28 the bottom level of which was converted into a living area. The mother-in-law's quarters also was not in place at the time  
the sellers (Harry and Deann Reynolds) purchased the property but was converted by the Reynoldses. Defendants'  
assertion that the lack of a permit was discovered at a time when additional grading was required by a building inspector  
is also inaccurate.

1 Robb that the remaining Defendants did not attend, their attendance being excused by stipulation.<sup>4</sup>  
2 The only remaining defendants in this case are the sellers' realty agents and broker, A.J. Johnson,  
3 James E. Johns and J.E. Johns & Associates<sup>5</sup> (the "Defendants"). The claims against the remaining  
4 Defendants are statutory in nature, these Defendants have not asserted claims of contribution or  
5 indemnity against the settling defendants, either as an affirmative defense or as a cross-claim, and  
6 these Defendants have not asserted as an affirmative defense or as a third-party complaint that third  
7 parties that are not named in this litigation may have contributed to cause Plaintiffs' injuries. As such,  
8 these Defendants cannot lawfully point the finger of blame at any other defendant to this case.  
9

10 **b. Established Misdeeds of the remaining Defendants.**

11 Approximately one year after purchasing the property in question, John Lindberg discovered  
12 that two structures found on the property were not constructed with building permits, which is a fact  
13 Plaintiffs allege was known to the sellers of the property at the time of the sale. Accordingly, Plaintiffs  
14 sued the sellers under NRS 113.150 for their failure to disclose in a Seller's Real Property Disclosure  
15 form the fact that two of the buildings on the property were not permitted. Plaintiffs also sued the  
16 remaining Defendants in this matter asserting that the listing of the property as a single-family  
17 residence was made in error when the property contained multiple residential living structures.  
18 Plaintiffs also alleged that Defendants improperly listed the combined living space found at the  
19 property as having 3,880 square feet, when the size of the combined living space is much less.  
20 Plaintiffs have also alleged that the remaining Defendants knew or should have known that the septic  
21 system and well were inadequate. With these factual allegations, Plaintiffs have claimed that  
22 Defendants violated NRS 625.252, NAC 645.600 and NRS 645.257. Plaintiffs contend that each of  
23 these factual allegations against the remaining Defendants have been established during discovery.  
24

25 For instance, a review of the property listing in this case, which is attached hereto as **Exhibit**

---

26  
27 <sup>4</sup> Plaintiffs believe another settlement conference with Judge Robb might help this matter reach a final resolution  
28 <sup>5</sup> Plaintiffs have notified J.E. Johns & Associates of their intent to enter default against this last remaining  
Defendant, which will be filed with this Court on February 23, 2018 if J.E. Johns & Associates' answer to Plaintiffs'  
Second Amended Complaint is not filed before that date.



1 1, demonstrates that the listing of the property as “single-family residential” was made in error because  
2 the listing itself demonstrates that the property consists of at least two residential buildings and a third  
3 accessory structure. This listing also advertised that the combined living space of the two residential  
4 structures totaled 3,880 square feet. *Id.* However, during discovery, it was learned that prior to listing  
5 the property, on or about September 21, 2012, the remaining Defendants obtained a copy of an  
6 appraisal of the property from the sellers and that the appraisal in no uncertain terms disclosed that the  
7 combined living space of the two residential structures totaled 3,640 square feet, not 3,880 square feet.  
8 Despite this knowledge, the remaining Defendants listed the property with the larger square footage.  
9

10 This discrepancy in the known actual square footage of the property (3,880 square feet  
11 compared to 3,640 square feet) is outlined in an appraisal dated September 5, 2012, which is attached  
12 hereto as **Exhibit 2**. The fact that the remaining Defendants received a copy of this appraisal on or  
13 about September 21, 2012, or at some time during the real estate transaction, is confirmed in black  
14 and white in the Residential Listing Input Form, attached hereto as **Exhibit 3**. In this form, which is  
15 in Defendant A.J. Johnson’s handwriting, the remaining Defendants outlined on page one of that form  
16 that the listed square footage of the property was confirmed by the owners of the property and by an  
17 appraiser. *Id.* On page three of this form, Defendant A.J. Johnson also wrote that “Agent request [sic]  
18 appraisal be done to verify pertinent info. . .” related to the property. *Id.*

19 Of course, at her deposition, A.J. Johnson has claimed that she did not receive a copy of this  
20 appraisal during this real estate transaction. Pertinent Portions of A.J. Johnson’s Deposition at 28:10  
21 – 30:6, attached hereto as **Exhibit 4**. This statement, however, is contradicted by A.J. Johnson herself  
22 in the Residential Listing Input Form noted above and in an email dated January 4, 2013, that Ms.  
23 Johnson sent during negotiations related to the property. Specifically, on January 3, 2013 at 1:47 pm,  
24 Plaintiffs made an offer to the sellers, seeking to purchase the property for \$375,000.00. January 3,  
25 2013 Offer attached hereto as **Exhibit 5**. The sellers then made a counter-offer on January 4, 2013,  
26 upping the price to \$385,000.00, as seen in the Counter-Offer attached hereto as **Exhibit 6**. Upon  
27 making this Counter-Offer, the sellers through A.J. Johnson then shared the September 5, 2012  
28

1 appraisal with the buyers' agent through an email dated January 4, 2013, which A.J. Johnson sent on  
2 12:36 pm, which is attached hereto as **Exhibit 7**. The text of this email is significant and shows that  
3 A.J. Johnson not only had the September 5, 2012 appraisal in her possession at this time but that she  
4 shared it with the Plaintiffs through their agent to assist the sellers to negotiate a higher sales price:

5 "1-4-13

6 Brian – I will be your point of contact on this file for Jim Johns<sup>6</sup> – The Sellers have elected to  
7 counter only because (the well, septic, buildings and pellet(s) stoves are all in good condition)  
8 they have an appraisal for \$400,000.00 and are willing to share with the Buyers. Thank you,  
A.J. (see attached)." *Id.*

9 This email clearly shows that A.J. Johnson shared the September 5, 2012 appraisal with the Plaintiffs'  
10 realtor on January 4, 2013. John Lindberg will testify at trial that he received the September 5, 2012  
11 appraisal from his agent during negotiations on January 4, 2013. Mr. Lindberg will also testify at trial  
12 that he received the appraisal soon after it was emailed to his agent, on or after 12:36 pm, that he  
13 reviewed the appraisal only to verify the claim that the property had appraised for approximately  
14 \$400,000.00, and that he accepted the sellers' Counter-Offer at 1:42 pm, approximately one hour after  
15 his agent received the appraisal.

16 The significance of the remaining Defendants' possession and use of the September 5, 2012  
17 appraisal during this sales transaction should not be lost on the Court. In multiple locations in the  
18 appraisal, the appraiser identifies the total square footage of the two residential structures at the  
19 property as being 3,640 square feet, not 3,880 square feet. **Exhibit 2** at p. 4 and 20. For example, on  
20 page 4 of the appraisal, the appraiser lists the square footage of the two residential structures as 2,180  
21 square feet and as 1,460 square feet and on page 20 of the appraisal, the square footage is captured  
22 from actual measurements made by the appraiser. *Id.* Despite this information that was known to the  
23 remaining Defendants before the property was listed and that, at a minimum, was known to the  
24

---

25  
26 <sup>6</sup> A.J. Johnson also claims she did not send this email, but that her late-husband Jim Johns *might have* sent it. **Exhibit**  
27 4 at 62:4-63:1. This is a ridiculous statement unsupported by any written evidence because Ms. Johnson refers to her late-  
28 husband in this email in the third person, the email is sent from A.J. Johnson's email account, and it is signed off by "A.J."  
**Exhibit 7**. None of this supports the assertion that Jim Johns sent this email, and even if he did, Mr. Johns sent it with A.J.  
Johnson's knowledge and consent, as admitted by Ms. Johnson during her deposition. **Exhibit 4** at 67:4 – 68:10.

1 remaining Defendants during the sales transaction as shown in her January 4, 2013 email, the  
2 remaining Defendants listed the property as having 3,880 square feet and never acted to correct this  
3 error. This error is so significant and so blatant that two of the remaining Defendants' own experts  
4 have admitted that the remaining Defendants erred in listing the square footage as 3,880 square feet.  
5 Pertinent Portions of Pamela Beko Molini's Deposition (at 29:3-8, 58:7-18, 63:5-22, 64:4-66:7) and  
6 Forrest Barbee's Deposition (at 74:23-75:20), attached hereto as **Exhibit 8**. Because this property  
7 sold for \$99.23 per square foot, the damages associated with the abatement of the sales price, as  
8 permitted by Nevada law, totals \$23,815.20. Expert testimony to establish this blatant violation of  
9 NRS 645.252(1)(a) and the damages that flow from it is not required, as argued in more detail below.  
10

11 The remaining Defendants' failure to disclose this known information regarding the square  
12 footage of the residential buildings found at the property is just one of the remaining Defendants'  
13 misdeeds established during discovery. As admitted by the Defendants in Motion in Limine No. 2,  
14 "[d]iscovery established that the septic system servicing the house was not large enough to service  
15 both the house and the mother in law quarters." Motion in Limine No. 2 at 5:20-22. During discovery,  
16 it has been learned that the septic system at this property was not sufficiently sized to serve both  
17 residential buildings (as Defendants have admitted), that the Washoe County Building Department  
18 ordered the Plaintiffs to remedy the improperly sized septic system after they purchased the property,  
19 and that it cost Plaintiffs \$27,663.95 to enlarge the capacity of the existing septic system. It was also  
20 learned during discovery that the remaining Defendants knew or should have known the size of the  
21 septic system during this transaction and that they should have known that the septic system was not  
22 appropriately sized for the total number of bedrooms served by the septic system.  
23

24 In this regard, we look again to the documents produced in this matter, because Ms. Johnson  
25 has also claimed during discovery that she was not aware of the actual size of the septic system during  
26 this transaction. **Exhibit 4** at 82:14 - 83:22. This claim, like many of Ms. Johnson's claims, is not  
27 supported by the evidence. Specifically, before the Plaintiffs made an offer on the property, they  
28 forwarded by email questions regarding the septic system through their realtor, Brian Kincannon, to

1 the sellers through their agent, the remaining Defendants. Emails with Septic Questions and  
2 Handwritten Responses, attached hereto as **Exhibit 9**. The Plaintiffs wanted to know the size of the  
3 septic system before they made an offer to purchase the property. In response to these questions, the  
4 sellers provided answers through the remaining Defendants, which are also attached hereto as part of  
5 **Exhibit 9** and in an email attached hereto as **Exhibit 10**. Of significance in these responses is the  
6 claim that the septic tank was *15,000 gallons* in size, which is enormous, and which should have been  
7 a red flag to the remaining Defendants. *Id.* Despite this clear error in disclosing the size of the tank,  
8 the remaining Defendants did not investigate the accuracy of the information they claim to have  
9 received from their clients.

10  
11 Later, during the pendency of this transaction, the sellers were required to obtain an inspection  
12 of the septic system, which was obtained on or about January 18, 2013, as evidenced by the septic  
13 system report attached hereto as **Exhibit 11**. The remaining Defendants received a copy of this report,  
14 as plainly outlined in the report itself. *Id.* The remaining Defendants then forwarded a copy of this  
15 report by email to the Plaintiffs through their realtor on January 19, 2013, as demonstrated in the  
16 emails attached hereto as **Exhibit 7**. Specifically, in an email dated January 19, 2013 from A.J.  
17 Johnson to Brian Kincannon, A.J. Johnson states: “1-19-13 Please see attached Septic Report on  
18 Eaton. Pumping and Inspection – Thanks A.J.” *Id.* A simple review of the septic report discloses  
19 unequivocally that the septic tank is 1,000 gallons in size, a fact that the remaining Defendants did not  
20 investigate further even after they had been told by their clients that the septic tank was 15,000 gallons  
21 in size, failing to investigate a major red flag in this case.

22  
23 According to the expert testimony of Sherrie Cartinella, the remaining Defendants knew the  
24 actual size of the septic tank during this transaction, knew that it served two houses, knew the size of  
25 the lot upon which the two houses were located, and should have known that the septic tank size was  
26 insufficient to handle both residential structures. Report of Sherrie Cartinella, attached hereto as  
27 **Exhibit 12**. According to Ms. Cartinella, she was retained in this matter “to offer [her] opinion  
28 regarding the seller’s agent’s failure to adhere to established standards of REALTORS in the case of

1 Lindberg v. Reynolds. . .” *Id.* In this regard, Ms. Cartinella offered the opinion that “[a]dvertising 3  
2 units on the 1.12 acre lot would elicit the question of how many septic tanks exist on the property. In  
3 my opinion, this should have raised a red flag for the listing agent [the remaining Defendants].” *Id.*  
4 Ms. Cartinella further opined that “[w]hile it is also expected that the seller will disclose material facts,  
5 the agent is expected to be informed. In this case, a one-acre parcel is allowed one septic in Washoe  
6 County according to District of Health regulations.” *Id.* Moreover, “[a]ccording to The Regulations  
7 of the Washoe County District of Health governing sewage, waste water and sanitation. . .” the septic  
8 tank in this case should have been no smaller than 1,500 gallons. *Id.* Ms. Cartinella further opined  
9 that these facts related to the septic tank and its required sizing “should have been known by a Real  
10 Estate agent and disclosed to a potential buyer.” *Id.* It is undisputed that the remaining Defendants  
11 did not disclose to the Plaintiffs that the 1,000-gallon septic tank was too small for this property.<sup>7</sup>  
12 After Plaintiffs learned of the inadequate size of the septic system, Washoe County ordered Plaintiffs  
13 to seek a variance so that they could install a second tank on the property so that the septic system  
14 would be adequately sized, which caused damages to Plaintiffs in an amount more than \$27,000.00.  
15

16 In Motion in Limine No. 2, the remaining Defendants almost concede that the damages  
17 asserted by Plaintiffs relating to the repairs that were needed to the septic system have been  
18 conclusively established. Motion in Limine No. 2 at 5:10-12. Defendants also concede in Motion in  
19 Limine No. 2 that “[d]iscovery established that the septic system servicing the house was not large  
20 enough to service both the house and the mother in law quarters.” Motion in Limine No. 2 at 5:20-  
21 22. There is no doubt that Plaintiffs only learned of the improper size of the septic system after they  
22 discovered that the mother-in-law’s quarters had been constructed without proper permitting. Yet, the  
23 information related to the size of the septic system was known to the remaining Defendants during  
24 this transaction and Plaintiffs offer expert testimony from Sherrie Cartinella to establish that the  
25 remaining Defendants should have known that the septic system in its current size was not sufficient.  
26

---

27  
28 <sup>7</sup> Plaintiffs also assert that their own realtor should have known about this issue, which is why Plaintiffs sued  
their own realtor in this case. Both realtors should have known that the septic system was not satisfactory for this  
property and should have disclosed this to Plaintiffs.



1 It is this expert testimony that the remaining Defendants ask this Court to strike in their Motion in  
2 Limine No. 3, which is a request this Court should not entertain.

## 3 **II. LEGAL ARGUMENT**

### 4 **a. Claims (plural) brought against the Remaining Defendants under NRS 645.252.**

5 In Motions in Limine Nos. 2 and 3, the remaining Defendants claim that the Plaintiffs have  
6 only alleged one misdeed<sup>8</sup> against the remaining Defendants, i.e., that the remaining Defendants failed  
7 to disclose known information and/or information that they should have known related to the septic  
8 system found at the property that is the subject of this litigation. (Motion in Limine No. 2 at 5:4-6 and  
9 Motion in Limine No. 3 at 5:4-7). This claim that Plaintiffs have only asserted one misdeed against  
10 the remaining Defendants is not accurate and conflicts with the facts established during discovery in  
11 this matter. Rather, Plaintiffs are pursuing multiple claims against the remaining Defendants that arise  
12 under NRS 645.252(1)(a) and that also arise under NRS 645.252(2).  
13

14 In accordance with NRS 645.252(1)(a), a “licensee who acts as an agent in a real estate  
15 transaction. . . [s]hall disclose to each party to the real estate transaction as soon as is practicable. . .  
16 [a]ny material and relevant facts, data or information which the licensee knows, or which by the  
17 exercise of reasonable care and diligence should have known, relating to the property which is the  
18 subject of the transaction.” Under NRS 645.252(2), a licensee who acts as an agent in a real estate  
19 transaction “[s]hall exercise reasonable skill and care with respect to all parties to the real estate  
20 transaction.” The obligations set forth in these pertinent portions of NRS 645.252 apply to real estate  
21 agents and to real estate brokers who act as a licensee in a real estate transaction and would include  
22 Defendants A.J. Johnson and James E. Johns.  
23

24 As outlined in the Factual Background section above, the claims against these remaining  
25 Defendants sound primarily in the remaining Defendants’ failure to disclose material and relevant  
26 facts that were known by or that should have been known by the remaining Defendants during this  
27 transaction. The most egregious of the Defendants’ misdeeds (plural) is that which relates to the listing  
28

---

<sup>8</sup> Defendants use this word themselves in their Motions.

1 of the property where the remaining Defendants listed the square footage, claiming that the property  
2 consisted of 3,880 square feet when it was known to the remaining Defendants that this was not true.  
3 We know that the remaining Defendants knew the actual square footage of the property (3,460 square  
4 feet) because the remaining Defendants had in their possession during this transaction the sellers'  
5 September 5, 2012 appraisal. This appraisal clearly identifies the total square footage of the living  
6 space as 3,640 square feet. **Exhibit 2** at p. 4 and 20.

7  
8 Despite A.J. Johnson's attempt to wiggle her way out of this fact, where she has claimed during  
9 her deposition that she did not receive the sellers' September 5, 2012 appraisal at any time during this  
10 transaction, the written documents disclosed by the remaining Defendants themselves and by their  
11 clients make it clear, in black and white, that the remaining Defendants received and relied upon the  
12 September 5, 2012 appraisal during this transaction. It says so in the Residential Listing Form attached  
13 hereto as **Exhibit 3**. A.J. Johnson herself confirmed as much in an email to Brian Kincannon dated  
14 January 3, 2013 attached hereto as **Exhibit 7** *where she forwarded the appraisal to Mr. Kincannon* as  
15 the parties were negotiating the price of the property. No testimony from any party to this transaction  
16 can diminish the written documents that prove that the remaining Defendants received and relied upon  
17 the September 5, 2012 appraisal during this transaction.

18 The remaining Defendants' second misdeed in this transaction does relate to the septic system.  
19 Again, regarding this issue, Ms. Johnson claimed during her deposition that she did not know the  
20 actual size of the septic system during this transaction. **Exhibit 4**. This claim is also untrue and is  
21 also disproved by the documents the remaining Defendants and their clients produced in this case. It  
22 is clear from these documents that the sellers were to obtain a septic system inspection during this  
23 transaction. The septic inspection report was forwarded to the remaining Defendants more than a  
24 month prior to closing. We know this is true because A.J. Johnson forwarded the septic inspection to  
25 the Plaintiffs' agent in an email dated January 19, 2013. **Exhibit 7**.

26  
27 To establish this claim, Plaintiffs have offered expert testimony that the remaining Defendants  
28 in this case should have known that the septic system in its actual size (1,000-gallon tank) was not

1 appropriately sized for this property, which required a 1,500-gallon tank. **Exhibit 12.** Under this state  
2 of the facts, the remaining Defendants did not disclose to the Plaintiffs material and relevant  
3 information that they should have known about the septic system, i.e., the appropriate tank sizing, and  
4 this failure to disclose this information during this transaction is a valid claim against the remaining  
5 Defendants under NRS 645.252(1)(a).

6 Plaintiffs finally present a third claim against these Defendants. This claims also arises from  
7 the remaining Defendants' listing of the property as a "single-family residence" when the property  
8 was occupied by one main residential building and two accessory structures (the mother-in-law's  
9 quarters and a shop/barn). The property zoning does not authorize the existence of a residential  
10 structure and two accessory structures on this property, making the listing inaccurate. Each of these  
11 misdeeds violate NRS 645.252 and do not require expert testimony to establish, as set forth in more  
12 detail below. Accordingly, the Court should deny Defendants' Motions in Limine Nos. 2 and 3.

14 **b. NRS 645.257(3) does not require Expert Testimony to Establish a violation of any**  
15 **of NRS 645.252**

16 In both Motions in Limine Nos. 2 and 3, the remaining Defendants' primary assertion is that  
17 NRS 645.257(3) "mandates expert testimony demonstrating that the licensee failed to perform a  
18 degree of care that a reasonably prudent licensee would exercise. . ." (Defendants' Motion in Limine  
19 No. 2 at 5:2-4) and that NRS 645.257(3) "is one of the few places in the Nevada Statutes wherein the  
20 statute mandates that you have to engage an expert that opines that the Defendant real estate agent  
21 violated the standard of care." (Defendants' Motion in Limine No. 3 at 6:1-3). Defendants further  
22 claim incorrectly that "[t]he expert must opine that the degree of care required of licensee is subject  
23 of the instructions [given to license applicants] under NRS 645.343." (Defendants' Motion in Limine  
24 No. 3 at 6:3-5). Despite these assertions, which are incorrect, NRS 645.257(3) says nothing about any  
25 mandated requirement that the breach of the statutory standards for realtors established by NRS  
26 645.251, et seq., must be confirmed by an expert. NRS 645.257(3) instead establishes the standard  
27  
28

1 that applies to realtors, which is one of ordinary care and which is measured by the current  
2 requirements of Nevada law that apply to realtors. NRS 645.257(3) does not require expert testimony  
3 to establish the standard of care that would apply (because it is already expressly established under  
4 NRS 645.251, et seq.) or to establish breach of the applicable standard or to establish what is being  
5 taught to current real estate license applicants or the damages that may flow from a realtor's misdeeds.  
6

7 Not surprisingly, the remaining Defendants cite to no Nevada Supreme Court case that holds  
8 that a claim for the breach of the statutory duties owed by a realtor to all parties involved in a realty  
9 transaction requires expert testimony. Defendants have not cited any applicable Nevada Supreme  
10 Court cases because none exist. Defendants also do not cite any case from any other state that would  
11 impose the obligation to secure expert testimony when suing a realtor for statutory violations because  
12 most states have held otherwise. Plaintiffs have not found one case that would require expert  
13 testimony in every instance of realtor malfeasance, as the remaining Defendants would require.  
14

15 Most states have concluded that expert testimony is not required in every instance to establish  
16 a realtor's breach of the realtor's statutory obligation to exercise ordinary care, i.e., that the realtor will  
17 exercise that skill and care that a reasonably prudent realtor would exercise during a real estate  
18 transaction. Specifically, in *Durbin v. Ross*, 276 Mont. 463, 476, 916 P.2d 758 (1996), the Supreme  
19 Court of Montana concluded that the plaintiff in that case properly pursued claims that sounded in the  
20 "nondisclosure of materials facts concerning the property. . .," and for statutory violations of  
21 Montana's Real Estate Licensing Act stemming from a realtor's failure to disclose facts related to a  
22 septic system (interestingly). Upon determining that the plaintiff in *Durbin* had pursued appropriate  
23 claims, the Supreme Court of Montana held that the failure to disclose properly the existence of "a  
24 legal septic system on property" did not require expert testimony<sup>9</sup> because it involved a "question  
25 resolvable by common knowledge and does not turn on a standard peculiarly within the knowledge of  
26  
27  
28

---

<sup>9</sup> The plaintiff in *Durbin* disclosed an expert during discovery but decided not to present the expert at trial. *Id.*



1 an expert witness.” *Id.* at 474. When considering the statutory violation claims arising under  
2 Montana’s Real Estate Licensing Act, the Supreme Court of Montana concluded that “the Real Estate  
3 Licensing Act establish[es] a standard of conduct to which brokers and salespersons must conform. .  
4 . ‘If not, they must bear the consequences.’ Accordingly, in the instant case, expert testimony was not  
5 required because a jury may determine whether the Realtors violated any of the provisions in the  
6 regulations or statutes.” *Id.* at 476 (citations omitted). Such is the case here, where the ordinary jury  
7 can determine whether the remaining Defendants violated Nevada’s realty statutes or regulations,  
8 because such violations are not solely within the knowledge of an expert witness.

10 Other states have also held that expert testimony is not required to establish the misdeeds of a  
11 realtor. In *Easton v. Strassburger*, 152 Cal.App.3d 90, 199 Cal.Rptr. 383, 393 (1984), a California  
12 Court of Appeals concluded that “none of the pertinent cases” regarding claimed misdeeds of a realtor  
13 “require expert testimony to establish the standard of care in the real estate industry. . .” or the breach  
14 of that standard. *Id.* at 392. Another Court in California dealing with a claim of realtor malfeasance  
15 noted that “[t]he correct rule on the necessity of expert testimony has been summarized by Bob Dylan:  
16 ‘You don’t need a weatherman to know which way the wind blows.’” *Jorgensen v. Beach n’ Bay*  
17 *Realty*, 125 Cal.App.3d 155, 163, 177 Cal.Rptr. 882 (1981)(citations omitted). In *Polyzos v. Cotrupi*,  
18 264 Va. 116, 563 S.E.2d 775, the Supreme Court of Virginia held that expert testimony is not required  
19 in every instance to establish a realtor’s statutory violation to exercise ordinary care when a “person  
20 of ordinary intelligence” would grasp that the realtor’s actions violated statutory provisions. *Id.* at  
21 122. In *Marchese v. Miller*, 364 Wis.2d 406, 866 N.W.2d 404 (2015), a Court in Wisconsin succinctly  
22 provided that “[r]equiring expert testimony is an extraordinary step. . . that should be taken only ‘when  
23 issues to be decided requires an analysis that would be difficult for the ordinary person in the  
24 community. . .’” *Id.* at \*7 (citations omitted). In that regard, “requiring expert testimony before a claim  
25 can get to [a] jury is an extraordinary step that should be ordered ‘only when unusually complex or  
26 esoteric issues are before the jury.’” *Id.* (citations omitted). In this case, the issues are not unusually  
27  
28

1 complex or esoteric and the alleged misdeeds of the remaining Defendants to disclose information that  
2 they knew or that they should have known is well within the grasp of the ordinary juror. As such,  
3 expert testimony should not be required under the circumstances of this case.

4 Moreover, NRS 645.257(3) does not specifically require expert testimony. This statute is  
5 starkly different from the statutory provisions of Nevada law that govern medical malpractice claims,  
6 which are found in NRS 41A. Under NRS 41A.071, to support a claim of medical malpractice, the  
7 plaintiff bringing the claim must supply an affidavit at the time the claim is filed that: (1) supports the  
8 allegations contained in the action; (2) is submitted by a medical expert who practices or has practiced  
9 in an area that is substantially similar to the type of practice engaged in at the time of the alleged  
10 professional negligence; (3) identifies the medical provider by name and describes the conduct that is  
11 alleged to be negligent; and (4) sets forth the facts related to each defendant concisely and directly.  
12 Even with this pre-filing requirement of expert testimony just to bring a claim for medical malpractice,  
13 the Nevada Supreme Court has held that expert testimony is not required in every instance where  
14 medical malpractice is claimed. *Szydel v. Markonan*, 121 Nev. 453, 117 P.3d 200 (2005). The holding  
15 in *Szydel* is instructive here, where the Nevada Supreme Court concluded that “it is unreasonable to  
16 require a plaintiff to expend unnecessary effort and expense to obtain an [expert opinion] from a  
17 medical expert when expert testimony is not required for the plaintiff to succeed at trial. . .” *Id.* at 460.

18 Other states have likewise held that expert testimony is not required in the medical malpractice  
19 context when the resort to “common knowledge” of the “ordinary juror” would eliminate the need for  
20 expert testimony. *Ewing v. Northridge Hosp. Medical Center*, 120 Cal.App.4th 1289, 16 Cal.Rptr.  
21 591 (2014). Such testimony is likewise not required when the misdeed constitutes a “blunder so  
22 egregious that a layman is capable of comprehending its enormity. . .” *Haugene v. Bambrick*, 663  
23 N.W. 2d 175, 180 (2003)(N.D.). In other contexts, such as in insurance broker liability claims, other  
24 states have concluded that expert testimony is not required “unless technical insurance issues beyond  
25 the understanding of the average trier of fact are involved.” *Fillinger v. Northwest Agency, Inc. of*  
26  
27  
28

1 *Great Falls*, 283 Mont. 71, 84,938 P.2d 1347 (1997). Finally, even in attorney malpractice cases,  
2 expert testimony is not always required to establish the misdeeds of an attorney. *Allyn v. McDonald*,  
3 112 Nev. 68, 910 P.2d 263 (2000).

4 In this case, the remaining Defendants either failed to disclose material information that they  
5 knew or that they should have known during this transaction or they did not. *It is that simple*. No  
6 expert testimony is required to prove any of the remaining Defendants' misdeeds, though Plaintiffs  
7 have offered the testimony of Sherrie Cartinella to establish what the remaining Defendants should  
8 have known regarding the septic system. That testimony itself is not required by NRS 645.257(3), but  
9 Plaintiffs concluded that offering Ms. Cartinella's testimony relating to what the remaining Defendants  
10 should have known about the septic system made sense because the "should have known" standard in  
11 this context could be confusing to the ordinary juror. On the remaining issues related to the failure to  
12 list the correct square footage and listing the property as "single family," this office made the decision  
13 not to offer expert testimony to avoid what could turn into a battle of experts when these remaining  
14 issues are so clearly established by the facts. Plaintiffs were not required to offer expert testimony on  
15 any of their claims and the failure to do so is not fatal to Plaintiffs' case. It would be unreasonable for  
16 the Court to require Plaintiffs to present expert testimony that is not necessary. Accordingly, the Court  
17 should deny Defendants' Motions in Limine Nos. 2 and 3.

18  
19  
20 **c. Sherrie Cartinella qualifies as an Expert in this Matter**

21 Toward the conclusion of Motion in Limine No. 3, Defendants set forth what they believe to  
22 be the standard by which an expert is to be evaluated in this and in all other realty transactions.  
23 Specifically, Defendants find fault with Sherrie Cartinella because she "can not [sic] comply with the  
24 mandate of the statute. . ." because "she was never an instructor. . ." of potential realty licensees.  
25 (Motion in Limine No. 3 at 7:8-12). Thus, according to the Defendants, only experts who have taught  
26 classes to potential realty licensees under NRS 645.343 and NRS 645.345 can act as experts in cases  
27 such as this. This is an absurd argument and unsupported by the law. Moreover, this is unsupported  
28

1 by the Defendants' own actions in this case, because none of their designated experts have indicated  
2 that they have acted as "an instructor" of potential realty licensees. Defendants also seem to argue  
3 that Ms. Cartinella must utter "magic words" in her report specifically related to a breach of the  
4 statutory standard of care that applies to realtors.

5         Instead, to qualify as an expert in this case, it must be shown that: (1) Ms. Cartinella is qualified  
6 in an area of scientific, technical or other specialized knowledge; (2) the specialized knowledge will  
7 assist the trier of fact to understand the evidence or to determine a fact in issue; and (3) the testimony  
8 is limited to matters within the scope of the expert's specialized knowledge. *Perez v. State*, 129 Nev.  
9 Adv. Op. 90, 313 P.3d 862 (2013). In making this evaluation, the Court has wide discretion to  
10 determine the admissibility of expert testimony on a case-by-case basis. *Brant v. State*, 130 Nev. Adv.  
11 Op. 97, 340 P.3d 576 (2014). Here, Ms. Cartinella is most qualified, as set forth in her curriculum  
12 vitae that accompanied the disclosure of her expert report, which is attached hereto as **Exhibit 12**. Ms.  
13 Cartinella's specialized knowledge as a real estate agent and a broker will be of assistance to the trier  
14 of fact in determining what the Defendants should have known regarding the septic system at this  
15 property. Her testimony will also be limited to those matters within her scope of knowledge.

16         Interestingly, in Motion in Limine No. 2, where Defendants do not seek to strike Ms. Cartinella  
17 as an expert, Defendants acknowledge the utility of Ms. Cartinella's testimony when they admit that  
18 "[t]he expert report of the Plaintiff states in summary that the listing broker should have known that  
19 the septic tank was a one thousand gallon tank which would not have been sufficient to service both  
20 the house and the mother in law quarters and the failure to disclose these facts is 'detrimental to the  
21 buyer.'" (Motion in Limine No. 2 at 5:4-8). That is exactly correct. Ms. Cartinella's testimony will  
22 assist the trier of fact to determine what the Defendants should have known regarding the septic system  
23 and what they should have disclosed to the Plaintiffs, which are issues upon which expert testimony  
24 is appropriate, though not required as set forth above. Ms. Cartinella is qualified to testify as an expert,  
25 her expert report outlines what the Defendants knew or should have known regarding the septic system  
26 and what they should have disclosed to the Plaintiffs regarding the septic system.



Ms. Cartinella is also not required to utter “magic words” in her expert report. As argued in Defendants’ Motion in Limine No. 3 at 7:13-17, Defendants would require Ms. Cartinella to say specifically in her expert report that “the Defendants violated the standard of care applicable to realtors because of [insert violation of this standard here].” The use of these “magic words” that Defendants would impose upon Ms. Cartinella is not required by any statute, case or rule governing expert testimony. Instead, Ms. Cartinella has expressly identified the Defendants’ violation of NRS 645.252(1)(a) in her expert report and during her deposition by stating that the Defendants knew or should have known that the septic system was insufficient for this property and that they should have disclosed what they knew or should have known to the Plaintiffs. Ms. Cartinella has opined and will opine at trial that these Defendants violated the duties identified in NRS 645.252(1)(a) when they failed to disclose material and relevant information regarding the septic system found at the property that they knew or that they should have known. All the other violations of NRS 645.252 outlined above are so blatant and so obvious that expert testimony is not required to establish these violations. The damages flowing from each of the Defendants’ misdeeds are also well within the grasp of the ordinary jury and expert testimony to support these damages is also not required. Finally, the evidence shows that the Defendants knew or should have known more about the septic system than what was told to them by their clients, yet they did nothing with that knowledge.

### **III. CONCLUSION**

Defendants’ Motions in Limine Nos. 2 and 3 both appear to argue that Plaintiffs do not offer satisfactory expert witness testimony in this case. However, to establish the misdeeds of a realtor in Nevada and in most other states, expert testimony is not required if the alleged misdeeds are within the grasp and knowledge of the ordinary member of the community. What the remaining Defendants are accused of doing, or not doing, in this case is not something that is solely within the knowledge of an expert witness. This case does not involve unusually complex or esoteric issues, for which expert testimony might be required. Instead, this case is more akin to deciding which way the wind is blowing, for which a weatherman is not needed. Plaintiffs do wish to present the testimony of Sherri

1 Cartinella, because Plaintiffs believe that her testimony will assist the trier of fact to determine issues  
2 relevant to this case. Because she is qualified to testify and because her testimony will be helpful to  
3 the trier of fact, the Court should permit her to do so. Ms. Cartinella is not required to utter “magic  
4 words” to establish a breach of NRS 645.252. Accordingly, the Court should deny Defendants’  
5 Motions in Limine Nos. 2 and 3.  
6

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

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

10 DATED this 23rd day of February, 2018.

11 MOORE LAW GROUP, PC

12  
13 By /s/ John D. Moore

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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Moore Law Group, PC, and that on  
3 February 23, 2018, I caused the foregoing document to be served on all parties to this action by:

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

6 ☐ personal delivery

7 ☐ facsimile (fax)

8 ☐ Federal Express/UPS or other overnight delivery

9 ☐ Reno/Carson Messenger Service

10 ☒ E-service via flex filing system

11 to the following:

12 C. Nicholas Pereos  
13 1610 Meadow Wood Lane, Suite 202  
14 Reno, NV 89502  
15

16  
17 /s/ Genevieve DeLucchi  
18 An Employee of Moore Law Group, PC  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## INDEX OF EXHIBITS

Exhibit Number	Description of Exhibit	No. of Pages
1	Listing	2
2	Appraisal	23
3	Residential Listing Input Form	3
4	Excerpts of Deposition of A.J. Johnson	11
5	Offer	6
6	Counteroffer	1
7	Email re appraisal	3
8	Excerpts of Depositions of Pam Boko Molini and Forrest Barbee	12
9	Emails re septic system	2
10	2 <sup>nd</sup> set of Emails re septic system	2
11	Septic system report	4
12	Report of Sherrie Cartinella	13

# EXHIBIT 1

# EXHIBIT 1



**MLS All Fields**

**MLS #** 0014058

**Status** SOLD

**Address** 20957 Eaton Rd.

**Unit #**
**City** Reno

**State** NV

**Zip** Nev -89521

**Area** 174Pleasant Valley

**Asking Price** \$399,900

**Class** Residential

**Type** Site/Stick Built

**Property Information**

<b>Bedrooms #</b>	3	<b>County</b>	Washoe	<b>Common Interest</b>	No
<b>Baths #Full or</b>	2	<b>Parcel #</b>	045337711	<b>Attached Common Wall</b>	No
<b># Half Baths</b>	0	<b>Taxes \$</b>	\$2,734.10	<b>Water Rights</b>	No
<b># Garage</b>	4	<b>Assessment \$</b>	0.00	<b>HOA</b>	No
<b># Carport</b>	0			<b>HOA/Mgt Co</b>	
<b>Total Parking</b>	4	<b>Zoning Actual</b>	Single Family	<b>Assoc Fee \$</b>	
<b>Stories</b>	1 Story	<b>Source of Zoning</b>	Assessor	<b>Assoc Trans Fee \$</b>	
<b>Unit Level</b>		<b>Horses Okay</b>	Yes	<b>Setup Fee</b>	
<b>Total Living Space</b>	3880	<b>Elementary School</b>	Pleasant Valley	<b>Other Fee</b>	
<b>Source of SqFt</b>	Assessor	<b>Middle School</b>	Depoali	<b>CC/R Restrictions</b>	No
<b>Price per SQFT</b>	103.07	<b>High School</b>	Galena		
<b>Year Built</b>	1986	<b>IPES</b>			
<b>Acreage</b>	1.12	<b>Coverage</b>			
<b>Construction</b>	Frame				
<b>Xstreet/Directions</b>	Pleasant Valley Road To Eaton				

**Unconverted Manuf. Housing Only**  
**Serial #** **Width**  
**HUD #** **Skirting**  
**Personal Property Taxes**

**Agent / Showing Information**

<b>Agent</b>	James E Johns Sr.	<b>Showing Instructions</b>	Call Listing Office
<b>Agent E-mail</b>		<b>To Show Contact</b>	775-856-2525
<b>Listing Office 1</b>	J.E. Johns & Associates	<b>Office:</b>	775-856-2525
<b>Listing Agent 2</b>		<b>Occupied By</b>	Owner
<b>Listing Agent 2</b>		<b>Contact Name</b>	James E. Johns
<b>Listing Office 2</b>		<b>Contact Phone</b>	775-856-2525

**Listing Information**

<b>Comm to BB</b>	2.50	<b>CBB \$ or %\$</b>		<b>Original Price</b>	\$399,900	<b>Listing Date</b>	12/1/2012
<b>Variable Rate</b>		Yes		<b>Days on Market</b>	89	<b>Input Date</b>	12/2/2012 3:29 PM
<b>Sliding Scale</b>		No		<b>Days On MLS</b>	88	<b>Expiration Date</b>	12/1/2013
<b>Sale/Lease</b>		For Sale		<b>Cumulative DOM</b>	160	<b>Update Date</b>	2/27/2015
<b>Listing Type</b>		Exclusive Right		<b>Cumulative</b>	159	<b>Status Date</b>	3/5/2013
<b>Possession</b>		COE		<b>Agent Hit Count</b>	178	<b>Price Date</b>	3/5/2013
<b>Limited Service Listing</b>		No		<b>Client Hit Count</b>	96	<b>HotSheet Date</b>	3/5/2013
<b>Special Conditions of</b>		None				<b>Off Market Date</b>	2/28/2013
<b>Fannie Mae First</b>		No					
<b>HUD</b>		No					

**Internet Display Options**

<b>Internet Display</b>	Y	<b>Automated Valuation</b>	Yes
<b>Internet Plus</b>	No	<b>Commentary/Reviews</b>	No

NO IMAGE  
AVAILABLE

NO IMAGE  
AVAILABLE

NO IMAGE  
AVAILABLE

NO IMAGE  
AVAILABLE

NO IMAGE  
AVAILABLE

NO IMAGE  
AVAILABLE

NO IMAGE  
AVAILABLE

NO IMAGE  
AVAILABLE

NO IMAGE  
AVAILABLE

NO IMAGE  
AVAILABLE

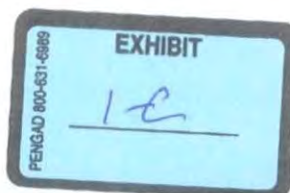
NO IMAGE  
AVAILABLE

NO IMAGE  
AVAILABLE

120014058

12/02/2017

Page 1 of 2



JJvL 0067

RA 0093

# Features

<b>GARAGE TYPES</b>	Attached, Detached, Large Door Opener(s), RV Access/Parking	<b>FOUNDATION</b>	Concrete/Crawl Space
<b>HOA AMENITIES</b>	No Amenities	<b>EXTERIOR</b>	Wood Siding
<b>ADJOINS</b>	Street	<b>ROOF</b>	Asphalt, Composition/Shingle
<b>VIEW</b>	Yes, Mountain, Valley, Desert	<b>HEATING/COOLING</b>	Propane, Hot Water System
<b>PERSONAL PROPERTY INCL</b>	Storage Shed	<b>WATER HEATER</b>	Propane
<b>INTERIOR FIXTURES</b>	Blinds/Shades, Smoke Detector(s), Security System/Owned	<b>WINDOWS</b>	Double Pane
<b>LIVING ROOM</b>	Separate/Formal, Fireplace/Woodstove/Pellet, High Ceiling	<b>FIREPLACE</b>	Yes, Pellet Stove
<b>DINING ROOM</b>	Separate/Formal	<b>UTILITIES</b>	Electricity, Propane, Well-Private, Septic
<b>FAMILY ROOM</b>	None	<b>LANDSCAPED</b>	Fully Landscaped
<b>KITCHEN</b>	Garbage Disposal, Microwave Built-In, Island, Pantry, Breakfast Bar	<b>SPRINKLERS</b>	Full Sprinklers, Front, Back, Drip-Full, Drip-Front, Drip-Back, Automatic
<b>MASTER BEDROOM</b>	Walk-In Closet, Shower Stall	<b>FENCED</b>	Full, Back
<b>LAUNDRY AREA</b>	Garage, Cabinets	<b>PATIO/DECK</b>	Deck
<b>OTHER ROOMS</b>	Yes, Office/Den(not incl bdrm), Bonus Room, Workshop, Guest House, In-Law Quarters	<b>EXTERIOR FEATURES</b>	Dog Run, Barn-Outbuildings, Workshop
<b>FLOOR COVERING</b>	Carpet, Ceramic Tile	<b>WATER TEST</b>	No
		<b>ACCESS</b>	Public
		<b>TOPOGRAPHY</b>	Level, Upslope
		<b>OWNER(S) MAY SELL</b>	Conventional, FHA, VA, Cash
		<b>GREEN FEATURES</b>	None

## MLS Remarks

REGULAR SALE..NO FREEWAY NOISE AND THIS IS A BEAUTIFUL PEACEFUL QUITE GARDEN OF PARADISE. BRING THE HORSE PLENTY OF ROOM AND PASTURE AREA - THREE SEPERATE UNITS ON THE PROPERTY INLAW QUARTERS OR GUEST HOUSE, OFFICE OR STUDIO OR TACK ROOM OR OFFICE THE POSSIBILITIES ARE ENDLESS. THIS PROPERTY IS LOCATED 30 MINUTES TO ANYWHERE (CARSON CITY, VIRGINIA CITY, LAKE TAHOE) HALF WAY BETWEEN CARSON AND RENO. GREAT SCHOOLS AND THE PROPERTY IS MATICULOUS AND MOVE IN READY. EASY TO SHOW AND COMPLETELY REMODELED...

## Extended Remarks

## Private Remarks

Seller needs a closing to conincide with the close of escrow of their new home.

## Sold Information

**Selling Agent** Brian F Kincannon - 775-338-2527  
**Selling Office 1** Keller Williams Group One Inc. - Office: 775-823-8787  
**Selling Agent 2**  
**Selling Office 2**

**Sold Price** \$385,000  
**Sold Price per SqFt** 99.23  
**How Sold** Conventional  
**Contract Date** 1/3/2013  
**Closing Date** 2/28/2013

120014058

This information is deemed reliable, but not guaranteed.

12/02/2017

Page 2 of 2

JJvL 0068

RA 0094

# EXHIBIT 2

# EXHIBIT 2



RENO, NV 89509

Telephone Number: (775) 337-0988

Fax Number: (775) 337-0933

DATE

09/05/2012

TO:

REYNOLDS  
20957 EATON ROAD  
RENO, NV 89521

Telephone Number:

Fax Number:

Alternate Number:

E-Mail:

REFERENCE

Internal Order #:

Lender Case #:

Client File #: 137312

Main File # on form: 137312

Other File # on form:

Federal Tax ID:

Employer ID:

DESCRIPTION

Lender: REYNOLDS

Client: REYNOLDS

Purchaser/Borrower: REYNOLDS

Property Address: 20957 EATON RD

City: RENO

County: WASHOE

State: NV

Zip: 89521

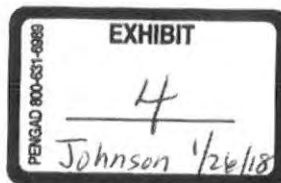
Legal Description: PARCEL MAP #292 LOT #2

FEES

AMOUNT

Appraisal

400.00



SUBTOTAL

400.00

PAYMENTS

AMOUNT

Check #: Date: Description: PAID IN FULL

400.00

Check #: Date: Description:

Check #: Date: Description:

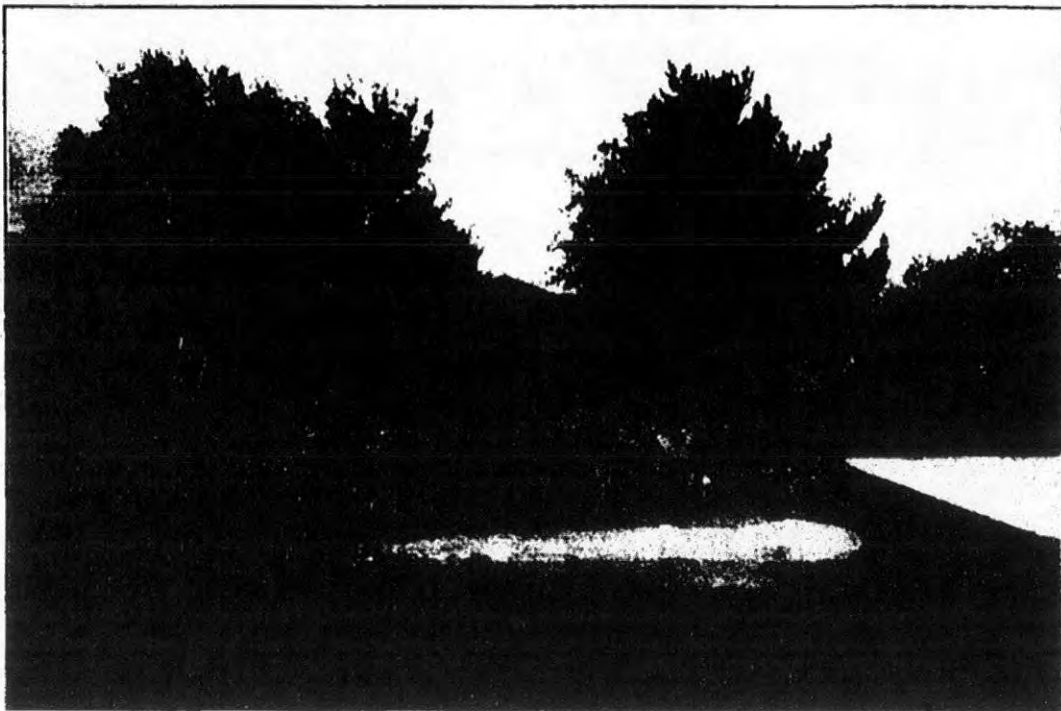
REY00067

SUBTOTAL

400.00

RA 0096

# TABLE OF CONTENTS



Invoice .....	1
Table of Contents .....	2
USPAP Identification .....	3
GP Restricted Use .....	4
Additional Listings 1-3 .....	6
Subject Photos .....	7
Subject Photos .....	8
Subject Photos .....	9
Subject Photos .....	10
Subject Photos .....	11
Subject Photos .....	12
Subject Photos .....	13
Subject Photos .....	14
Comparable Photos 1-3 .....	15
Listings Photos 1-3 .....	16
Info Sheet .....	17
Info Sheet .....	18
Parcel Map .....	19
Building Sketch (Page - 1) .....	20
Location Map .....	21
Flood Map .....	22
Location Map .....	23

REY00068

RA 0097



Borrower/Client	REYNOLDS	File No.	137312
Property Address	20957 EATON RD		
City	RENO	County	WASHOE
Lender	REYNOLDS	State	NV
		Zip Code	89521

### APPRAISAL AND REPORT IDENTIFICATION

This Appraisal Report is one of the following types:

- ☐ Self Contained (A written report prepared under Standards Rule 2-2(a), pursuant to the Scope of Work, as disclosed elsewhere in this report.)  
☐ Summary (A written report prepared under Standards Rule 2-2(b), pursuant to the Scope of Work, as disclosed elsewhere in this report.)  
☒ Restricted Use (A written report prepared under Standards Rule 2-2(c), pursuant to the Scope of Work, as disclosed elsewhere in this report, restricted to the stated intended use by the specified client or intended user.)

### Comments on Standards Rule 2-3

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- Unless otherwise indicated, I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- Unless otherwise indicated, I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification (if there are exceptions, the name of each individual providing significant real property appraisal assistance is stated elsewhere in this report).

### Comments on Appraisal and Report Identification

Note any USPAP related issues requiring disclosure and any State mandated requirements:

#### APPRAISER:

Signature:   
 Name: RICK W. JOHNSON  
 Designation: CERTIFIED RESIDENTIAL APPRAISER  
 Date Signed: 09/05/2012  
 State Certification #: A.0002907-CR  
 or State License #: \_\_\_\_\_  
 State: NV  
 Expiration Date of Certification or License: 04/30/2012  
 Inspection of Subject:  
☐ None ☒ Interior ☐ Exterior  
 Date of Inspection: 09/05/2012

#### Co-Appraiser:

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Designation: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_  
 State Certification #: \_\_\_\_\_  
 or State License #: \_\_\_\_\_  
 State: \_\_\_\_\_  
 Expiration Date of Certification or License: \_\_\_\_\_  
 Inspection of Subject:  
☐ None ☐ Interior ☐ Exterior  
 Date of Inspection: \_\_\_\_\_



Market Area Name: PLEASANT VALLEY Map Reference: 174 Census Tract: 0032.03 ☐ Flood Hazard

The purpose of this appraisal is to develop an opinion of: ☒ Market Value (as defined), or ☐ other type of value (describe)

This report reflects the following value (if not Current, see comments): ☒ Current (the Inspection Date is the Effective Date) ☐ Retrospective ☐ Prospective

Approaches developed for this appraisal: ☒ Sales Comparison Approach ☐ Cost Approach ☐ Income Approach ☐ Other:

Property Rights Appraised: ☒ Fee Simple ☐ Leasehold ☐ Leased Fee ☐ Other (describe)

Intended Use: ESTABLISH MARKET VALUE FOR A PROPOSED SALE

Under USPAP Standards Rule 2-2(c), this is a Restricted Use Appraisal Report, and is intended only for the sole use of the named client. There are no other intended users. The client must clearly understand that the appraiser's opinions and conclusions may not be understood properly without additional information in the appraiser's work file.

Client: REYNOLDS Address: 20957 EATON ROAD, RENO, NV 89521

Appraiser: RICHARD LACE Address: 3495 LAKESIDE DR. #25, RENO, NV 89509

FEATURE	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3
Address	20957 EATON RD Reno, NV 89521	20890 AMES LN RENO, NV 89521	125 ANDREW LN RENO, NV 89521	20685 COOKE DR RENO, NV 89521
Proximity to Subject		0.12 MILES NE	1.24 MILES E	0.24 MILES NE
Sale Price	\$	\$ 287,000	\$ 402,000	\$ 370,000
Sale Price/GLA	\$ 138.33/sq.ft.	\$ 159.09/sq.ft.	\$ 115.95/sq.ft.	\$ 131.07/sq.ft.
Data Source(s)		MLS #110003792	MLS #120000282	MLS #110002711
Verification Source(s)		#4120388 WASHOE COUNTY	#4088753 WASHOE COUNTY	#4141634 WASHOE COUNTY
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Sales or Financing	0	CASH	VA	OWER
Concessions		DOM = 444	DOM = 56	DOM = 537
Date of Sale/Time		06/08/2012	02/29/2012	08/15/2012
Rights Appraised	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Location	AVERAGE	AVERAGE	AVERAGE	AVERAGE
Site	1.12 ACRES	1.26 ACRES	.97 ACRES	1.06 AC
View	MOUNTAIN	MOUNTAIN	MOUNTAIN	MOUNTAIN
Design (Style)	RANCH	RANCH	RANCH	SPLIT LEVEL
Quality of Construction	AVERAGE	AVERAGE	AVERAGE	AVERAGE
Age	26A/5E	46A/25E	10	35A/5E
Condition	GOOD	AVERAGE	GOOD	GOOD
Above Grade	Total Bdrms Baths	Total Bdrms Baths	Total Bdrms Baths	Total Bdrms Baths
Room Count	6 3 2	7 3 2	8 3 3	9 5 3
Gross Living Area	2,180 sq.ft.	1,804 sq.ft.	3,467 sq.ft.	2,823 sq.ft.
Basement & Finished	NONE	1804 SF	NONE	NONE
Rooms Below Grade	N/A	N/A	N/A	N/A
Functional Utility	AVERAGE	AVERAGE	AVERAGE	AVERAGE
Heating/Cooling	FAU/CAC	FAU/CAC	FAU/CAC	FAU/CAC
Energy Efficient Items	INSULATION	INSULATION	INSULATION	INSULATION
Garage/Carport	G2AT/BARN/SHOP	G-3/ATTACH	G-3/ATTACH	G4/ATT, G2DT
Porch/Patio/Deck	PRCH, PT, GZBO	PRCH, DK, CVDPT	PORCH, DECK, PT	PCH, PT, BLCNY
EXTRAS	2 PLT STVS	2-FPL'S	FIREPLACE	FIREPLACE
EXTRAS	GUEST HOUSE	NONE	NONE	NONE
EXTRAS	NONE	NONE	NONE	NONE
EXTRAS	NONE	NONE	NONE	NONE
EXTRAS	GOOD LANDSCAPE	GOOD LANDSCAPE	GOOD LANDSCAPE	GOOD LANDSCAPE
Net Adjustment (Total)		<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 53,320	<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 26,600	<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 7,065
Adjusted Sale Price of Comparables		Net 18.6 % Gross 50.0 % \$ 340,320	Net 8.6 % Gross 22.2 % \$ 428,600	Net 1.9 % Gross 22.7 % \$ 377,065

Summary of Sales Comparison Approach ALL COMPARABLES WERE TAKEN FROM THE IMMEDIATE MARKET AREA AND SUPPORT THE FINAL VALUE CONCLUSION. THE SUBJECT IS CONSIDERED COMPATIBLE WITH THE MARKET AREA. THERE HAVE BEEN FEW RESALES IN THE PLEASANT VALLEY AREA OVER THE PAST 12 MONTHS. WITH THE OPENING OF THE NEW I 580 FREEWAY EXTENSION, TRAFFIC HAS SLOWED DOWN TREMENDOUSLY WHICH IN TURN HAS RETURNED PLEASANT VALLEY TO THE SLEEPY BEDROOM COMMUNITY IT ONCE WAS. THIS SHOULD HELP WITH THE MARKETABILITY WITH THE SUBJECT PROPERTY.


THE SUBJECT ALSO HAS THE UTILITY OF A GUEST HOUSE. THE GUEST HOUSE IS 1460 SF. THE WASHOE COUNTY ASSESSOR SHOWS THE GUEST HOUSE AND A LOFT ABOVE THE GUEST HOUSE. OVER TIME, THE GUEST HOUSE HAS BEEN IMPROVED TO BE MORE IN LINE WITH THE QUALITY OF THE MAIN RESIDENCE. HOWEVER, THE IMPROVEMENTS MAY OR MAY NOT BE LEGAL AND FOR APPRAISAL PURPOSES, WERE GIVEN LITTLE VALUE. WITH THAT SAID, SINCE THE MARKET AREA TYPICALLY HAS OUT BUILDINGS, FINISHED AND UNFINISHED GARAGES, BARNs AND GUEST HOUSES, THE IMPROVEMENTS TO THE SUBJECT ARE CONFORMING FOR THE AREA AND MAY CONTRIBUTE TO THE OVERALL MARKETABILITY OF THE SUBJECT PROPERTY.

SINCE THERE ARE FEW NON ADVERSELY EFFECT HOMES ON THE MARKET AND THIS WILL BE THE FIRST LISTING SINCE THE OPENING OF THE I580 EXTENSION, IT IS MY RECOMMENDATION THAT THE PROPOSED LIST PRICE START AT \$399,900. THE FINAL OPINION OF VALUE IS ROUNDED AT \$400,000.

REYNOLDS

RA 0099

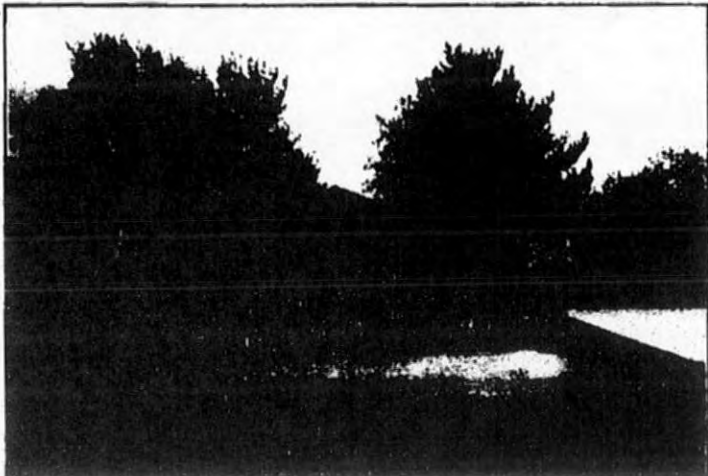


<b>TRANS</b>	2nd Prior Subject Sale/Transfer	
	Date:	
	Price:	
<b>MARKET</b>	Source(s):	
	Subject Market Area and Marketability: <u>THE MARKET AREA HAS EXPERIENCED A DECLINE IN THE MEDIAN HOUSING PRICES SINCE THE HEIGHT OF THE MARKET IN AUGUST OF 2005. FINANCING HAS BEEN CONVENTIONAL AND GOVERNMENTAL WITH NO SPECIAL CONDITIONS, CONCESSIONS, OR BUY DOWNS KNOWN.</u>	
<b>SITE</b>	Site Area: <u>1.12 ACRES</u>	Site View: <u>MOUNTAIN</u>
	Zoning Classification: <u>LDS</u>	Topography: <u>FLAT AND UNSLOPED</u> Drainage: <u>APPEARS ADEQUATE</u>
	Description: <u>ALLOWS FOR SFR 1 ACRE MIN.</u>	
	Zoning Compliance: <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal nonconforming (grandfathered) <input type="checkbox"/> illegal <input type="checkbox"/> No zoning	
	Highest & Best Use: <input checked="" type="checkbox"/> Present use, or <input type="checkbox"/> Other use (explain)	
	Actual Use as of Effective Date: <u>SINGLE FAMILY RESIDENTIAL</u>	Use as appraised in this report: <u>SINGLE FAMILY RESIDENTIAL</u>
	Opinion of Highest & Best Use: <u>SINGLE FAMILY RESIDENTIAL</u>	
	FEMA Spec'l Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No FEMA Flood Zone <u>X</u>	
	FEMA Map # <u>32031C3332G</u> FEMA Map Date <u>03/16/2009</u>	
	Site Comments: <u>ZONE X DOES REQUIRE FLOOD INSURANCE. NO ADVERSE EASEMENTS, ENCROACHMENTS OR CONDITIONS WERE NOTED. TITLE REPORT NOT REVIEWED.</u>	
<b>IMPROVEMENTS</b>	Improvements Comments: <u>THE SUBJECT HAS A FUNCTIONAL FLOOR PLAN WITH LESS THAN NORMAL PHYSICAL DEPRECIATION. NO FUNCTIONAL OR EXTERNAL OBSOLESCENCE WAS NOTED. THE SUBJECT IS RATED AT AVERAGE QUALITY CONSTRUCTION.</u>	
<b>RECONCILIATION</b>	Indicated Value by: Sales Comparison Approach \$ <u>400,000</u>	
	Indicated Value by: Cost Approach (If developed) \$ _____	
	Indicated Value by: Income Approach (If developed) \$ _____	
	Final Reconciliation <u>THE SALES COMPARISON APPROACH TO VALUE IS BELIEVED TO BE THE BEST SUITED TO THE APPRAISAL OF SINGLE FAMILY RESIDENCES AND THE GREATEST WEIGHT IS GIVEN TO THIS INDICATED VALUE. THE COST APPROACH AND THE INCOME APPROACH ARE NEITHER APPLICABLE NOR NECESSARY.</u>	
<b>ATTACHMENTS</b>	This appraisal is made <input checked="" type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, <input type="checkbox"/> subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair: _____	
	<input type="checkbox"/> This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.	
	Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: \$ <u>400,000</u> as of: <u>400,000</u> , which is the effective date of this appraisal.	
	If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.	
	A true and complete copy of this report contains _____ pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.	
<b>SIGNATURES</b>	Attached Exhibits:	
	<input checked="" type="checkbox"/> Scope of Work <input checked="" type="checkbox"/> Limiting Cond./Certifications <input type="checkbox"/> Narrative Addendum <input checked="" type="checkbox"/> Photograph Addenda <input checked="" type="checkbox"/> Sketch Addendum <input checked="" type="checkbox"/> Map Addenda <input type="checkbox"/> Additional Sales <input type="checkbox"/> Cost Addendum <input checked="" type="checkbox"/> Flood Addendum <input type="checkbox"/> Manuf. House Addendum <input type="checkbox"/> Hypothetical Conditions <input type="checkbox"/> Extraordinary Assumptions <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____	
	Client Contact: _____ Client Name: <u>REYNOLDS</u>	
	E-Mail: _____ Address: <u>20957 EATON ROAD, RENO, NV 89521</u>	
	<div style="display: flex; justify-content: space-between;"> <div> APPRaiser     Appraiser: <u>RICHARD LACEY</u>  Company: <u>LACE APPRAISALS, LLC.</u>  Phone: <u>(775) 337-0988</u> Fax: <u>(775) 201-1697</u>  E-Mail: <u>richard@laceappraisals.com</u> </div> <div> SUPERVISORY APPRAISER (If required)  or CO-APPRAISER (If applicable)   Supervisory or  Co-Appraiser Name: _____  Company: _____  Phone: _____ Fax: <u>REY00071</u>  E-Mail: _____ </div> </div>	

RA 0100

Last Price Revision Date	04/12/2012			07/23/2012					
Data Source(s)	MLS #120004416			MLS #120C09009					
Verification Source(s)	ASSESSOR			ASSESSOR					
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.	DESCRIPTION	+(-) \$ Adjust.
Sales or Financing Concessions	0	NONE KNOWN		NONE KNOWN					
Days on Market		NONE KNOWN		NONE KNOWN					
Rights Appraised		58		52					
Location	Fee Simple	Fee Simple		Fee Simple					
Site	AVERAGE	AVERAGE		AVERAGE					
View	1.12 ACRES	1 ACRE		2.03 ACRES					
Design (Style)	MOUNTAIN	MOUNTAIN		MOUNTAIN					
Quality of Construction	RANCH	RANCH		COLONIAL					
Age	AVERAGE	AVERAGE		AVERAGE					
Condition	26A/5E	49A/10E	+5,000	54A/15E	+10,000				
Above Grade Room Count	GOOD	GOOD		GOOD					
Gross Living Area	Total Bdrms Baths	Total Bdrms Baths		Total Bdrms Baths		Total Bdrms Baths			
Basement & Finished Rooms Below Grade	6 3 2	7 3 2	+4,000	7 4 3	-5,000				
Functional Utility	2,180 sq.ft.	1,610 sq.ft.	+25,650	2,823 sq.ft.	-28,935				
Heating/Cooling									
Energy Efficient Items	NONE	NONE		NONE					
Garage/Carport	N/A	N/A		N/A					
Porch/Patio/Deck	AVERAGE	AVERAGE		AVERAGE					
EXTRAS	FAU/CAC	FAU/NONE	+1,500	FAU/NONE	+1,500				
EXTRAS	INSULATION	INSULATION		INSULATION					
EXTRAS	G2AT/BARN/SHOP	G-2/ATTACH		G-3/BUILTIN					
EXTRAS	PRCH, PT, GZBO	PORCH, DECK, PT		PORCH, DECK, PT					
EXTRAS	2-PLTSTVS	FIREPLACE		2 FIREPLACES					
EXTRAS	14609F GSTHSE	NONE	+43,800	NONE	+43,800				
EXTRAS	NONE	NONE		NONE					
EXTRAS	NONE	NONE		NONE					
EXTRAS	GD LANDSCPE	GD LANDSCPE		NO LANDSCAPE	+5,000				
Net Adjustment (Total)		<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ 79,950	<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ 26,365	<input type="checkbox"/> + <input type="checkbox"/> -	\$		
Adjusted List Price of Comparables		Net 24.5 %		Net 7.9 %		Net %			
Comments		Gross 24.5 %	\$ 405,950	Gross 28.1 %	\$ 361,265	Gross %	\$		

REY00072



### Subject Front

20957 EATON RD

Sales Price

Gross Living Area 2,180

Total Rooms 6

Total Bedrooms 3

Total Bathrooms 2

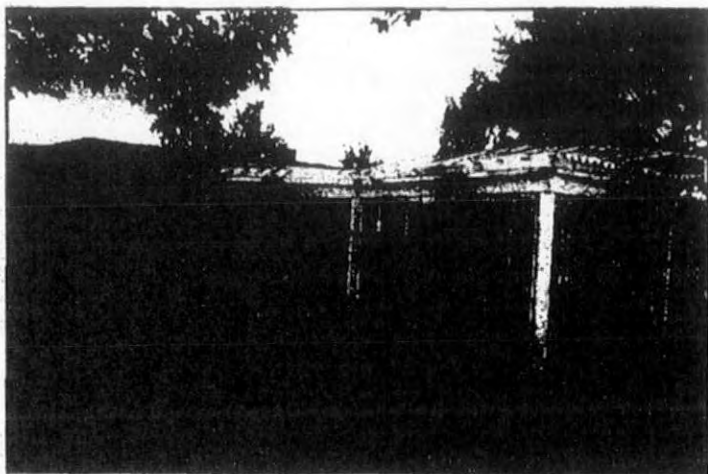
Location AVERAGE

View MOUNTAIN

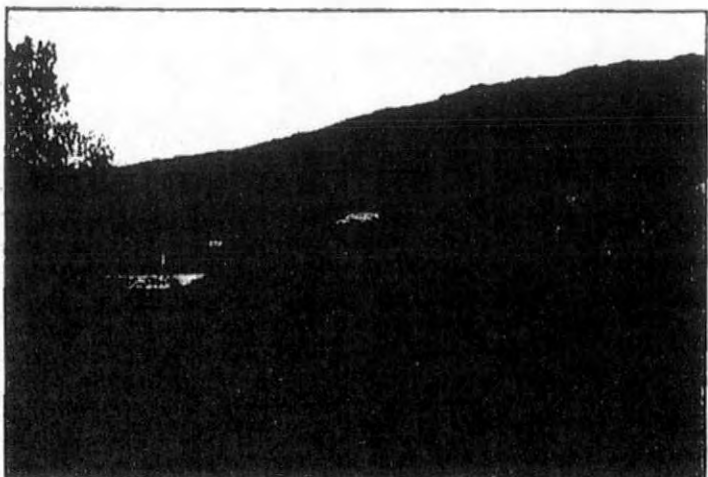
Site 1.12 ACRES

Quality AVERAGE

Age 26A/5E



### Subject Rear

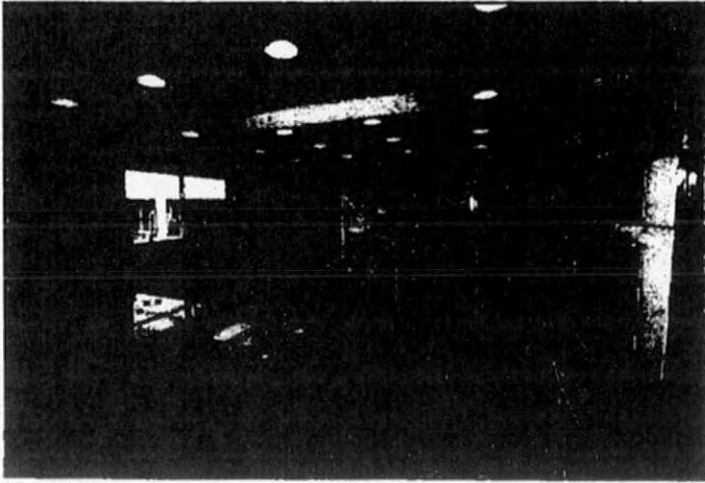


### Subject Street

REY00073

RA 0102





### Kitchen

20957 EATON RD

Sales Price

Gross Living Area 2,180

Total Rooms 6

Total Bedrooms 3

Total Bathrooms 2

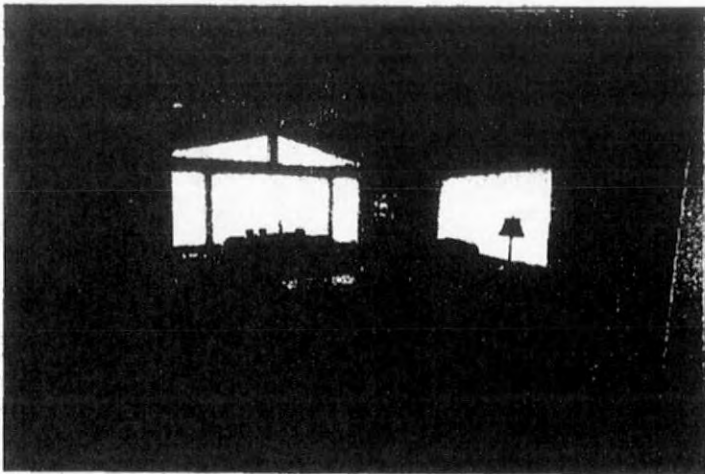
Location AVERAGE

View MOUNTAIN

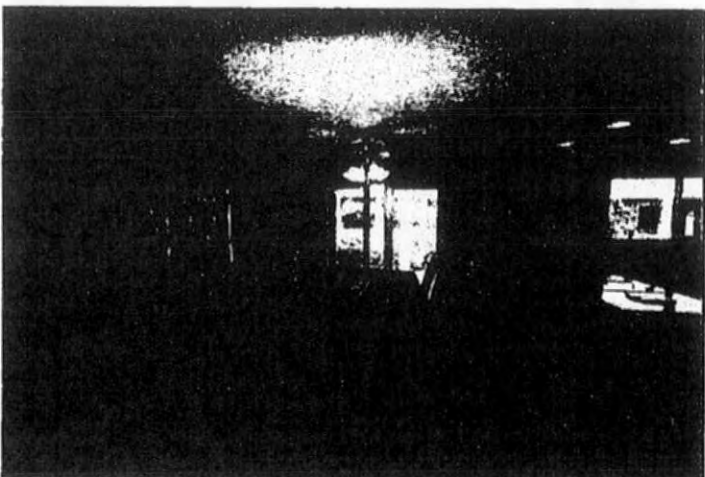
Site 1.12 ACRES

Quality AVERAGE

Age 26A/5E



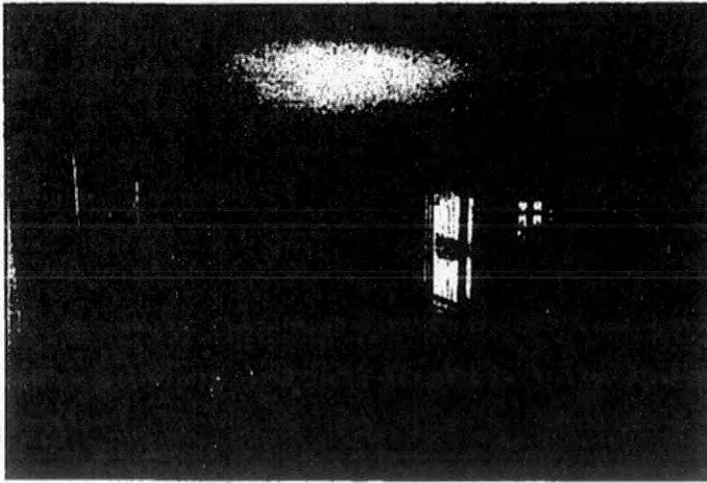
### Living Room



### Dining Room

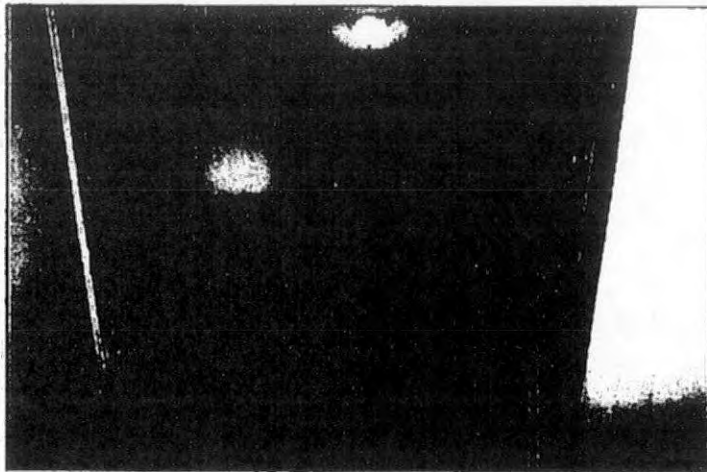
REY00074

RA 0103

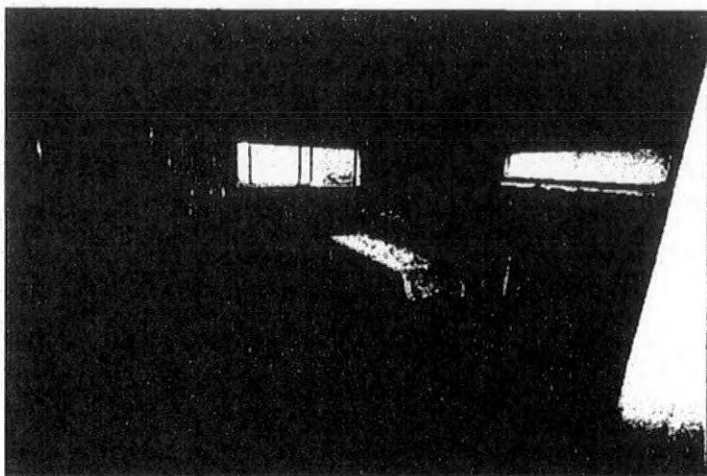


# **Foyer**

20957 EATON RD  
 Sales Price  
 Gross Living Area 2,180  
 Total Rooms 6  
 Total Bedrooms 3  
 Total Bathrooms 2  
 Location AVERAGE  
 View MOUNTAIN  
 Site 1.12 ACRES  
 Quality AVERAGE  
 Age 26A/5E



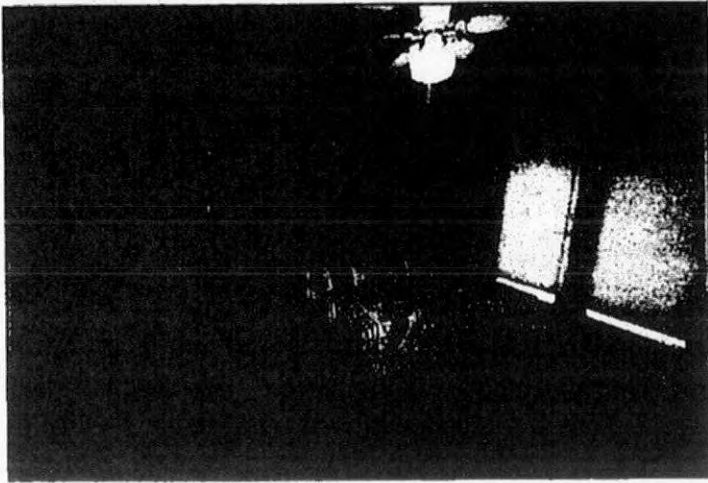
# **Bed Room**



# **Bed Room**

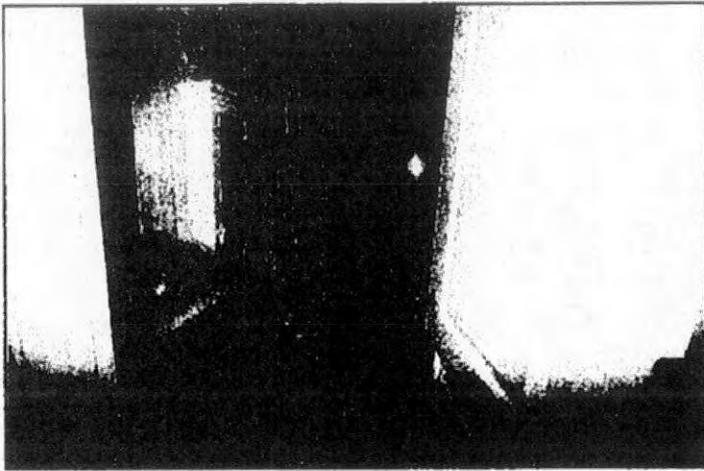
REY00075

RA 0104

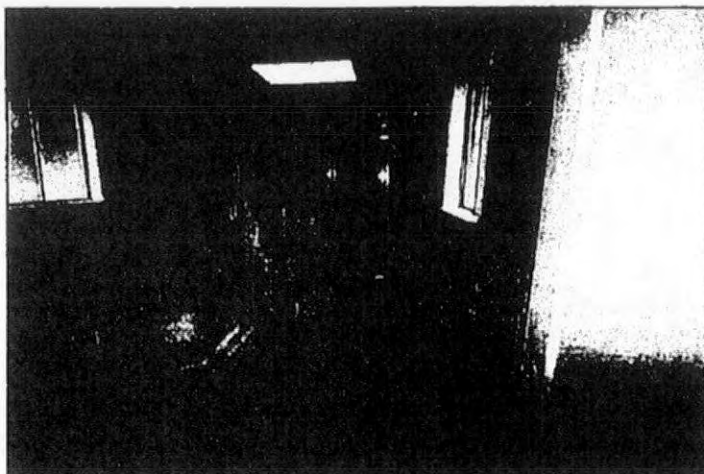


### Bed Room

20957 EATON RD  
 Sales Price  
 Gross Living Area 2,180  
 Total Rooms 6  
 Total Bedrooms 3  
 Total Bathrooms 2  
 Location AVERAGE  
 View MOUNTAIN  
 Site 1.12 ACRES  
 Quality AVERAGE  
 Age 26A/5E



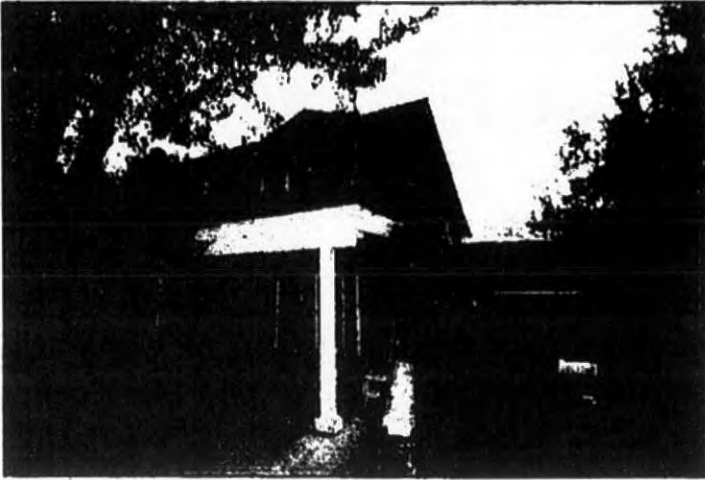
### Bath



### Bath

REY00076

RA 0105



### Guest House

20957 EATON RD

Sales Price

Gross Living Area 2,180

Total Rooms 6

Total Bedrooms 3

Total Bathrooms 2

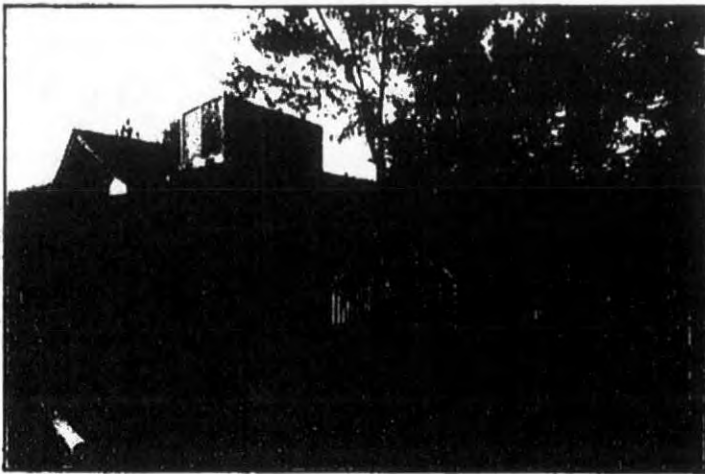
Location AVERAGE

View MOUNTAIN

Site 1.12 ACRES

Quality AVERAGE

Age 26A/5E



### Guest House Rear

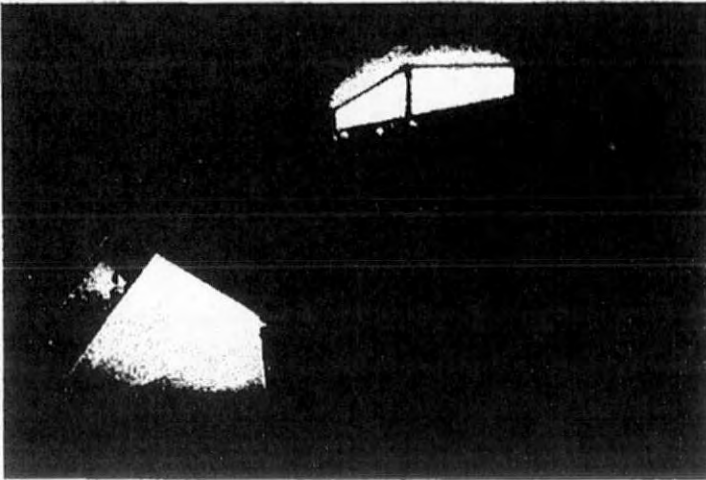


### Guest House Rear

REY00077

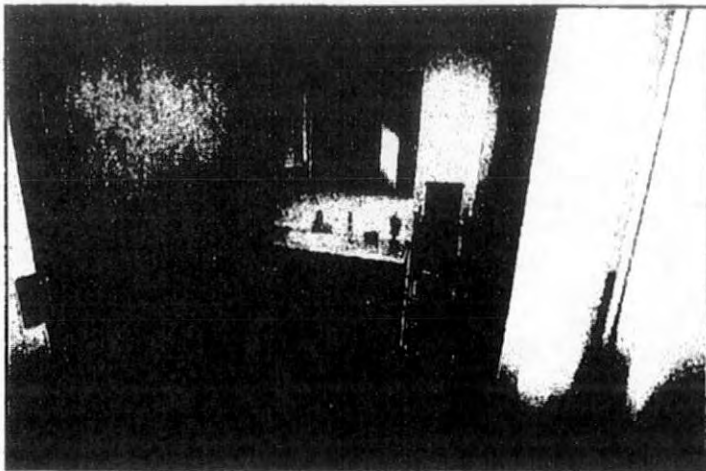
RA 0106



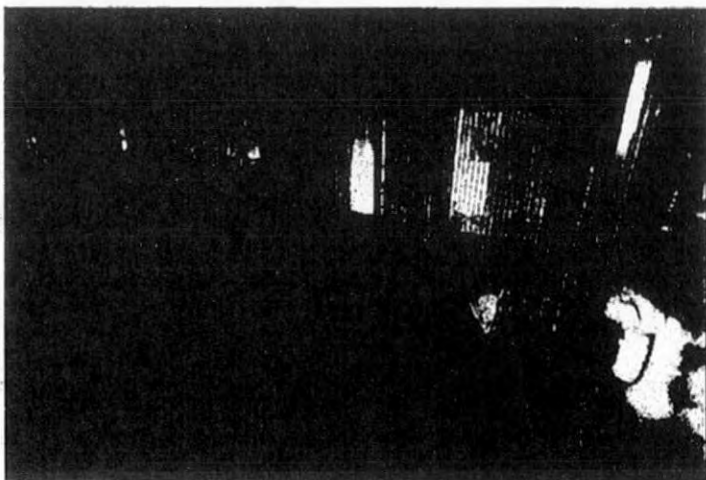


### Guest House

20957 EATON RD  
 Sales Price  
 Gross Living Area 2,180  
 Total Rooms 6  
 Total Bedrooms 3  
 Total Bathrooms 2  
 Location AVERAGE  
 View MOUNTAIN  
 Site 1.12 ACRES  
 Quality AVERAGE  
 Age 26A/5E



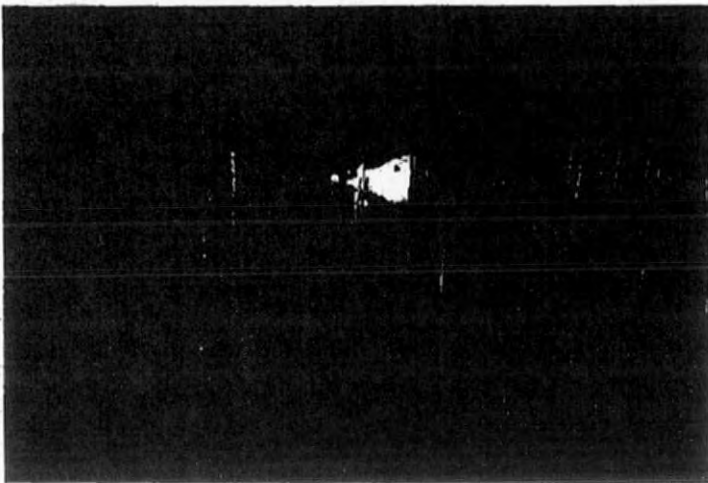
### Guest House Bath



### Guest House

REY00078

RA 0107



### Guest House

20957 EATON RD

Sales Price

Gross Living Area 2,180

Total Rooms 6

Total Bedrooms 3

Total Bathrooms 2

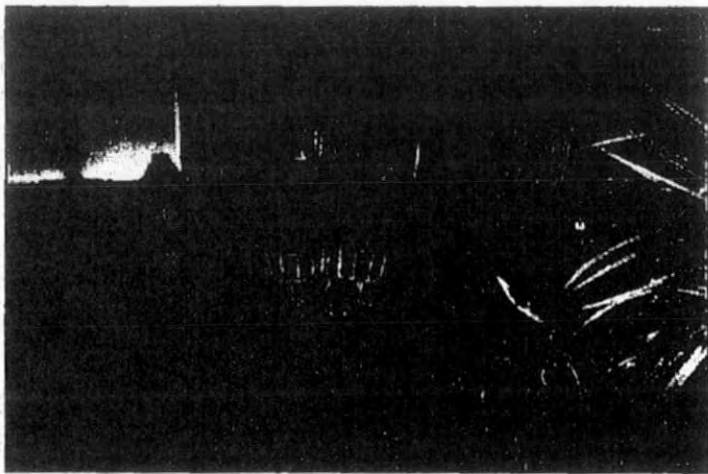
Location AVERAGE

View MOUNTAIN

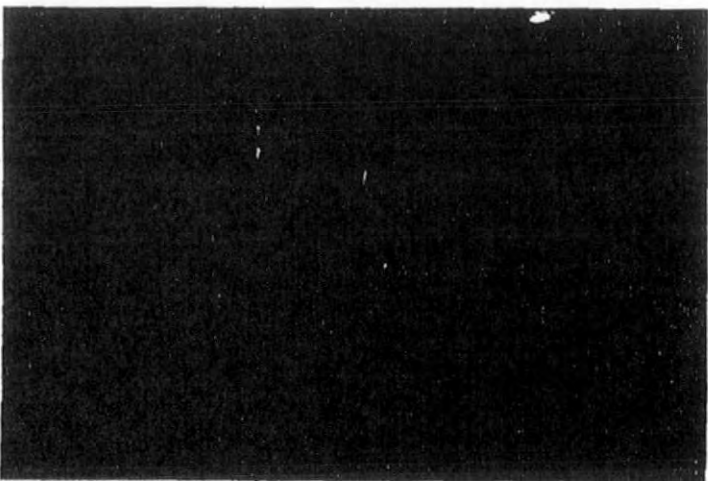
Site 1.12 ACRES

Quality AVERAGE

Age 26A/5E

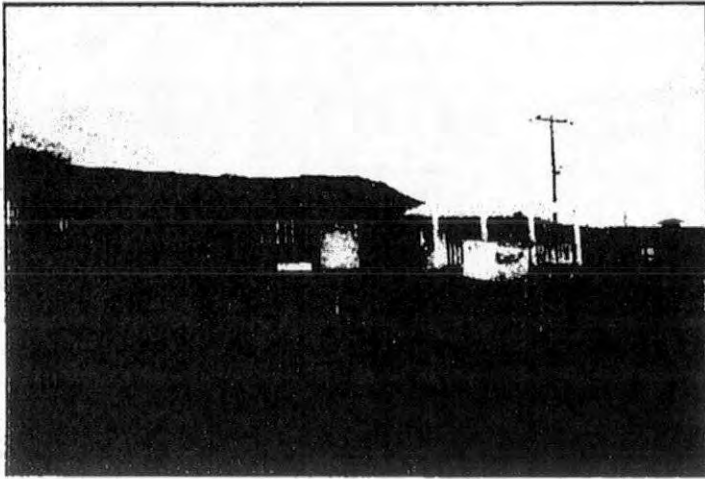


### Guest House



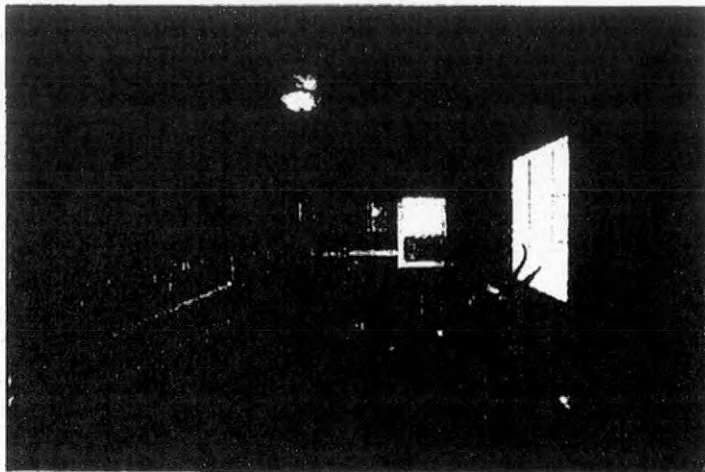
### Guest House

REY00079

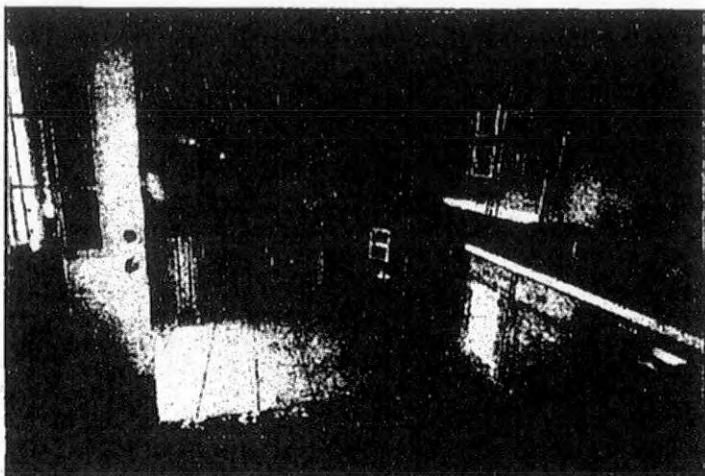


### Barn/Shop

20957 EATON RD  
 Sales Price  
 Gross Living Area 2,180  
 Total Rooms 6  
 Total Bedrooms 3  
 Total Bathrooms 2  
 Location AVERAGE  
 View MOUNTAIN  
 Site 1.12 ACRES  
 Quality AVERAGE  
 Age 26A/5E



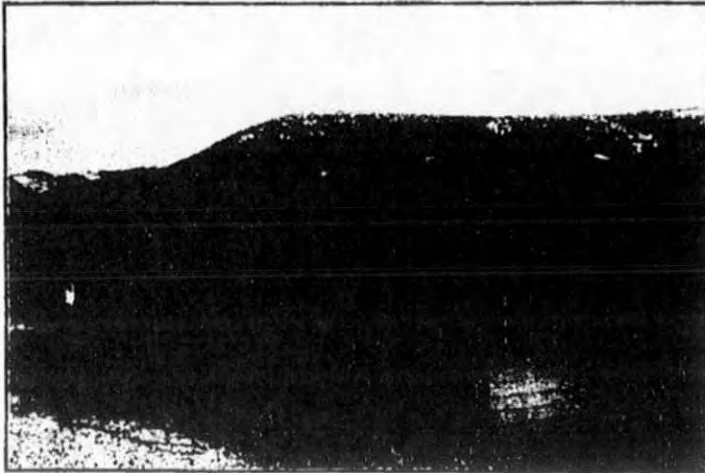
### Barn/Shop



### Barn/Shop

REY00080

RA 0109



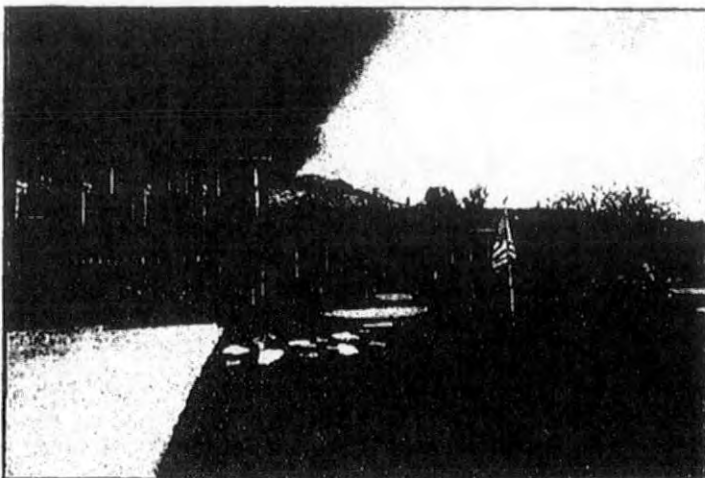
### Comparable 1

20890 AMES LN  
 Prox. to Subject 0.12 MILES NE  
 Sale Price 287,000  
 Gross Living Area 1,804  
 Total Rooms 7  
 Total Bedrooms 3  
 Total Bathrooms 2  
 Location AVERAGE  
 View MOUNTAIN  
 Site 1.26 ACRES  
 Quality AVERAGE  
 Age 46A/25E



### Comparable 2

125 ANDREW LN  
 Prox. to Subject 1.24 MILES E  
 Sale Price 402,000  
 Gross Living Area 3,467  
 Total Rooms 8  
 Total Bedrooms 3  
 Total Bathrooms 3  
 Location AVERAGE  
 View MOUNTAIN  
 Site .97 ACRES  
 Quality AVERAGE  
 Age 10

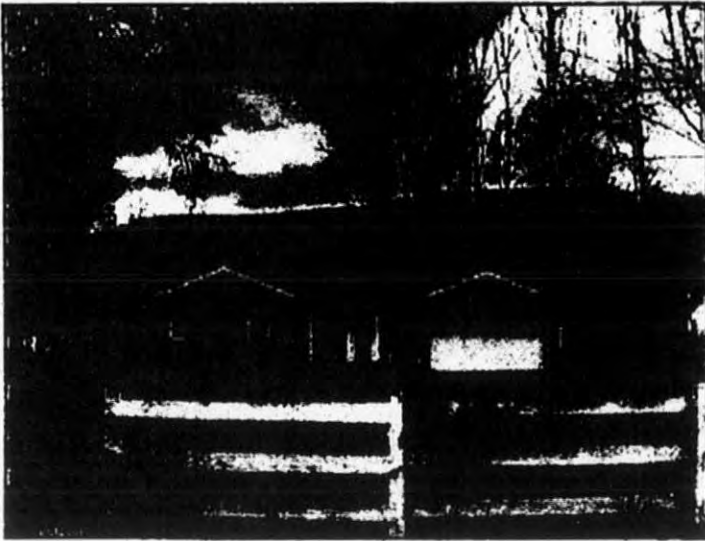


### Comparable 3

20685 COOKE DR  
 Prox. to Subject 0.24 MILES NE  
 Sale Price 370,000  
 Gross Living Area 2,823  
 Total Rooms 9  
 Total Bedrooms 5  
 Total Bathrooms 3  
 Location AVERAGE  
 View MOUNTAIN  
 Site 1.06 AC  
 Quality AVERAGE  
 Age 35A/5E

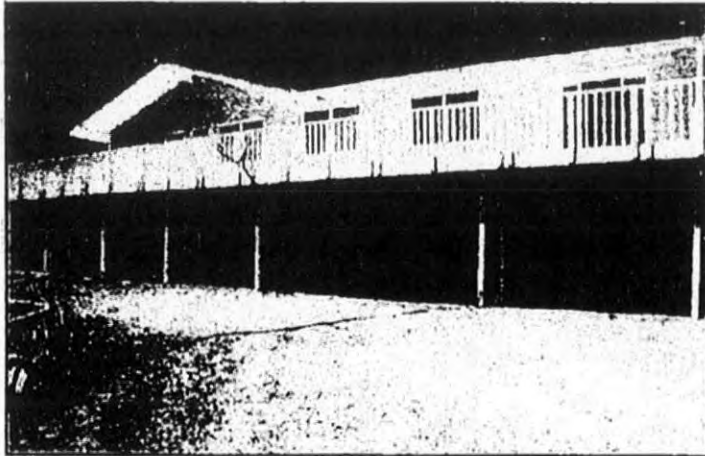
REY00081

RA 0110



### Listing 1

142 CONCHO DR  
 Proximity to Subject 0.46 MILES S  
 List Price 326,000  
 Days on Market 58  
 Gross Living Area 1,610  
 Total Rooms 7  
 Total Bedrooms 3  
 Total Bathrooms 2  
 Age 49A/10E



### Listing 2

20975 DAVID DR  
 Proximity to Subject 0.13 MILES N  
 List Price 334,900  
 Days on Market 52  
 Gross Living Area 2,823  
 Total Rooms 7  
 Total Bedrooms 4  
 Total Bathrooms 3  
 Age 54A/15E

### Listing 3

Proximity to Subject  
 List Price  
 Days on Market  
 Gross Living Area  
 Total Rooms  
 Total Bedrooms  
 Total Bathrooms  
 Age

REY00082

RA 0111



## Info Sheet

WASHOE COUNTY QUICK INFO (Summary data may not be complete representation of property)				09/12/2012	
<b>Owner Information &amp; Legal Description</b>			<b>Building Information</b>		
APN 045-337-11			Quality R025 FAIR/AVG		
Card 1 of 1			Stories ONE		
Site 20957 EATON RD			Year Built 1986		
Owner 1 REYNOLDS, HARRY R & DEANN			W.A.Y. 1987		
Mail Address 20957 EATON RD			Bedrooms 3		
RENO NV 89521			Full Baths 2		
Rec Doc No 2794935 Rec Date 01/23/2003			Half Baths 0		
Prior Owner REYNOLDS, HARRY R & DEANN			Fixtures 9		
Prior Doc 2116619 07/14/1997			Fireplaces 1		
Keyline Desc PM 292 LT 2			Heat Type FA		
Subdivision UNSPECIFIED			Sec Heat Type		
Lot 2 Block Sub Map#			Ext Walls HARDBOARD/FR		
Record of Survey Map Parcel 292			Sec Ext Walls		
Section 7 Township 17 SPC			Roof Cover COMP SHINGLE		
Range 20			%Incomplete 0		
Tax Dist 4000 Add'l Tax Prior APN			Obso/Bldg Adj 0		
Tax Cap Info			Construction Mod 0		
Tax Cap 3 PCT Qualified Primary Residence			Last Activity 09/13/2011		
Status			Bldg Type Sgl Fam Res		
			Square Feet 2,180		
			Square Feet does not include Basement or Garage Conversion Area.		
			Click here for Building Square Footage, Special Feature and Yard Item Details.		
			Finished Bemt 0		
			Unfin Bemt 0		
			Bemt Type		
			Gar Conv Sq Foot 0		
			Total Gar Area 528		
			Gar Type GARA		
			Det Garage 0		
			Bemt Gar Door 0		
			Sub Floor WOOD		
			Frame STUD FRAMED		
			Units/Bldg 1		
			Units/Parcel 1		
			Last Permit		
<b>Land Information</b>					
Land Use 020		Zoning LDS	Sewer SEPTIC	Value Year 2013	
Size 48903 SF		Water WELL	Street PAVED	Reason Reappraisal	
				Neighborhood IDBF	
				Neighborhood Map ID Neighborhoods Map	
<b>Valuation Information</b>		2011/12 FV	2012/13 FV	<b>Sales/Transfer Information/Recorded Document</b>	
Taxable Land Value	80,000	60,000	Y-Code	LUC	Doc Date
Taxable Improvement Value	165,636	181,087	3NTT	020	01/23/2003
Taxable Total	245,636	241,087			07/14/1997
Assessed Land Value	28,000	21,000	2D	020	05/22/1996
Assessed Improvement Value	57,973	63,380	2D	020	09/01/1987
Total Assessed	85,973	84,380			112,000
Grantor					
0 REYNOLDS, HARRY R & DEANN					
0					
All data on this form is for use by the Washoe County Assessor for assessment purposes only. Zoning information should be verified with the appropriate planning agency. All parcels are reappraised each year.					

REY00083

## Info Sheet

Best if printed in landscape orientation.

All data on this form is for use by the Washoe County Assessor for assessment purposes only.

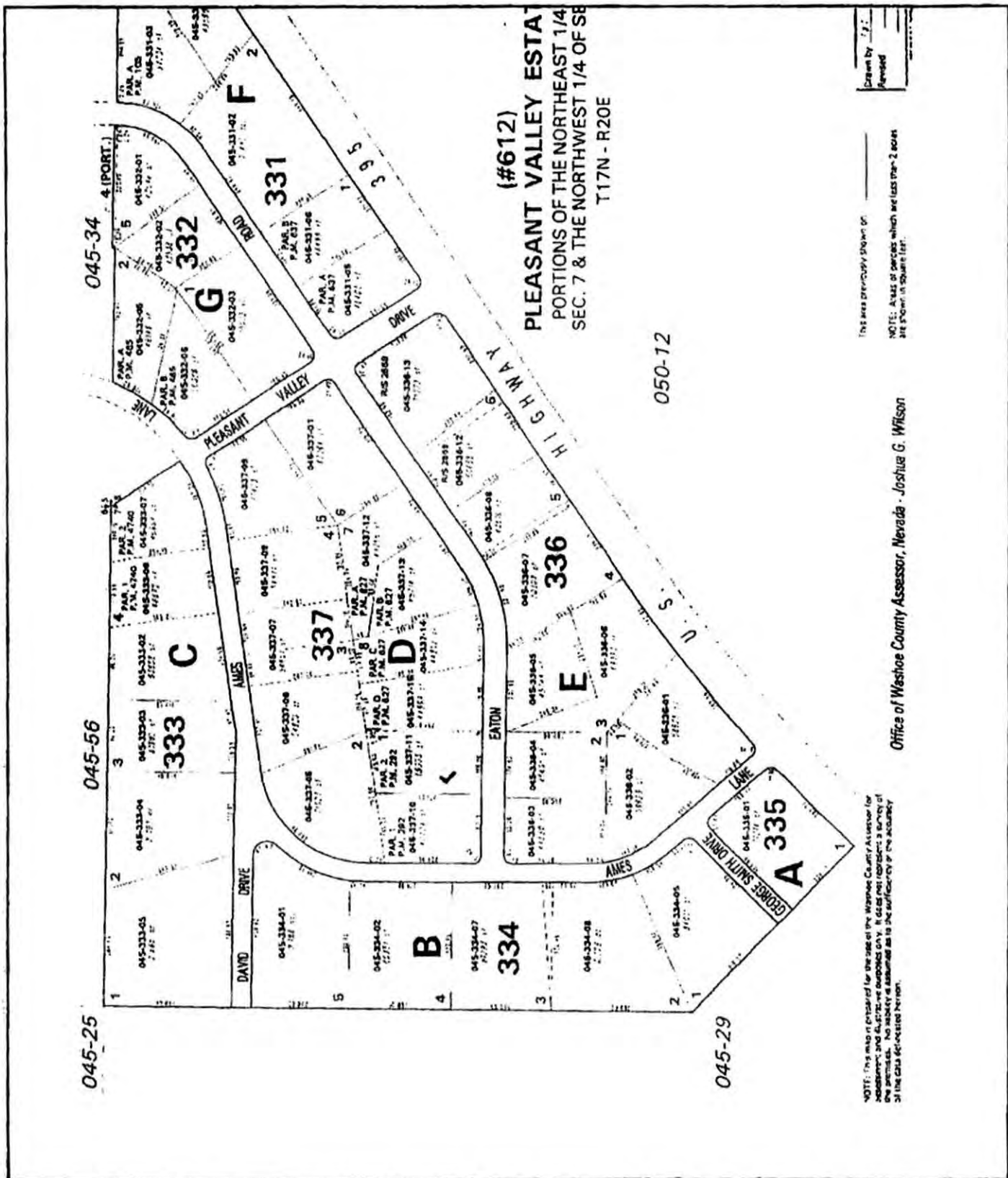
1. The following information is required for the assessment of the property. The information should be provided in the following order: 1. General Information, 2. Building Information, 3. Land Information, 4. Other Information. The information should be provided in the following order: 1. General Information, 2. Building Information, 3. Land Information, 4. Other Information.

		Area	Included in Square Foot Total
1FLR	FIRST FLOOR	1,740	Yes
1FLR	FIRST FLOOR	440	Yes
DO	No Value Drawn for Info Only	2,785	
GARA	GARAGE ATTACHED	528	
POR1	PORCH CONCRETE SLAB	272	
PRF1	PORCH ROOF	272	

Description	Quality Class (EBLD=Equal to Building)	Year	Square Foot OR # of Units
FNV5 FN VINYL 5 SOLID	3.0	2008	42
FPS1 FIREPLACE SINGLE 1 STORY	EBLD	1986	1
FWCO FLATWORK CONCRETE	3.0	1986	1,200
FWCO FLATWORK CONCRETE	3.0	2008	850
GST1 GUEST HOUSE Q1	3.0	1997	460
HBR1 RAISED BREEZWAY BARN LOW	3.0	1986	650
LFT1 LOFT TYPE 1 - LOW	3.0	1997	1,175
LTC2 LATTICE AVERAGE-METAL, VINYL, WOOD	3.0	2008	850
WPRS WELL, PRESSURE SYSEM & SEPTIC	3.0	1986	1
YIMP YARD IMPROVEMENTS	3.0	1986	6

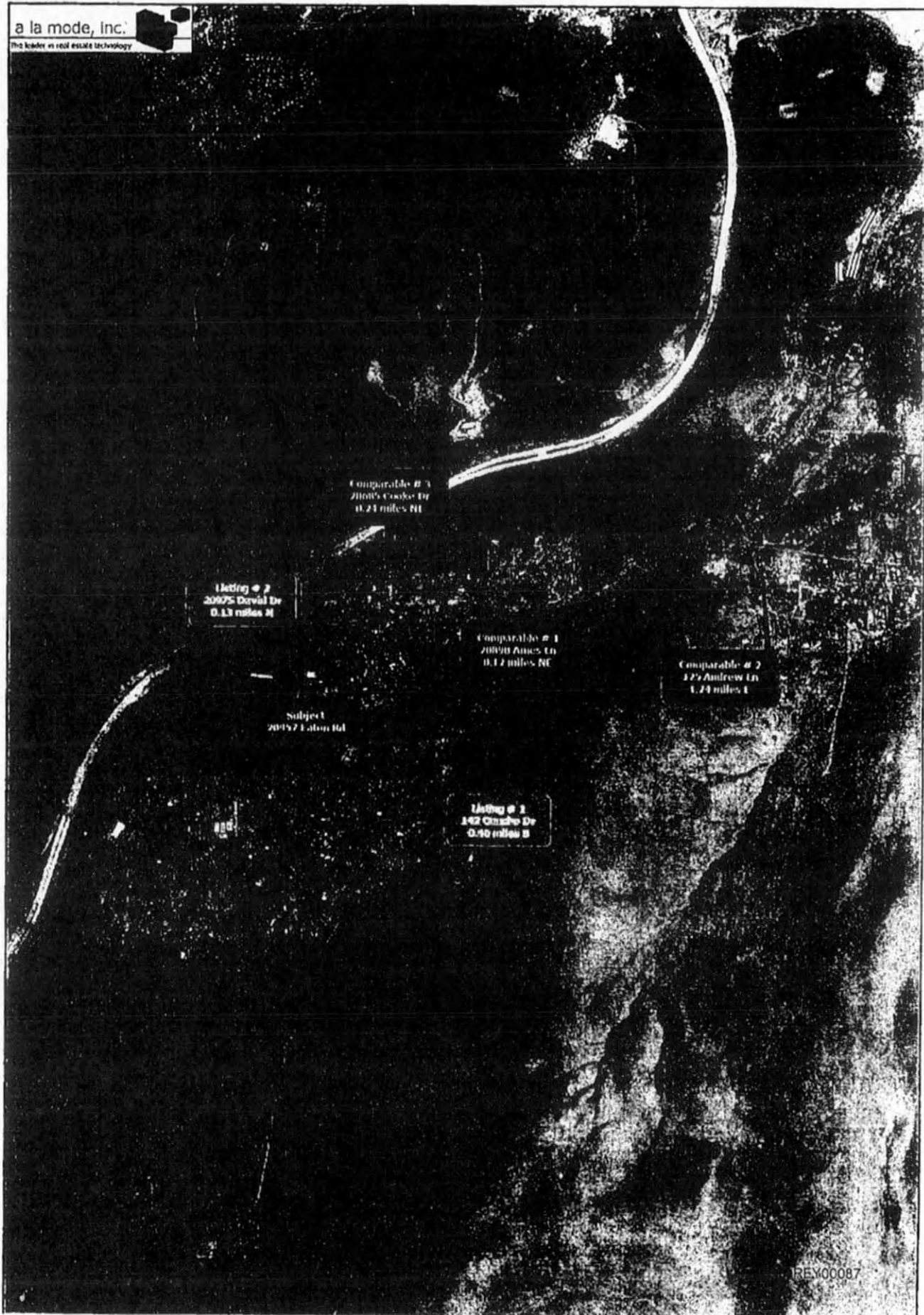
All data on this form is for use by the Washoe County Assessor for assessment purposes only.

## Parcel Map



REY00085





REX00087



InterFlood

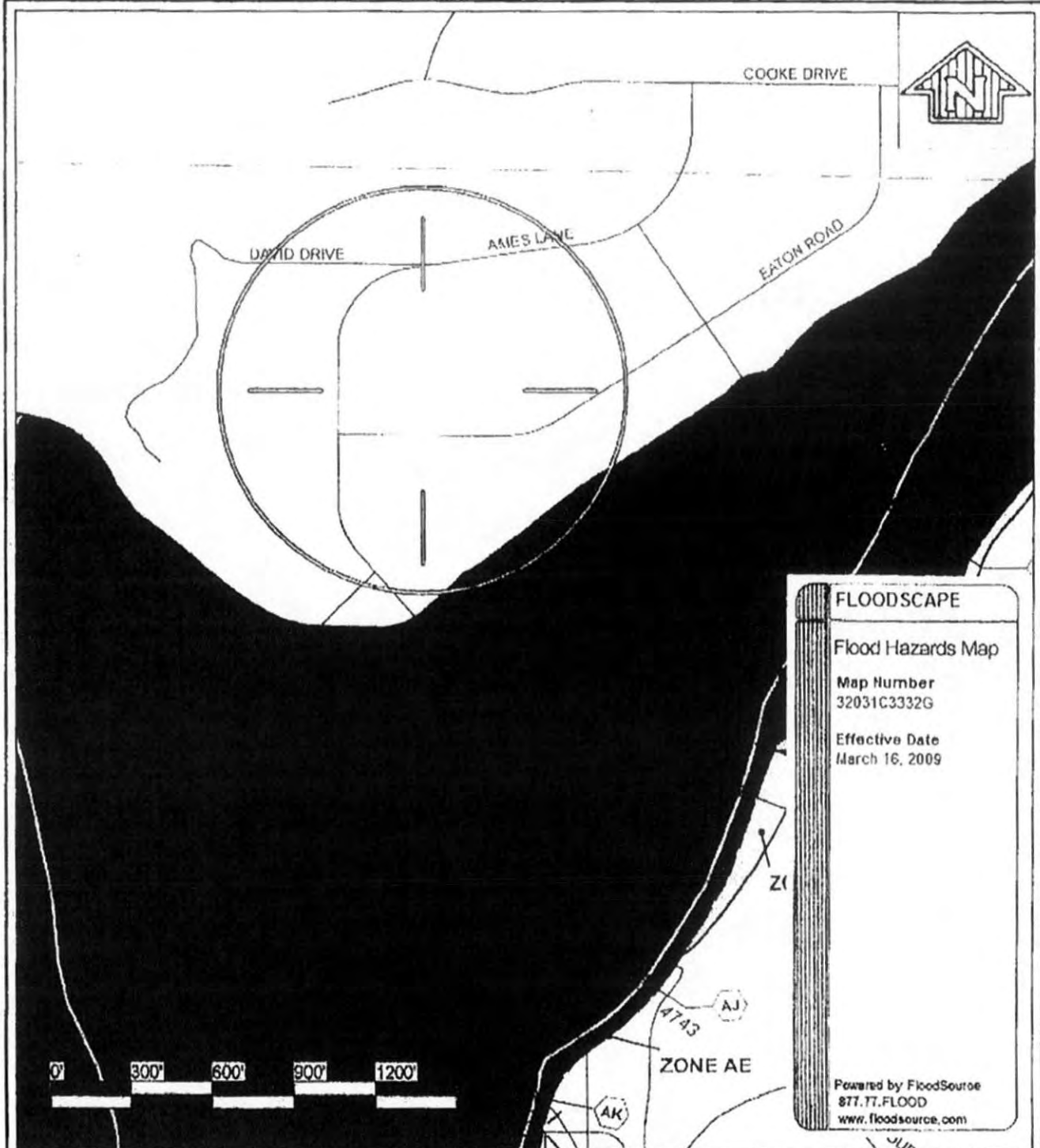


by a la mode

www.interflood.com • 1-800-252-6633

Prepared for:  
R. Lace Appraisals

20957 Eaton Rd  
Reno, NV 89521



FLOODSCAPE

Flood Hazards Map

Map Number  
32031C3332G

Effective Date  
March 16, 2009

Powered by FloodSource  
877.77.FLOOD  
www.floodsource.com

a la mode, Inc.

The leader in real estate technology



RA 0118

# EXHIBIT 3

# EXHIBIT 3

# Residential Listing Input Form



TYPE OF PROPERTY ☒ Site/Stick Built ☐ Condo/Townhouse  
☐ Manuf/Modular ☐ Shared Ownership

LISTING DATE September 21, 2012

EXPIRATION DATE February 28, 2013

Agent Name A.J. Johnson

2nd Agent \_\_\_\_\_

Office J.E. Johns & Associates

2nd Office \_\_\_\_\_

Agent email AJ453@aol.com

2nd Agent email \_\_\_\_\_

Contact Name \_\_\_\_\_

Phone \_\_\_\_\_

Showing Instructions: ☒ Listing Agent ☐ Listing Office ☒ Owner ☐ Tenant

To Show, please contact: \_\_\_\_\_

☒ Lockbox Direct ☐ Lockbox/Call 1st ☐ Drive By ☐ Showing Assist ☐ Showing Service  
(Other than Showing Assist)

(This field is alphanumeric. Enter the name and exact phone number or email address that members should use to schedule a showing)

Price \$ 399,999

CommBB ☐ \$ ☐ % 2.5

Variable Rate ☒ Y ☐ N

Sliding Scale ☐ Y ☒ N

Area 174 Address # 20957 Direction \_\_\_\_\_ Street Eaton Road Type \_\_\_\_\_ Unit # \_\_\_\_\_

City Reno State Nev Zip \_\_\_\_\_ County Washoe

Xstreet/Directions 395 / Pleasant Valley / Eaton Parcel # 04533711 Acreage \_\_\_\_\_

Water Rights ☐ Y ☐ N Taxes \$ 273410 Assessment \$ 0 HUD ☐ Y ☐ N

## SALE/LEASE

- ☒ For Sale
- ☐ For Lease/Option
- ☐ For Sale or Lease Option
- ☐ For Auction

## LISTING TYPE

- ☒ Exclusive Right
- ☐ Exclusive Agency
- ☐ Exclusive Right with Reservations

## SPECIAL CONDITIONS OF SALE

- ☐ REO
- ☒ None
- ☐ Relocation
- ☐ Short Sale
- ☐ Subj. to Court Approval
- ☐ Yes-Other \_\_\_\_\_

FANNIE MAE FIRST ☐ Y ☒ N

LIMITED SERVICE LISTING ☐ Y ☒ N

COMMON INTEREST OWNERSHIP ☐ Y ☒ N

ATTACHED/Common Wall ☐ Y ☒ N

SCHOOLS:  
Verify with District

Elem. Pleasant View Middle Doppel High Chadron

Bedrooms # 3 Baths #Full or 3/4 2 #Half 0 #Garage 4 #Carport 0

STORIES 1 TOTAL LIVING SPACE 2180 + 600 SOURCE OF SQ FT ☒ Owner ☐ Assessor ☒ Appraiser ☐ Agent ☐ Plans

YEAR BUILT 1986

## CONSTRUCTION

- ☐ Frame
- ☐ Masonry
- ☐ Rock
- ☐ Log
- ☐ 2x6 Exterior
- ☐ Manuf/converted
- ☐ Manuf/not converted
- ☐ Manuf/conv. in escrow
- ☐ Modular
- ☐ Insulated Concrete Forms
- ☐ Low VOC Products
- ☐ Alternative Materials

ZONING LDS/SFR

## ZONING CATEGORY

- ☒ Single Family
- ☐ Multifamily
- ☐ Manufactured Housing
- ☐ Office
- ☐ PUD
- ☐ Commercial
- ☐ Industrial
- ☐ Agricultural
- ☐ Non-conforming

## SOURCE OF ZONING

- ☒ Owner
- ☐ Assessor
- ☐ Appraiser
- ☐ City

## HORSES OKAY

- ☒ Yes
- ☐ No

## CHECK ALL THAT APPLY

### A. GARAGE TYPES

- ☐ 1. None
- ☒ 2. Attached
- ☐ 3. Detached
- ☐ 4. Under
- ☐ 5. Both Att & Det
- ☐ 6. Tandem
- ☐ 7. Carport
- ☐ 8. Designated Parking
- ☐ 9. Common

## B. HOA AMENITIES

- ☒ 1. No Amenities
- ☐ 2. Adtl Parking
- ☐ 3. Adult Living Certified 55+
- ☐ 4. Air Strip Access
- ☐ 5. Beach
- ☐ 6. Boat Launch
- ☐ 7. Buoy
- ☐ 8. Carport
- ☐ 9. Club Hs/Rec Rm
- ☐ 10. Com. Area Maint.
- ☐ 11. Dock
- ☐ 12. Equestrian
- ☐ 13. Exterior Maint.
- ☐ 14. Garage
- ☐ 15. Gates/Fences
- ☐ 16. Golf
- ☐ 17. Gym
- ☐ 18. Insured Structure
- ☐ 19. Landsc. Maint. Full
- ☐ 20. Landsc. Maint. Part
- ☐ 21. Life Guard
- ☐ 22. Marina
- ☐ 23. Nordic Trails
- ☐ 24. On-site Mgt.
- ☐ 25. Pier

- ☐ 26. Pool
- ☐ 27. Racquetball
- ☐ 28. Sauna
- ☐ 29. Security
- ☐ 30. Security Gates
- ☐ 31. Shuttle Service
- ☐ 32. Ski Area
- ☐ 33. Snow Removal
- ☐ 34. Spa/Hot Tub
- ☐ 35. Storage
- ☐ 36. Tennis
- ☐ 37. Full Utilities
- ☐ 38. Partial Utilities

## C. ADJOINS

- ☐ 1. Golf Course
- ☐ 2. Greenbelt
- ☐ 3. Lake
- ☐ 4. Creek/Stream
- ☐ 5. Forest
- ☐ 6. BLM/BIA
- ☐ 7. Street
- ☐ 8. Undeveloped Acr.
- ☐ 9. Common Area
- ☐ 10. Split Lake Front
- ☐ 11. Air Strip
- ☐ 12. River

## D. VIEW (OPTIONAL)

- ☒ 1. Yes
- ☐ 2. Mountain
- ☐ 3. Lake
- ☐ 4. Golf Course
- ☐ 5. City
- ☐ 6. Park
- ☐ 7. Valley
- ☐ 8. Desert
- ☐ 9. River
- ☐ 10. Greenbelt
- ☐ 11. Trees
- ☐ 12. Creek
- ☐ 13. Wooded
- ☐ 14. Filtered Lake View
- ☐ 15. Peak View
- ☐ 16. Year Round Stream
- ☐ 17. Ski Resort
- ☐ 18. Meadow

Agent \_\_\_\_\_

Seller \_\_\_\_\_

Seller \_\_\_\_\_

J.E. Johns & Associates P.O. Box 2201 Reno, NV 89510  
 Phone: 775.856.2525 Fax: 775.851.3325

James Johns

Produced with zipForm® by zipLogix 10070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

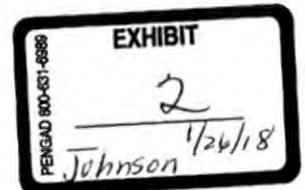
NRMRL 5 7/8/2011 page 1 of 3

Untitled

REY00027

RA 0120

Listing #





# Residential Listing Input Form page 2



CHECK ALL THAT APPLY

## E. INTERIOR FEATURES/ PERSONAL PROP. INCL.

- ☒ 1. None
- ☒ 2. Drapes/Curtains
- ☒ 3. Blinds/Shades
- ☒ 4. Rods
- ☒ 5. Garage Door Opener(s)
- ☒ 6. Smoke Detector
- ☒ 7. Intercom
- ☒ 8. Security System/Owned
- ☒ 9. Security System/Licensed
- ☒ 10. Central Vacuum
- ☒ 11. Humidifier
- ☒ 12. Filter System
- ☒ 13. Washer
- ☒ 14. Dryer
- ☒ 15. Hot Tub
- ☒ 16. Softener/Rented
- ☒ 17. Water Softener/Owned
- ☒ 18. Furnished
- ☒ 19. Refrigerator
- ☒ 20. Portable Dishwasher
- ☒ 21. Microwave (portable)

## F. LIVING ROOM

- ☒ 1. None
- ☒ 2. Separate/Formal
- ☒ 3. Combo/Fam. Rm
- ☒ 4. Great Room
- ☒ 5. Fireplace/Woodstove/Pellet
- ☒ 6. High Ceiling
- ☒ 7. Ceiling Fan
- ☒ 8. Combo/Dining Rm

## G. DINING ROOM

- ☒ 1. Separate/Formal
- ☒ 2. Kitchen Combo
- ☒ 3. Living Rm Combo
- ☒ 4. Family Rm Combo
- ☒ 5. Great Room
- ☒ 6. Fireplace/Woodstove/Pellet
- ☒ 7. High Ceiling
- ☒ 8. Ceiling Fan
- ☒ 9. No Dining Room

## H. FAMILY ROOM

- ☒ 1. None
- ☒ 2. Separate
- ☒ 3. Combo/Living Room
- ☒ 4. Great Room
- ☒ 5. Fireplace/Woodstove/Pellet
- ☒ 6. High Ceiling
- ☒ 7. Ceiling Fan

## I. KITCHEN

- ☒ 1. Gas Range
- ☒ 2. Electric Range
- ☒ 3. Single Oven
- ☒ 4. Double Oven
- ☒ 5. Refrigerator
- ☒ 6. Built-in Dishwasher
- ☒ 7. Garbage Disposal
- ☒ 8. Microwave - Built-in
- ☒ 9. Trash Compactor
- ☒ 10. Island
- ☒ 11. Pantry
- ☒ 12. Breakfast Bar
- ☒ 13. Breakfast Nook
- ☒ 15. Cook Top
- ☒ 99. None of the Above

## J. MASTER BDRM

- ☒ 1. None
- ☒ 2. Walk-In Closet
- ☒ 3. Fireplace, Woodstove, Pellet
- ☒ 4. High Ceiling
- ☒ 5. Ceiling Fan
- ☒ 6. Double Sinks

- ☒ 7. Shower Stall
- ☒ 8. Tub/Shower Combo
- ☒ 9. Bathtub
- ☒ 10. Garden Tub
- ☒ 11. Jetted Tub
- ☒ 12. On Main Floor
- ☒ 13. 2nd Master Bdrm (or more)

## K. LAUNDRY AREA

- ☒ 1. None
- ☒ 2. Yes
- ☒ 3. Hall Closet
- ☒ 4. Kitchen
- ☒ 5. Garage
- ☒ 6. Bathroom Combo
- ☒ 7. Laundry Room
- ☒ 8. Laundry Sink
- ☒ 9. Cabinets
- ☒ 10. Shelves
- ☒ 11. Common

## L. OTHER ROOMS

- ☒ 1. None
- ☒ 2. Yes
- ☒ 3. Office/Den (not incl in bdrms)
- ☒ 4. Study/Library
- ☒ 5. Game Room
- ☒ 6. Sewing Room
- ☒ 7. Bonus Room
- ☒ 8. Loft
- ☒ 9. Entry/Foyer
- ☒ 10. Atrium
- ☒ 11. Mud Room
- ☒ 12. Workshop
- ☒ 13. Maid's Room
- ☒ 14. Sunroom
- ☒ 15. Bdrm/Office on Main Flr
- ☒ 16. Basement-Finished
- ☒ 17. Basement-Unfinished
- ☒ 18. Basement-Walkout/Daylight
- ☒ 19. Guest House
- ☒ 20. In-Law Quarters
- ☒ 21. Rec Room

## M. FLOOR COVERING

- ☒ 1. Carpet
- ☒ 2. Ceramic Tile
- ☒ 3. Vinyl Tile
- ☒ 4. Sheet Vinyl
- ☒ 5. Wood
- ☒ 6. Stone
- ☒ 7. Brick
- ☒ 8. Laminate
- ☒ 9. Concrete
- ☒ 10. Marble
- ☒ 11. Slate
- ☒ 12. Porcelain
- ☒ 13. Travertine
- ☒ 99. None/Unfinished

## N. FOUNDATION

- ☒ 1. None
- ☒ 2. Concrete/Crawl Space
- ☒ 3. Concrete Slab
- ☒ 4. Masonry
- ☒ 5. Wood
- ☒ 6. Post & Pier
- ☒ 7. Stone
- ☒ 8. Full Perimeter
- ☒ 9. B-Point
- ☒ 10. Strip

## O. EXTERIOR

- ☒ 1. Masonry Veneer
- ☒ 2. Stucco
- ☒ 3. Wood Siding
- ☒ 4. Metal Siding
- ☒ 5. Vinyl Siding
- ☒ 6. Rock

- ☒ 7. Asbestos
- ☒ 8. Log
- ☒ 9. Masonite
- ☒ 10. Brick
- ☒ 11. Fiber Cement Siding

## P. ROOF

- ☒ 1. Pitched
- ☒ 2. Flat
- ☒ 3. Gravel
- ☒ 4. Asphalt
- ☒ 5. Composition/Shingle
- ☒ 6. Wood/Shake
- ☒ 7. Tile
- ☒ 8. Metal

## Q. HEATING/COOLING

- ☒ 1. Natural Gas
- ☒ 2. Propane
- ☒ 3. Oil
- ☒ 4. Electric
- ☒ 5. Solar
- ☒ 6. Wood/Coal
- ☒ 7. Geothermal
- ☒ 8. Forced Air
- ☒ 9. Wall Heater
- ☒ 10. Hot Water System
- ☒ 11. Baseboard
- ☒ 12. Fireplace
- ☒ 13. Heat Pump
- ☒ 14. Radiant Heat-Ceiling
- ☒ 15. Radiant Heat-Floor
- ☒ 16. Floor Furnace
- ☒ 17. Radiator
- ☒ 18. No Heat
- ☒ 19. Central Refrig. A/C
- ☒ 20. Evap. Cooling
- ☒ 21. Air Unit

## R. WATER HEATER

- ☒ 1. Natural Gas
- ☒ 2. Propane
- ☒ 3. Electric
- ☒ 4. Solar
- ☒ 5. Oil
- ☒ 6. Circulating Pump
- ☒ 7. On Demand
- ☒ 8. Geothermal
- ☒ 99. None

## S. WINDOWS

- ☒ 1. Single Pane
- ☒ 2. Double Pane
- ☒ 3. Triple Pane
- ☒ 4. Storm Windows
- ☒ 5. Metal Frame
- ☒ 6. Wood Frame
- ☒ 7. Vinyl Frame
- ☒ 8. Low E
- ☒ 9. Combo/Varies
- ☒ 10. 100% Energy Star

## T. FIREPLACE

- ☒ 1. None
- ☒ 2. Yes
- ☒ 3. One
- ☒ 4. Two or More
- ☒ 5. Wood-Burning Stove
- ☒ 6. Wood/Coal Stove
- ☒ 7. Pellet Stove
- ☒ 8. Gas Stove
- ☒ 9. Air Circulating
- ☒ 10. Insert
- ☒ 11. Fireplace
- ☒ 12. Free Standing
- ☒ 13. Gas Log

## U. UTILITIES

- ☒ 1. Electricity
- ☒ 2. Natural Gas

- ☒ 3. Propane
- ☒ 4. Oil
- ☒ 5. City/County Water
- ☒ 6. Well-Private
- ☒ 7. Well-Community
- ☒ 8. Assessment to Assume
- ☒ 9. City Sewer
- ☒ 10. Community Sewer
- ☒ 11. Septic
- ☒ 12. Cable
- ☒ 13. DSL Available
- ☒ 14. T1 + Available
- ☒ 15. Telephone
- ☒ 16. Water Meter Installed
- ☒ 17. Solar (photovoltaic)
- ☒ 18. Wind
- ☒ 19. Generator

## V. LANDSCAPED

- ☒ 1. None
- ☒ 2. Yes
- ☒ 3. Fully Landscaped
- ☒ 4. Partially Landscaped

## W. SPRINKLERS

- ☒ 1. None
- ☒ 2. Full Sprinklers
- ☒ 3. Front
- ☒ 4. Back
- ☒ 5. Drip-Full
- ☒ 6. Drip-Front
- ☒ 7. Drip-Back
- ☒ 8. Automatic
- ☒ 9. Manual

## X. FENCED

- ☒ 1. None
- ☒ 2. Full
- ☒ 3. Front
- ☒ 4. Back
- ☒ 5. Partial

## Y. PATIO/DECK

- ☒ 1. None
- ☒ 2. Yes
- ☒ 3. Uncovered
- ☒ 4. Covered
- ☒ 5. Enclosed-Screen
- ☒ 6. Enclosed-Glass
- ☒ 7. Breezeway-Open
- ☒ 8. Breezeway-Closed
- ☒ 9. Deck
- ☒ 10. Patio

## Z. EXTERIOR FEATURES

- ☒ 1. RV Access/Parking
- ☒ 2. RV Garage
- ☒ 3. Satellite Dish/Owned
- ☒ 4. TV Antenna
- ☒ 5. Dog Run
- ☒ 6. Storage Shed
- ☒ 7. Barn-Outbuildings
- ☒ 8. Corrals/Stalls
- ☒ 9. Above Ground Pool
- ☒ 10. In-Ground Pool
- ☒ 11. Spa/Hot Tub
- ☒ 12. Sauna
- ☒ 13. Tennis Courts
- ☒ 14. BBQ-Built In
- ☒ 15. BBQ Stuffed In
- ☒ 16. Heated Driveway
- ☒ 17. Gazebo
- ☒ 18. Pier
- ☒ 19. Boat House
- ☒ 20. None, N/A
- ☒ 21. Workshop

## ZA. WATER TEST

- ☒ 1. Yes
- ☒ 2. No
- ☒ 3. Copy on File

## ZB. ACCESS

- ☒ 1. Public
- ☒ 2. Private
- ☒ 3. Private w/Maint Agrmt

## ZC. TOPOGRAPHY

- ☒ 1. Level
- ☒ 2. Upslope
- ☒ 3. Downslope
- ☒ 4. Steep
- ☒ 5. Rolling
- ☒ 6. Gentle
- ☒ 7. Hilly
- ☒ 8. Comb/Varies
- ☒ 9. Cul-de-sac
- ☒ 10. Flag Lot
- ☒ 11. Corner Lot

## ZD. OWNER(S) MAY SELL (Optional)

- ☒ 1. Conventional
- ☒ 2. FHA
- ☒ 3. VA
- ☒ 4. Owner Carry 1st
- ☒ 5. Owner Carry 2nd
- ☒ 6. Cash
- ☒ 7. Exchange/1031
- ☒ 8. Lease/Option

## ZE. ACCESSIBILITY (Optional)

- ☒ 1. Bell Lights
- ☒ 2. Electric Lift
- ☒ 3. Entry Ramp
- ☒ 4. No Steps
- ☒ 5. Roll-in Shower
- ☒ 6. Sliding Shelves
- ☒ 7. Triangle Exit
- ☒ 8. Wide Width Doorways
- ☒ 9. Wide Width Hallways

## ZF. "GREEN" FEATURES

- ☒ 1. Yes, See Assoc. Docs\*
- ☒ 2. None
- ☒ 3. One or more Energy Star Rated Appliances\*

\*Indicates documented energy efficient ratings, appliances or features. If Green Features ZF: 1 or 3 is checked, worksheet MUST be updated into Associated Docs.

## CONDO ONLY

### UNIT LEVEL

- ☒ 1. Ground Floor
- ☒ 2. Mid Level
- ☒ 3. Top Floor

## UNCONV. MANUF. HOUSING ONLY

HUD#

SERIAL#

PERS. PROP TAXES \$

SKIRTING

- ☒ 1. None
- ☒ 2. Full
- ☒ 3. Part

WIDTH

- ☒ 1. Single
- ☒ 2. Double
- ☒ 3. Triple

Listing #

Agent

Seller

Seller



# Residential Listing Input Form page 3



HOA ☐ Y ☒ N

ASSOC. FEE \$

MONTHLY, QTLY, ANNUAL

ASSOC. TRANS FEE \$

CCR RESTRICTIONS ☐ Y ☐ N

IPES

COVERAGE

Leto Tahoe properties only

HOA/MGT Co. Name & Phone (req'd if HOA = Yes):

MLS REMARKS (512 character maximum - no contact information allowed in MLS Remarks or Extended Remarks per MLS Rules/Regulations)

MAIN HOUSE Second House Garage w/ office  
2180 approx 1700 approx 600 approx  
Agent request appraisal be done to verify pertinent info  
~~Sale to proceed with success full close of escrow of~~  
~~Spokane area home~~

EXTENDED REMARKS (additional 512 characters - use separate page to compile for entry; extended remarks appear on the full profile sheets only)

PRIVATE REMARKS (512 characters - Only appear on the MLS All Fields Report and are confidential member-to-member comments - not for public distribution)

## REAL ESTATE DIRECTORY

☒ Publish  
☐ Do Not Publish

\* a per issue insertion fee will be billed to your account each time the listing is published in the REALTORS® Real Estate Directory.

REAL ESTATE DIRECTORY AD LINES Only 395 of 512 characters will print in the magazine; if Directory Ad Lines are blank, MLS Remarks will print with your ad.

PUBLISH UNTIL Date

\* if no date is indicated, ad will run until manually removed or reported SOLD, PENDING NO SHOW, EXPIRED, WITHDRAWN, etc. ACTIVE PENDING status will not remove this listing from the publication.

## Seller(s) signature(s) below acknowledge(s) the following:

1. Seller(s) authorization for the use of a lockbox in the marketing of this property.
2. That the undersigned agent is authorized to submit the information contained herein to the Northern Nevada Regional Multiple Listing Service ("NVRMLS") for the purpose of publication in current multiple listing service ("MLS") compilations and dissemination of all information contained herein to its members during the specified listing period.
3. That the Seller acknowledges and agrees that all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, pricing information and other copyrightable data and information relating to the property, provided by Seller (the "Listing Content"), may be included in compilations of listings, and otherwise distributed, publicly displayed and reproduced.
4. That Seller(s) grants to listing Broker a non-exclusive, irrevocable, worldwide, royalty free license to use, sublicense, publish, display, reproduce, prepare derivative works and distribute Listing Content provided by Seller, and certifies that the Listing Content provided does not violate or infringe upon the rights, including copyright rights, of any person or entity.
5. That the listing broker, his authorized representatives, the NVRMLS and its shareholders, trustees, officers, employees, and agents are not responsible for vandalism, theft or damage of any nature whatsoever to the property.
6. That the property is offered without respect to race, religious creed, color, national origin, disability, ancestry, familial status, sex, sexual orientation, marital status, source of income or any other class protected under applicable state and federal laws.
7. Seller(s) understanding that there is no contractual relationship between the seller(s) and the NVRMLS or its shareholders, trustees, officers, employees or agents.
8. Seller(s) receipt of a copy of this property listing form.

Execution of this listing input form confirms that I (we) have executed concurrently herewith an "Exclusive Right to Sell" listing agreement with the undersigned licensee, unless otherwise noted in the body of the listing form. I (we) acknowledge that the information herein is true and correct to the best of my/our knowledge and I (we) agree to indemnify and hold the undersigned licensee, his/her broker, and the NVRMLS and its shareholders, trustees, officers, employees and agents free and harmless from any liability or damage arising from incorrect or undisclosed information provided by me (us).

Seller Harry R. Reynolds Date 9/21/12

Listing Agent A.J. Johnson Date 9-21-12

Seller Deann Reynolds Date 9/21/12

Listing Broker James E. Johns Date 9-21-12

# EXHIBIT 4

# EXHIBIT 4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

-o0o-

JOHN LINDBERG, an individual; Case No. CV15-00281  
MICHAL LINDBERG, an  
individual; and JUDITH L. Dept No. 3  
LINDBERG, an individual,  
Plaintiffs,  
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, et al.,  
Defendants.

\_\_\_\_\_/

DEPOSITION OF  
A.J. JOHNSON  
JANUARY 26, 2018  
RENO, NEVADA

REPORTED BY: CORRIE L. WOLDEN, NV CSR #194, RPR, CP  
JOB NO.: 443304

1 right?

2 A I assume so, yes.

3 Q You don't know?

4 A Well, I can't remember --

5 Q Okay.

6 A -- what the final price was.

7 Q And you could be refreshed in your recollection if  
8 you saw the documents related to the sale?

9 A Yes.

10 Q Okay. Then we will go ahead and do that. You  
11 then down here list total living space as 2,180 and 1,700  
12 square feet; is that right?

13 A Yes.

14 Q And then you added 600 feet, also; is that  
15 correct?

16 A Yes.

17 Q That was for a barn/garage area; is that correct?

18 A No.

19 Q What is the 600 feet?

20 A I can't remember. This information would have  
21 come from the client.

22 Q Okay.

23 A So I would have written down whatever they told  
24 me.

25 Q Okay. Now, it says here total living space two

1 amounts and then an additional amount, so 2,180, 1,700, and  
2 then 600. Do you remember what the 2,180 was for?

3 A I believe it was for the front house.

4 Q Okay. And the 1,700?

5 A I believe it was for the in-law quarters.

6 Q And but you don't recall the 600?

7 A No.

8 Q Okay. And then if you look here, source of square  
9 footage, checked is owner and appraiser. Do you see that?

10 A Correct.

11 Q Did you check those boxes?

12 A I did.

13 Q Okay. And that's because you received information  
14 from the owner about the square footage, right?

15 A That is correct.

16 Q And from an appraiser?

17 A No, that is incorrect.

18 Q Why did you mark appraiser as the source of square  
19 footage?

20 A Because they stated they got it from their  
21 appraisal.

22 Q Okay. Did you see the appraisal on  
23 September 21st?

24 A No.

25 Q Okay. Did you see it at any time after



1 September 21st, between September 21st and let's say  
2 December 1st, 2012?

3 A No.

4 Q Did you see it between December 1st, 2012 and  
5 February 28th, 2013?

6 A No.

7 Q Do you know, did J.E. Johns ever see the  
8 appraisal?

9 A I can't answer that. I don't know.

10 Q Do you know if the appraisal was ever attached to  
11 an e-mail sent from your e-mail account to the buyer's agent  
12 in this case?

13 A I can't -- I don't know.

14 Q Okay. Let's look at the third page, if we could.  
15 There is some handwriting in the MLS remarks. Do you see  
16 that?

17 A Yes.

18 Q And that's also your handwriting, correct?

19 A Correct.

20 Q Do you see where you list main house, 2,180  
21 approximate?

22 A Correct.

23 Q That's the square footage for the main house?

24 A Correct.

25 Q Second house, 1,700 approximate?

1 A Uh-huh.

2 Q How did they do that?

3 A I cannot remember. I honestly don't remember.

4 Q When you shared this counter offer with  
5 Mr. Kincannon on January 4th did you also share with him  
6 Exhibit 4 which is the appraisal that we have looked at  
7 already in this case?

8 A No.

9 Q Do you know if someone from J.E. Johns &  
10 Associates did?

11 A I don't know.

12 Q Do you know if James E. Johns did?

13 A I don't know.

14 Q At this time in 2012 and 2013 were there any other  
15 agents working for J.E. Johns & Associates?

16 A I don't believe so, no.

17 Q So if Mr. Kincannon received the appraisal in this  
18 case, the appraisal that the Reynolds had done in September  
19 of 2012, he would have received it from either you or  
20 James Johns?

21 MR. PEREOS: Objection; inconsistent with the  
22 testimony of the witness based upon her prior testimony,  
23 assumes facts not in evidence. Calls for speculation.

24 THE WITNESS: I don't know.

25 ///

1 BY MR. MOORE:

2 Q You don't know?

3 A I'm sorry, I don't.

4 Q Would it have been appropriate for him to get that  
5 from the Reynolds themselves?

6 A Appropriate, no.

7 Q Okay. The way things work is you are a conduit of  
8 information from your client to my client, right, and you  
9 pass that information to a realtor; is that right?

10 A Rephrase your question, please.

11 Q The way these transactions work is you represent a  
12 client and my client has a realtor that represents him?

13 A Correct.

14 Q And you two act as conduits of information between  
15 your respective clients; is that right?

16 A Correct.

17 Q Typically, under these scenarios the seller's  
18 agent will provide information to the buyer's agent?

19 A Correct.

20 Q And you would believe it would be inappropriate  
21 for you to give information directly to my client, right?

22 A Correct.

23 Q And it would be inappropriate vice versa for my  
24 client's agent to give or receive information directly from  
25 your client?

1 MR. PEREOS: Objection; characterization and  
2 misquotes the testimony of the witness.

3 BY MR. MOORE:

4 Q Someone references it in this e-mail?

5 A Correct.

6 Q Who signed off as you, right?

7 A Who signed off as me?

8 Q "Thank you, A.J."

9 A That is what it says, correct.

10 Q Okay. Someone signed off as you or you sent this  
11 e-mail?

12 A I can't answer that question.

13 Q Okay. Would it have been anybody other than  
14 James E. Johns sending this e-mail if it weren't you?

15 A No.

16 Q Would you have known that Mr. Johnson was using  
17 your e-mail and pretending to be you at the time he did  
18 this?

19 A No.

20 Q Did you authorize him to send e-mails on your  
21 behalf?

22 A He was the broker.

23 Q Did you authorize him to use your name on e-mails?

24 A Possibly. I don't know.

25 Q Okay. I'm going to push you on that.

1 A Okay.

2 Q Did you authorize him to use your name in e-mails?

3 A He had authorization to use my e-mails, yes.

4 Q To use your name --

5 A Yes.

6 Q To use your name in your e-mails?

7 A Yes.

8 Q And you knew if he was using your name in e-mails  
9 that he was doing that?

10 A Yes.

11 Q Okay.

12 MR. MOORE: I'm going to take a little break.

13 THE WITNESS: Yeah. Can I please have a break for  
14 a few minutes?

15 MR. MOORE: Yeah.

16 THE WITNESS: Thank you.

17 (Whereupon a break was taken from 11:23 a.m. to 11:29 a.m.)

18 BY MR. MOORE:

19 Q Ms. Johns, before we took a break we were  
20 discussing the appraisal that the Reynolds received in this  
21 matter in September 2012, which is marked as an exhibit to  
22 your deposition as Exhibit 4. Do you know that portions of  
23 this appraisal were produced in this case by your attorney?

24 MR. PEREOS: Oh, portions you said?

25 MR. MOORE: Yeah, portions.



1 A No.

2 Q Okay. Why not?

3 A Because this wasn't my file at the time, but I  
4 retrieve information that's given to me by my client. If it  
5 is incorrect, which this document went to title, it would  
6 have also gone to the buyer's broker. I don't see this  
7 unless there is an issue.

8 Q Okay. Was this document sent to J.E. Johns &  
9 Associates?

10 A I don't -- I'm sorry, I don't know.

11 Q Okay. Let's look at Exhibit 5, if you could,  
12 page 2 of Exhibit 5.

13 A Yes.

14 Q All right. If we look at Exhibit 17 briefly,  
15 again, it's dated January 18th; is that right? Well, it  
16 looks like it's January 16th, but there is evidence that it  
17 was faxed on the 18th. Do you see that?

18 A I'm sorry, we are looking at Exhibit 17?

19 Q Yes.

20 A Okay.

21 Q On the first page, the invoice date is the 16th of  
22 January, but at the top it appears that it has been faxed on  
23 January 18th. Do you see that?

24 A Correct.

25 Q Okay. And then there is also a date of

1 January 17th on the pump inspection, and then another one  
2 January 18th outlining the specifics related to the tank.  
3 J.E. Johns & Associates received this on January 18th; isn't  
4 that correct?

5 A I don't know.

6 Q And then sent it to Brian Kincannon on the 19th?

7 A I don't know.

8 Q Okay. Let's look at Exhibit 5, page 2.

9 A Okay.

10 Q The bottom e-mail dated January 19th, 2013, from  
11 aj4jj@aol.com. Do you see that?

12 A Yes.

13 Q "Please see attached septic report on Eaton,  
14 pumping and inspection. Thanks, A.J. Please let me know  
15 when inspections are. Thanks, A.J." Did I read that  
16 correctly?

17 A Yes.

18 Q You sent this to Mr. Kincannon, this being  
19 Exhibit 17, on January 19th; is that correct?

20 A I don't know.

21 Q Okay. Someone using your e-mail account sent it?

22 A Yes.

23 Q If it wasn't you, it was Mr. Johns?

24 A I don't know. I would assume, yes.

25 Q And if he sent it on your behalf, you would have

1 STATE OF NEVADA )  
2 ) Ss.  
3 WASHOE COUNTY )

4 I, CORRIE L. WOLDEN, a Certified Shorthand  
5 Reporter in and for the County of Washoe, State of Nevada,  
6 do hereby certify; That on FRIDAY, JANUARY 26, 2018, at the  
7 hour of 9:57 a.m. of said day, at 151 Country Estates  
8 Circle, Reno, Nevada, personally appeared A.J. JOHNSON, who  
9 was duly sworn by me to testify the truth, the whole truth  
10 and nothing but the truth, and thereupon was deposed in the  
11 matter entitled herein;

12 That I am not a relative, employee or independent  
13 contractor of counsel to any of the parties; or a relative,  
14 employee or independent contractor of the parties involved  
15 in the proceeding, or a person financially interested in the  
16 proceeding;

17 That said deposition was taken in verbatim  
18 stenotype notes by me, and thereafter transcribed into  
19 typewriting as herein appears; That the foregoing  
20 transcript, consisting of pages 1 through 98, is a full,  
21 true and correct transcription of my stenotype notes of said  
22 deposition.

23 DATED: At Reno, Nevada, this 4th day of February,  
24 2018.

*Corrie L. Wolden*

CORRIE L. WOLDEN, CSR #194, RPR, CP

# EXHIBIT 5

# EXHIBIT 5



# OFFER AND ACCEPTANCE AGREEMENT RESIDENTIAL PROPERTY



1 RECEIVED FROM Jon Lindberg, Michal K Lindberg  
2 hereinafter designated as BUYER, the amount set forth below as EARNEST MONEY DEPOSIT on account of the PURCHASE PRICE  
3 OF \$ 375,000.00 DOLLARS, for the real property

4 situated in the ☒ City OR ☐ Unincorporated Area of Reno, County of Washoe,  
5 State of Nevada, commonly described as 20957 Eaton Road

6 APN 045337711 (legal description to be supplied in escrow).

7 BUYER ☒ does, ☐ does not intend to occupy the property as a residence.

8  
9 **EARNEST MONEY DEPOSIT** Evidenced by ☒ Check, or ☐ other \$ 1,500.00  
10 payable to First Centennial Title, held uncashed until acceptance and then deposited  
11 within one (1) business day of acceptance with First Centennial Title (Roberta Crown)

12 Authorized escrow holder to be selected by ☒ BUYER ☐ SELLER.

13

## 14 DISPOSITION OF EARNEST MONEY DEPOSIT IN THE EVENT OF DEFAULT

15 In the event BUYER shall default in the performance of this Agreement, SELLER may, subject to any rights of a BROKER herein,  
16 retain such portion of the deposit to cover damages sustained, and/or take such actions as deemed appropriate by SELLER to collect such  
17 damages. BUYER shall have the right to take such action as deemed appropriate by BUYER to recover such portion of the deposit as may  
18 be allowed by law.

19

20 **BALANCE OF CASH DOWN PAYMENT** (not including closing costs) \$ 36,000.00

21 Source of down payment Accounts

22

23 **CASH PURCHASE** The BUYER to provide evidence, satisfactory to SELLER, of sufficient cash available to complete this purchase  
24 within        days of written acceptance.

25

FINANCING TERMS	
26	<b>NEW FIRST LOAN PROCEEDS:</b> <input checked="" type="checkbox"/> Conventional, <input type="checkbox"/> FHA, <input type="checkbox"/> VA, <input type="checkbox"/> Rural, <input type="checkbox"/> Private \$ <u>337,500.00</u>
27	<input checked="" type="checkbox"/> Fixed Rate for <u>30</u> years. Interest not to exceed <u>4.000</u> %.
28	<input type="checkbox"/> Adjustable Rate for <u>      </u> years. Initial Interest not to exceed <u>      </u> % maximum lifetime rate not to exceed <u>      </u> %.
29	Payment shall include: <input type="checkbox"/> Interest only OR <input type="checkbox"/> Principal and Interest
30	
31	<b>NEW SECOND LOAN PROCEEDS:</b> <input type="checkbox"/> Conventional, <input type="checkbox"/> FHA, <input type="checkbox"/> VA, <input type="checkbox"/> Rural, <input type="checkbox"/> Private \$ <u>      </u>
32	<input type="checkbox"/> Fixed Rate for <u>      </u> years. Interest not to exceed <u>      </u> %.
33	<input type="checkbox"/> Adjustable Rate for <u>      </u> years. Initial Interest not to exceed <u>      </u> % maximum lifetime rate not to exceed <u>      </u> %.
34	Payment shall include: <input type="checkbox"/> Interest only OR <input type="checkbox"/> Principal and Interest
35	
36	Taxes and Insurance shall be impounded monthly by lender or paid directly by BUYER.
37	
38	<b>BUYER</b> to lock loan terms within <u>45</u> days of acceptance or BUYER agrees to pay prevailing rates.
39	
40	<b>BUYER</b> to pay discount points not to exceed <u>      </u> %. SELLER to pay discount points not to exceed <u>      </u> %.
41	Any reduction in discount points at closing to be allocated proportionately.
42	Loan origination fee not to exceed <u>1.000</u> % paid by <input checked="" type="checkbox"/> BUYER, <input type="checkbox"/> SELLER.
43	SELLER agrees to pay up to \$ <u>      </u> in fees which cannot be paid by the BUYER pursuant to FHA or VA regulation.
44	All remaining loan fees shall be paid as required by law, ordinance and/or regulation.
45	PMI, MIP, VA funding fee, if any, to be <input type="checkbox"/> paid in cash, <input type="checkbox"/> financed, <input type="checkbox"/> paid monthly.
46	
47	<b>OTHER</b> (Specify in Additional Terms and Conditions or Financing Addendum): \$ <u>      </u>
48	
49	<b>TOTAL PURCHASE PRICE</b> in the sum of (not including closing costs): \$ <u>375,000.00</u>

50

51  
52 **LOAN APPROVAL** Within five (5) days of acceptance, BUYER agrees to (1) submit a loan application, including all documentation,  
53 to a lender of BUYER's choice, (2) authorize ordering of the appraisal and (3) furnish a pre-approval letter to SELLER based upon a  
54 standard factual credit report and review of debt to income ratios.

55 This offer is conditioned upon BUYER's ability to deliver to SELLER a letter of loan approval which includes income verification and  
56 verification of available funds, subject to acceptable appraisal and lender review of preliminary report from title company within  
57 30 days of acceptance. By signing below, BUYER consents to the lender's release of loan status and conditions of approval to the  
58 SELLER and Brokers.

59 If loan approval is not obtained within said time frame, SELLER reserves the right to terminate this Agreement. Both parties agree to  
60 cancel the escrow and have earnest money deposit returned to BUYER less expenses incurred by BUYER.

61

62 **CLOSING** Close of escrow to be March 4, 2013. Unless otherwise agreed upon in writing, close of escrow  
63 date shall not change from the originally agreed upon closing date. Both parties shall deposit with the authorized escrow holder all funds  
64 and instruments necessary to complete the transaction in accordance with the terms herein.

Address 20957 Eaton Road Reno NV 89521

Page 1 of 7

Buyer [Signature] and Seller [Signature] have read this page.

RSAR0 05/12  
ROA 1/7

Produced with zipForm® by zipLogix, 18070 Fifteen Mile Road, Fraser, Michigan 48026 [www.zipLogix.com](http://www.zipLogix.com)

Jon Linberg

RA 0136 KW 9



1  
2 **ADDITIONAL CONTRACT TERMS**

3 **DEFINITIONS** The BROKER includes cooperating Brokers and all Licensees. DAYS means calendar days unless otherwise specified.  
4 **ACCEPTANCE** means the date on which this Agreement and any other counter offers are fully executed and delivered. **DELIVERED**  
5 means personally delivered to principals or respective Licensees, transmitted by facsimile machine, Electronic PostMark™, or mailed by  
6 certified mail. In the event of fax transmission, delivery shall be deemed to be complete at the time noted on the confirmation sheet  
7 generated by the sender's fax. In the event of certified mailing, delivery shall be deemed to have been made on the third day following the  
8 date of mailing, evidenced by the postmark on the envelope containing the delivered material. **RECEIPT** means personally accepted by  
9 the designated recipient or the authorized representative, in the case of personal delivery; accepted by the designated recipient's fax  
10 machine; verification of Electronic PostMark™ or three (3) days following the date of mailing, evidenced by the postmark on the  
11 envelope containing the delivered material, in the case of a certified mailing, not withstanding the date the recipient, or the authorized  
12 representative, actually signs for the certified mailing.

13 **CONDITIONS SATISFIED OR WAIVED IN WRITING** Each condition, contingency, approval and disapproval shall be satisfied  
14 according to its terms unless waived in writing by the beneficiating party within the time limits specified, or an extension in writing is  
15 agreed to by the parties or, this Agreement shall terminate and all deposits be returned to BUYER less expenses incurred by BUYER to  
16 the date of termination of this transaction. Each party shall diligently pursue the completion of this transaction.

17  
18 **APPRAISAL BUYER Initial Required**

19 ☒ Included ☐ Waived  
20 [Signature] Appraisal fee to be paid by ☒ BUYER ☐ SELLER. It is expressly agreed,  
21 notwithstanding any other provisions of this contract, the BUYER shall not be obligated to complete the purchase of the property or to  
22 incur any penalty for forfeiture of earnest money deposit if the appraised value of the property (excluding closing costs) is less than the  
23 amount specified as the purchase price. The BUYER shall, however, have the option of proceeding with the consummation of the contract  
24 without regard to the amount of the appraised valuation.

25  
26 **SALE OF OTHER PROPERTY** BUYER must check one of the following:

27 ☒ A. This Agreement is not contingent upon conveyance of BUYER's property  
28 OR  
29 ☐ B. This Agreement is contingent upon conveyance of BUYER's property described as:

30 \_\_\_\_\_ which is  
31 ☐ in escrow OR  
32 ☐ currently listed in an MLS System by a REALTOR®, or will be listed within \_\_\_\_\_ days of Acceptance.  
33 SELLER ☐ shall OR ☐ shall not have the right to continue to offer this property for sale and accept written offers subject to the  
34 BUYER's rights under this Agreement.  
35 Should SELLER accept such an offer, the Acceptance shall be made subject to BUYER's rights under this Agreement, and written  
36 notice of the contingent acceptance of any such offer shall be immediately delivered to BUYER's Broker.  
37 If BUYER fails to deliver a written waiver of this contingency within \_\_\_\_\_ hours of the delivery of SELLER's notice to  
38 BUYER or Broker, this Agreement shall terminate, earnest money deposit shall be returned to BUYER, less expenses incurred by  
39 BUYER and escrow shall be terminated.  
40 If BUYER delivers a timely waiver of this contingency, BUYER's earnest money deposit shall be increased to \$ \_\_\_\_\_,  
41 and BUYER shall pay the balance of that increased deposit within \_\_\_\_\_ hours of the delivery of the waiver.  
42 Concurrent with the written waiver, BUYER must also deliver proof of adequate funds to close escrow and that the financing is  
43 not conditioned upon the sale and/or closing of any property.  
44 If BUYER fails to timely pay the increased deposit, the waiver and proof will be deemed ineffective and this Agreement shall  
45 terminate, and all BUYER's deposits will be refunded, less any expenses incurred by the BUYER.  
46 If "B" is checked above, BUYER shall provide information regarding the listing or escrow on BUYER's property and related  
47 escrows, including, but not limited to, closing date, loan status, inspections and all additional contingencies, within \_\_\_\_\_ days  
48 of acceptance. BUYER authorizes SELLER or SELLER's Broker to obtain updates on BUYER's listing or escrow. If the escrow  
49 on BUYER's property does not close by \_\_\_\_\_, this Agreement will terminate unless the BUYER and SELLER otherwise  
50 agree in writing.

51  
52 Should BUYER waive this contingency, all inspections shall be completed within \_\_\_\_\_ days of the delivery of BUYER's  
53 waiver of this contingency. If this contingency is waived, the close of original escrow date will hold unless otherwise agreed upon  
54 in writing.

55  
56 **SELLER'S REAL PROPERTY DISCLOSURE FORM** The SELLER will provide BUYER, at time of written acceptance, a  
57 completed Seller's Real Property Disclosure Form which, by this reference, shall be incorporated into this Agreement. BUYER shall  
58 return an acknowledged copy to SELLER within four (4) working days of receipt.

59 **DISCLAIMER:** BUYER understands that the above Seller's Real Property Disclosure Form is for disclosure purposes and is not a  
60 substitute for property inspections by experts, including, but not limited to, engineers, geologists, architects, general contractors, specialty  
61 contractors such as roofing contractors and pest control operators. BUYER is urged to retain such experts that are believed appropriate.  
62 BUYER understands and acknowledges the Brokers in the transaction cannot warrant the condition of the property or guarantee all defects  
63 have been disclosed by SELLER. Both parties acknowledge Brokers will not be investigating the status of permits, location of property  
64 lines, and/or code compliance.

Address 20957 Eaton Road Reno NV 89521  
Page 2 of 7 Buyer [Signature] and Seller [Signature] have read this page.

1 VESTED TITLE Title shall vest as designated in Escrow Instructions.

2

3 EXAMINATION OF TITLE In addition to any encumbrances referred to herein, BUYER shall take title to the property subject to:  
4 (1) Real Estate Taxes not yet due, and (2) Covenants, Conditions, & Restrictions (CC&Rs), rights of way, and easements of record, if  
5 any, which do not materially affect the value or intended use of the property. Within two (2) business days of acceptance, SELLER  
6 shall order a preliminary report from a title company and CC&Rs if applicable, for the property. Within five (5) days from BUYER's  
7 receipt of the preliminary report and CC&Rs, all exceptions shall be deemed approved unless written objection is delivered to SELLER's  
8 Broker within this five (5) day period. Should BUYER object to any exceptions, SELLER shall use due diligence to remove those  
9 exceptions before close of escrow. If those exceptions cannot be removed before close of escrow, BUYER may elect to purchase, subject  
10 to the existing exceptions or BUYER may elect to terminate all rights and obligations hereunder, and the deposit shall be returned to  
11 BUYER, less expenses incurred by BUYER to the date of termination. If SELLER is unwilling or unable to remove such objections,  
12 SELLER shall deliver written notification to BUYER's Broker within ten (10) days of receipt of said objections.

13

14 CLOSING COSTS

15 ☐ BUYER ☒ SELLER shall pay for a (Standard) owner's policy of title insurance.

16 ☒ BUYER ☐ SELLER shall pay for a (Standard) lender's policy of title insurance.

17 BUYER is aware additional coverage policies are available. All costs associated with additional coverage policies to be paid for by

18 ☒ BUYER, ☐ SELLER, ☐ other \_\_\_\_\_

19 Escrow Fee to be paid by ☐ BUYER, ☐ SELLER, ☒ split equally.

20 Transfer Tax(es) to be paid by ☐ BUYER, ☒ SELLER, ☐ other \_\_\_\_\_

21 All remaining closing costs shall be paid in customary manner as required by law, ordinance and/or regulation.

22

23 BONDS AND ASSESSMENTS (Other than Common-Interest Communities) In the event there is a bond or assessment which has  
24 a principal balance or requires settlement in full prior to close of escrow, the bond or assessment shall be ☒ paid by SELLER, or  
25 ☐ assumed by BUYER, ☐ other \_\_\_\_\_

26

27 OMISSIONS FROM ESCROW INSTRUCTIONS The omission from escrow instructions of any provision herein shall not  
28 preclude any party from enforcing that provision. All representations and warranties shall survive the conveyance of the property.

29

30 PRORATION Any and all rents, taxes, interest, homeowner association fees, payments on bonds and assessments assumed by  
31 BUYER, and other expenses of the property shall be prorated as of the date of recordation of the deed. Security deposits, advance rentals,  
32 or considerations involving future lease credits shall be credited to BUYER at close of escrow.

33

34 REASSESSMENT OF PROPERTY TAX The BUYER is advised the property may be reassessed upon change of ownership which  
35 may result in a tax increase or decrease.

36

37 SYSTEMS AND MAINTENANCE Until possession is delivered, SELLER shall maintain the property in its entirety, including, but  
38 not limited to, all existing structures, landscaping, grounds, appliances and systems. SELLER agrees to deliver the property in a neat and  
39 clean condition, and remove all debris and personal belongings removed. The following items are specifically excluded from the above:

40

41

42 HOME WARRANTY CONTRACT

43 BUYER Initial Required

44 ☒ Included ☐ Waived

45 ☒ BUYER, ☒ SELLER, ☐ other 400.00 A home warranty contract, shall be selected by ☒ BUYER, ☐ SELLER and paid for by

46 ☒ BUYER, ☒ SELLER, ☐ other 400.00 The home warranty contract shall become effective  
47 at close of escrow for not less than one year, at a price NOT to exceed \$ \_\_\_\_\_. The Brokers herein have informed both parties

48

49 that such protection programs are available. Brokers do not approve or endorse any particular program.

50

51 COMMON-INTEREST COMMUNITY DISCLOSURE

52 The property ☐ is ☒ is not located in a Common-Interest Community.

53

54 If so, complete the following:

55 Association transfer fee to be paid by ☐ BUYER, ☐ SELLER, ☐ other \_\_\_\_\_. The amount of

56 any delinquent assessments including penalties, attorney's fees, and other charges provided for in the management documents shall be

57 paid current by the SELLER at close of escrow. SELLER must disclose knowledge of upcoming and pending assessments.

58 Existing Assessments levied shall be paid by ☐ BUYER, ☐ SELLER, ☐ other \_\_\_\_\_

59 Assessments levied, but not yet due, shall be paid by ☐ BUYER, ☐ SELLER, ☐ other \_\_\_\_\_

60 SELLER to provide BUYER common-interest community documents ("Resale Package") as required by NRS. BUYER to have five (5)

61 days from receipt of Resale Package for review. If the BUYER does not approve the Resale Package then written notice to cancel must be

62 given within that same 5 day period.

63 AREA RECREATION PRIVILEGES AND RULES If applicable, SELLER shall relinquish, on or before close of escrow,

64 recreation privileges, passes, identification cards or keys for access to common-interest community facilities and general improvements.

65 Upon close of escrow, SELLER agrees to pay replacement charges for identification cards or keys that are not relinquished. BUYER

66 shall become familiar with the current common-interest community facilities and general improvement policies regarding recreation

67 privileges and associated costs prior to close of escrow.

Address 20957 Eaton Road Reno NV 89521

Page 3 of 7

Buyer [Signature] and Seller [Signature] have read this page.

RSAR0 05/12

ROA 3/7

Produced with zipForm9 by zipLogix, 18070 Filleen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Jon Linberg

RA 0138 KW 11

1 **ITEMS NOT ADDRESSED** Items of a general maintenance or cosmetic nature which do not materially affect value or use of the  
2 subject property, which existed at the time of acceptance and which are not expressly addressed in this Agreement are deemed accepted  
3 by the BUYER.  
4

5 **INSPECTIONS AND FINAL WALK-THROUGH** Acceptance of this offer is subject to the following reserved right. BUYER may  
6 have the property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will  
7 inspect the property. The following is not an exhaustive list of possible inspections; therefore, the BUYER shall initial those inspections  
8 included and waived AND add under "OTHER" any additional inspections necessary to satisfy the BUYER.

9 ☒ Within 21 days of the date of acceptance

10 OR ☐ according to the deadline inserted in the above "Sale of Other Property"

11 OR ☐ within \_\_\_\_\_ days of Lien Holder(s) Approval of Short Sale,

12 all inspections shall be completed and BUYER shall deliver to SELLER, at BUYER's sole expense, copies of all inspection reports and  
13 written notice signed by BUYER providing for one of the following:

14 A. approval of the inspections without requiring any repairs; OR

15 B. approval of the inspections with an attached Notice of Required Repairs Form or an Addendum listing all required repairs to  
16 which SELLER shall respond within 5 days of delivery; OR

17 C. termination of this Agreement including an explanation how the condition(s) revealed by any inspection report materially  
18 and/or reasonably justify such a decision.

19 If any inspection is not completed and delivered to SELLER by the deadline set forth above, BUYER is deemed to have waived the right  
20 to that inspection and SELLER is released from liability for the cost of repairs said inspection would have reasonably identified had it  
21 been conducted, except as otherwise provided by law. If BUYER acts reasonably in terminating the Agreement based upon objectionable  
22 conditions revealed by the inspection(s), BUYER is released from any and all obligations to SELLER and entitled to a refund of the  
23 earnest money deposit, less expenses incurred by BUYER.  
24

25 **BUYER Initial Required**

26 

Included	Waived
----------	--------

27 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	PEST INSPECTION
-------------------------------------	--------------------------	-----------------

Paid by: ☒ BUYER, ☐ SELLER

28 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	HOME INSPECTION
-------------------------------------	--------------------------	-----------------

Paid by: ☒ BUYER, ☐ SELLER

29 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	HEATING SYSTEM INSPECTION
-------------------------------------	--------------------------	---------------------------

Paid by: ☐ BUYER, ☐ SELLER

30 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	COOLING SYSTEM INSPECTION
-------------------------------------	--------------------------	---------------------------

Paid by: ☐ BUYER, ☐ SELLER

31 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	OIL TANK TEST Type _____
-------------------------------------	--------------------------	--------------------------

Paid by: ☐ BUYER, ☐ SELLER

32 If oil tank needs to be filled to perform test, BUYER ☐ will, ☐ will not reimburse SELLER.

33 

<input type="checkbox"/>	<input type="checkbox"/>	WOODBURNING DEVICE INSPECTION
--------------------------	--------------------------	-------------------------------

Paid by: ☐ BUYER, ☒ SELLER

34 In the event device does not meet all applicable codes and/or laws, the cost of its removal shall be the responsibility of the SELLER.  
35 Stovepipe to be capped off at ceiling or fireplace to be restored to working order at SELLER's expense.

36 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	FIREPLACE INSPECTION
-------------------------------------	--------------------------	----------------------

Paid by: ☐ BUYER, ☒ SELLER

37 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	SURVEY Type _____
-------------------------------------	--------------------------	-------------------

Paid by: ☐ BUYER, ☐ SELLER

38 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	WELL QUANTITY
-------------------------------------	--------------------------	---------------

Paid by: ☐ BUYER, ☒ SELLER

39 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	WELL QUALITY
-------------------------------------	--------------------------	--------------

Paid by: ☐ BUYER, ☒ SELLER

40 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	SEPTIC PUMPING
-------------------------------------	--------------------------	----------------

Paid by: ☐ BUYER, ☒ SELLER

41 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	SEPTIC INSPECTION
-------------------------------------	--------------------------	-------------------

Paid by: ☐ BUYER, ☒ SELLER

42 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	OTHER _____
-------------------------------------	--------------------------	-------------

Paid by: ☐ BUYER, ☐ SELLER

43 

<input checked="" type="checkbox"/>	<input type="checkbox"/>	RE-INSPECTIONS
-------------------------------------	--------------------------	----------------

Paid by: ☐ BUYER, ☒ SELLER

44 SELLER agrees to provide reasonable access to the property to BUYER, as well as inspectors representing BUYER, for both inspections  
45 and re-inspections as provided in this Agreement and to representatives of lending institutions for appraisal purposes. SELLER agrees to  
46 have all utilities in service the day of inspection and until close of escrow. BUYER shall have the right to a final walk-through inspection  
47 no later than 5 days prior to close of escrow to ensure compliance with the terms of this Agreement.  
48

49 **LIMITATION OF REPAIR COSTS** The SELLER agrees to pay for and complete repairs in an amount NOT to exceed the total sum  
50 of \$ 2,500.00 for all repair conditions indicated on Page 2, lines 18-24 (Appraisal Report); Page 3, lines 37-40 (System and  
51 Maintenance); Page 4, lines 5-49 (Inspection and Final Walk Through); and/or any defect identified in the Seller's Real Property  
52 Disclosure Form or discovered by SELLER but not disclosed in the Seller's Real Property Disclosure Form or which has been  
53 discovered to be materially worse than was indicated.

54 In the event BUYER's required repairs are not completed by close of escrow, BUYER shall execute an Addendum directing how the  
55 SELLER's funds for the remaining repairs shall be disburse on behalf of the BUYER. The Brokers herein have no responsibility to assist  
56 in the payment of any repair, correction or deferred maintenance on the subject property which may have been revealed by the above  
57 inspections, agreed upon by the BUYER and SELLER or requested by one party.  
58

59 **DESTRUCTION OF IMPROVEMENTS** If the improvements of the property are destroyed, materially damaged, or found to be  
60 materially defective prior to close of escrow, BUYER may terminate the Agreement by written notice delivered to SELLER's Broker,  
61 and earnest money deposit shall be returned to BUYER. In the event BUYER does not elect to terminate the Agreement, BUYER shall be  
62 entitled to receive, in addition to the property, any insurance proceeds payable on account of the damage, destruction and/or defect.

Address 20957 Eaton Road Reno NV 89521

Page 4 of 7

Buyer [Signature] and Seller [Signature] have read this page.

Produced with zipForm® by zipLogix, 18070 Filleen Mile Road, Fraser, Michigan 48026 [www.ziplogix.com](http://www.ziplogix.com)

RSAR© 05/12  
ROA 4/7

Jon Linberg

RA 0139 KW 12

1 **OIL AND PROPANE** If applicable, any oil or propane existing at time of written acceptance, allowing for normal use up to close of  
2 escrow, will be ☐ purchased by BUYER ☒ included in the purchase price. If fuel is purchased by BUYER, SELLER to contact fuel  
3 company to measure existing fuel no later than five (5) days prior to close of escrow. Fuel credit amount to be submitted to title company  
4 for credit to SELLER for remaining fuel.

5  
6 **PHYSICAL POSSESSION** Physical possession of the property, with keys to all property locks, community mailbox keys, alarms,  
7 and garage door opener(s), if applicable, shall be delivered to BUYER ☒ upon recordation of the deed or ☐ by separate Agreement.

8  
9 **VERIFICATION OF INFORMATION** Any information relating to square footage, land or its use, and/or improvements of  
10 the land are approximate or estimates only, and neither the SELLER nor the Brokers involved make any representation or guarantee  
11 regarding the accuracy. Any oral or written representations by SELLER or Brokers regarding age of improvements, size, and square  
12 footage of parcel or building, or location of property lines, may not be accurate. Apparent boundary line indicators such as fences,  
13 hedges, walls, or other barriers may not represent the true boundary lines. Brokers are not obligated to investigate the status of permits,  
14 zoning, or code compliance. BUYER to satisfy any concerns with conditions that are an important or critical element of the purchase  
15 decision. BUYER has not received or relied upon any representations by either Brokers or SELLER with respect to the condition of the  
16 property which are not contained in this Agreement or in any attachments. The information contained in the Multiple Listing Service,  
17 computer or advertisements, and feature sheets pertaining to this property are not warranted or guaranteed by the Brokers. Errors and/or  
18 omissions in inputting information, while uncommon, are possible. BUYER shall be responsible for verifying the accuracy of pertinent  
19 information. Deposit of all funds necessary to close escrow shall be deemed as final acceptance of the property. SELLER agrees to hold  
20 all Brokers in the transaction harmless and to defend and indemnify them from any claim, demand, action or proceedings resulting from  
21 any omission or alleged omission by SELLER's statements.

22  
23 **FIXTURES** All items permanently attached to the property as of this date, including, but not limited to, light fixtures, attached  
24 floor coverings, draperies, blinds and shades including window hardware, door and window screen(s), storm sash, combination doors,  
25 awnings, TV antenna(s), satellite dish, burglar, fire and smoke alarms, built-in pools and spas and related equipment, solar system(s),  
26 conforming woodstoves, attached fireplace screen(s), electric garage door opener(s) with control(s), outdoor plants and trees, (other than  
27 in movable containers), are included in the purchase price, free of liens, **EXCLUDING**

28 \_\_\_\_\_  
29 \_\_\_\_\_  
30 \_\_\_\_\_  
31 **PERSONAL PROPERTY** The following personal property, on the premises when inspected by BUYER, is included in the purchase  
32 price and shall be transferred to BUYER free of liens at close of escrow with no warranty implied as to the condition of any personal  
33 property after close of escrow: Electric Range, Single Oven, Garbage Disposal, Microwave Built in,  
34 blinds shades, closet builtins.

35  
36 **WATER RIGHTS** Water rights, if any, to be included with the property unless specifically excluded by deed or mutual agreement.

37  
38 **WATER METERS** The BUYER may be required, at some future date, to incur the costs of installation of water meters and/or  
39 conversion to metered rates.

40  
41 **WELLS** Many factors may affect the performance of a well system. If the property includes a well, BUYER may be required, at some  
42 future date, to incur the costs of connecting the residence to a public water system. See Authorization for Release of Water Quality and  
43 Water Quantity Testing Results and Information Regarding Private Well and Septic System.

44  
45 **ADDITIONAL FEES** Some areas may include/impose additional fees or charges for the remediation of water systems.

46  
47 **SEPTIC SYSTEMS** If the property includes a septic system, BUYER may be required, at some future date, to incur the costs of  
48 connecting the residence's plumbing to a public sewer system. See Information Regarding Private Well and Septic System.

49  
50 **At close of escrow, BUYER assumes all future costs associated with water meters, wells and septic systems.**

51  
52 **PRIVATE ROADS** If the property shares a common road or access driveway or right of way with other property, the SELLER shall  
53 disclose the existence of any road maintenance agreement.

54  
55 **LAND USE REGULATION** The BUYER is advised the property may be subject to the authority of the federal government, state,  
56 county, Tahoe Regional Planning Agency, city and/or the various courts having jurisdiction. These governmental entities, from time to  
57 time, have adopted and revised land use and environmental regulations that may apply to the property, and which, among other things,  
58 may restrict new construction, expansion, remodeling and rebuilding of buildings and other improvements. Due to the uncertain effect of  
59 land use and environmental regulations that may apply to the property and may affect BUYER's intended use of the property, the Broker  
60 makes no representations or warranties regarding the existing permissible uses or future revisions to the land use regulations.

61  
62 **ENVIRONMENTAL CONDITIONS** The BUYER is advised the property may be located in an area found to have special flood  
63 hazards as indicated by FEMA, avalanche conditions, freezing temperatures, snow loads, seismic activity and/or wildland fires. It may be  
64 necessary to purchase additional insurance in order to obtain a loan secured by the property from any federally regulated financial  
65 institution or a loan insured or guaranteed by an agency of the U.S. Government. **For further information, consult your lender,**  
66 **insurance carrier or other appropriate agency.**

Address 20957 Eaton Road Reno NV 89521  
Page 5 of 7 Buyer [Signature] and Seller [Signature] have read this page.

1 **TAX WITHHOLDING (FIRPTA)** Unless the property is acquired for use as a primary residence and is sold for no more than  
2 \$300,000, SELLER agrees to provide BUYER with (a) NON-FOREIGN SELLER AFFIDAVIT (PPC Form 101-V), or (b)  
3 WITHHOLDING CERTIFICATE FORM from the Internal Revenue Service stating that withholding is not required. In the event none of  
4 the foregoing is applicable, BUYER must withhold 10% of the Gross Sales Price under the FOREIGN INVESTMENT AND REAL  
5 PROPERTY TAX ACT (IRC Section 1445).

6  
7 **TAX DEFERRED EXCHANGE** In the event BUYER or SELLER wishes to enter into an IRC tax deferred exchange for the real  
8 property described herein, each of the parties agrees to cooperate with the other party in connection with such exchange, including the  
9 execution of documents as may be reasonably necessary to effectuate the same. Provided that the other party shall not be obligated to  
10 delay the closing, all additional costs in connection with the exchange shall be borne by the party requesting the exchange, and the other  
11 party shall not be obligated to execute any note, contract, deed, or other document providing for any personal liability which would  
12 survive the exchange. The other party shall be indemnified and held harmless against any liability arising or is claimed to have arisen on  
13 account of the acquisition of ownership of the exchange property.

14  
15 **ADDITIONAL TERMS AND CONDITIONS:**

16  
17  
18  
19  
20  
21  
22 **THE FOLLOWING HAVE BEEN RECEIVED AND ACKNOWLEDGED BY BUYER:**

- 23 ☐ Common Interest-Community Information Statement "Before You Purchase Property in a Common-Interest  
24 Community Did You Know..."  
25 ☒ Duties Owed by a Nevada Real Estate Licensee  
26 ☒ Environmental Contact List  
27 ☒ For your Protection: Get a Home Inspection  
28 ☒ Information Regarding Private Well and Septic System  
29 ☒ Residential Disclosure Guide  
30 ☒ The New Reality of Property Insurance

31  
32 **THE FOLLOWING ADDENDA AND EXHIBITS ARE ATTACHED AND INCORPORATED**

- 33 ☒ Authorization of Release of Water Quality and Water Quantity Testing Results  
34 ☐ Consent to Act  
35 ☐ Financing Addendum  
36 ☐ Lead Based Paint Addendum (if property built prior to 1978)  
37 ☐ Range Land Disclosure  
38 ☐ Used Manufactured/Mobile Home Disclosure  
39 ☐ Short Sale Addendum to the Offer and Acceptance Agreement  
40 ☐ Other

41  
42  
43 **ELECTRONIC TRANSMISSION** The electronic transmission of a signed copy hereof or any counter offer/amendment to the other  
44 party or the Broker shall constitute delivery of said signed document. Signatures appearing on electronically transmitted documents  
45 shall be accepted as originals.

46  
47 **TIME IS OF THE ESSENCE** Time is of the essence of this Agreement.

48  
49 **NEVADA LAW TO APPLY** Nevada law shall apply to the interpretation and enforcement of this Agreement.

50  
51 **MEDIATION** For information purposes only. If a dispute arises out of or relates to this Agreement, or its breach, the parties are  
52 aware that the local Association of REALTORS® has a Dispute Resolution Service (DRS) available. A DRS brochure is available upon  
53 request.

54  
55 **ATTORNEY FEES** In the event either party is required to engage the services of an attorney to enforce this Agreement, the  
56 prevailing party in any proceeding shall be entitled to an award of reasonable attorney's fees, legal expenses and costs.

57  
58 **CODE OF ETHICS** Not all real estate licensees are REALTOR(S)®. A REALTOR® is a member of the National Association of  
59 REALTORS® and therefore subscribes to a higher ethical standard in the industry, known as the REALTOR® Code of Ethics. To receive  
60 a copy of the REALTOR® Code of Ethics, ask your real estate professional OR, the local Association of REALTORS®.

61  
62 **PROFESSIONAL CONSULTATION ADVISORY** A real estate Broker is qualified to advise on real estate. The parties are advised  
63 to consult with appropriate professionals, including, but not limited to, engineers, surveyors, appraisers, lawyers, CPAs, or other  
64 professionals, on specific topics, including, but not limited to, land use regulation, boundaries and setbacks, square footage, physical  
65 condition, legal, tax, water rights and other consequences of the transaction.

Address 20957 Eaton Road Reno NV 89521  
Page 6 of 7 Buyer [Signature] and Seller [Signature] have read this page.

RSAR® 05/12  
ROA 6/7

Produced with zipForm® by zipLogix, 16070 Fifteen Mile Road, Fraser, Michigan 48026 [www.ziplogix.com](http://www.ziplogix.com)

Jon Linberg

RA 0141 KW 14



# EXHIBIT 6

# EXHIBIT 6



## COUNTER OFFER



1 Property address 20957 Eaton Road  
 2 in reference to the offer made by, Lindholm et al, Buyer,  
 3 dated 1-3-13, the following Counter Offer is submitted:  
 4

5 (1) Purchase Price to be \$385,000.00  
 6 (2) Escrow is with Choice Escrow First Contingible Title  
 7 (3) Limited Crets of Repairs Not to exceed \$500.00  
 8 (4) Pelled State is approved, with no inspections  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23

24 **OTHER TERMS:** All other terms to remain the same.  
 25

26 **RIGHT TO ACCEPT OTHER OFFERS:** Seller reserves the right to accept any other offer prior to Buyer's written  
 27 acceptance of the Counter Offer. Acceptance shall not be effective until a copy of this Counter Offer, dated and signed  
 28 by Buyer, is received by Seller and/or A.J. Johnson  
 29

30 **EXPIRATION:** This Counter Offer shall expire unless written acceptance is delivered to Seller or his/her Agent on or  
 31 before 5:00 ☐ AM ☒ PM, on 1-5-13  
 32

33 Seller: Harold R. Lindholm Date: 1-4-13 Time: \_\_\_\_\_  
 34

35 Seller: Don Date: 1-4-13 Time: \_\_\_\_\_  
 36

37 **BUYER'S ACCEPTANCE, COUNTER TO COUNTER OFFER OR REJECTION OF AGREEMENT**  
 38

39 ☒ **Acceptance of Counter Offer:** The undersigned Buyer accepts this Counter Offer to purchase.  
 40

41 ☐ **Counter to the Counter Offer:** Buyer signs this Counter Offer subject to a Counter to the Counter Offer  
 42 dated \_\_\_\_\_  
 43

44 ☐ **Rejection:** By his signature below, Buyer rejects the foregoing Counter Offer.  
 45

46 Buyer: [Signature] Date: 1-4-13 Time: 1:42  
 47

48 Buyer: Michael R. Lindberg Date: 1/4/13 Time: 2:25 pm

Page 1 of 1

J.E. Johns PO Box 12201 Reno, NV 89510  
 James Johns

Phone: 775 356-2725 Fax: 775 351-3315  
 Produced with ZipForm® by zipform.com, 18070 Spring Mile Road, Premier, Michigan 48066 www.zipform.com

© RSAR 01/03  
 CTR 1/1  
 Residential Purchase

RA 0143 KW 8

# EXHIBIT 7

# EXHIBIT 7

obj: Re: Physical and pest inspection - 20957 EATON  
date: 1/31/2013 2:44:05 P.M. Pacific Standard Time  
from: bkincannon@kw.com  
to: AJ4JJ@aol.com  
re inspections went well there are some items with the home. Please  
reward the last inspection and we will put together a repair addendum.

hanks,  
rian  
Kincannon Team  
Keller Williams  
bkincannon@kw.com  
75-338-2527

AJ4JJ@aol.com:

> 1-30-13  
>  
> You called today. How did the inspection go?? A.J. Johnson  
>  
>  
> In a message dated 1/24/2013 10:32:40 A.M. Pacific Standard Time,  
> bkincannon@kw.com writes:  
>  
> Just have them fill it up at this time. How are we with the well? Is  
> the inspection time ok?  
>  
> Thanks,  
>  
> Brian  
> Kincannon Team  
> Keller Williams  
> bkincannon@kw.com  
> 775-338-2527  
>  
> Quoting AJ Johnson <aj4jj@aol.com>:  
>  
>> Anything on the riser for the septic??  
>>  
>> Sent from my iPhone  
>>  
>> On Jan 24, 2013, at 9:42 AM, bkincannon@kw.com wrote:  
>>  
>>>  
>>>  
>>> --- Forwarded message from bkincannon@kw.com ---  
>>> Date: Tue, 22 Jan 2013 14:43:11 -0600  
>>> From: bkincannon@kw.com  
>>> Subject: Physical and pest inspection - 20957 EATON  
>>> To: AJ4JJ <AJ4JJ@aol.com>  
>>>  
>>> Hi A.J.  
>>> I just heard from the physical inspector and the inspection is set  
>>> up for Tuesday at 10am. January 29th at 10am.  
>>> Please let us know you received this email and that time will work  
>>> for your seller. Also, any information on the well inspection?  
>>> Thank you,  
>>> Tammy Kincannon  
>>> Keller Williams Group One Realty  
>>> 775.220.7553  
>>> tkincannon@kw.com  
>>>  
>>>



JJVL 050

Sunday, February 10, 2013 AOL: AJ4JJ

RA 0145

>>  
>>  
>> Quoting bkincannon@kw.com:  
>>  
>>> Thanks A.J.  
>>> Can you tell me if you have the inspection report for the well?  
>>> If not, do you have a time frame on that inspection?  
>>> We are trying to schedule the physical and pest for either Monday  
>>> or Tuesday next week at 10am. Once I hear back from the inspector  
>>> I will let you know.  
>>> Hope you are feeling better,  
>>> Tammy Kincannon  
>>> Kincannon Team  
>>> Keller Williams Group One Realty  
>>> 775.220.7653  
>>> tkincannon@kw.com  
>>>  
>>>  
>>> Quoting AJ4JJ@aol.com:  
>>>  
>>>> 1-19-13  
>>>>  
>>>>  
>>>> Please see attached Septic Report on Eaton. Pumping and Inspection -  
>>>> Thanks. A.J. Please let me know when inspections are. Thanks.  
> A.J.  
>>>  
>>>  
>>>  
>>>  
>> — End forwarded message —  
>>>  
>>  
>  
>  
>  
>



Subj: Counter Offer on 20957  
Date: 1/4/2013 12:38:12 P.M. Pacific Standard Time  
From: AJ4JJ@aol.com  
To: bkinannon@kw.com  
CC: AJ4JJ@aol.com

1-4-13

Brian - I will be your point of contact on this file for Jim Johns - The Sellers have elected to counter only because (the well, septic, buildings and pellet(s) stoves are all in good condition) they have an appraisal for \$400,000 and are willing to share with the Buyers. Thank you. A.J. (see attached)

(just a heads up) obviously you know because there is limited inventory - there are three more showings on this property today...Thanks again for your offer. Hopefully we can work together.

"I shall pass this way but once  
therefore,  
any good I can do, or any kindness  
I can show another human-being,  
let me do it now ~  
Let me not ask why, or delay  
nor excuse it ~  
For I shall not pass this way  
again..."

# EXHIBIT 8

# EXHIBIT 8

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

-oOo-

JOHN LINDBERG, et al.,	Case No. CV15-0281
Plaintiffs,	Department No. 3
vs.	
HARRY RICHARD REYNOLDS, et al.,	
Defendants.	

---

DEPOSITION OF  
PAMELA BEKO MOLINI  
JANUARY 16, 2018  
Reno, Nevada

SUNSHINE LITIGATION SERVICES  
REPORTED BY: DEBORA L. CECERE NV CCR #324, RPR  
JOB NO.: 441853

1           A       They do a schematic and break down the  
2       square footage.

3           Q       If you get an appraisal that has the square  
4       footage broken down, would you expect a seller's agent  
5       to use that information?

6           A       Yes. I would prefer that information to  
7       what the assessor provides, frankly, because the  
8       assessor is frequently incorrect.

9           Q       I agree.

10          A       Okay.

11          Q       I think the assessor is wrong in this case,  
12       but that's a different story.

13          A       The assessor is wrong in a lot of cases.

14          Q       That's a different story.

15                 So in this case you're aware that an  
16       appraisal was done --

17          A       Yes.

18          Q       -- prior to the listing?

19          A       Yes.

20          Q       Do you know what the listed square footage  
21       is in the appraisal?

22          A       I had, I looked at two appraisals.

23          Q       Um-hum.

24          A       I'm not sure which one was before and which  
25       one -- I remember it was Richard Lace. Is that not

1 right?

2 A Um-hum, yes.

3 Q Do you know where A.J. Johnson got the  
4 living, total living space square footage?

5 A I don't know for a fact, but I'm assuming  
6 she got it from the appraisal.

7 Q Okay. All right. Can you look at the very  
8 first page of Exhibit 7? Right next to 2180 and 1700  
9 it says:

10 Source of square footage.

11 She checked "owner" and "appraiser," is that  
12 right?

13 A Yes.

14 Q She doesn't check assessor, does she?

15 A No.

16 Q So would you agree with me that she got this  
17 information from the owner and from an appraisal?

18 A Yes.

19 Q Okay. And then we have the second page, and  
20 it's got a bunch of check marks and things on it, is  
21 that right?

22 A Yes.

23 Q Okay. I'm going to show you next in order,  
24 Exhibit 8.

25 ///



1 list it for that anyway, they violated their  
2 obligations as a Realtor?

3 A She broke it down. She makes it clear how  
4 she came up with that total.

5 Q So have you seen the appraisal?

6 A I've seen the one by Richard Lace.

7 Q Okay. I'm going to show you what's been  
8 marked as the next exhibit.

9 (Exhibit Number 9 was marked for  
10 identification.)

11 BY MR. MOORE:

12 Q Let me know when you're done reviewing.

13 A Okay.

14 Q Okay. Is this the appraisal you reviewed in  
15 preparation of your report?

16 A Yes.

17 Q And you received this from Ms. Johnson?

18 A Yes.

19 Q And did she represent to you that this was  
20 the appraisal that she received before she took the  
21 listing in this case?

22 A Yes.

23 Q If you look at the date of the appraisal,  
24 it's dated September 5th, 2012, is that right?

25 A Yes.

1           Q       She took the listing on September 21st, is  
2   that right?

3           A       Yes.

4           Q       All right. Let's go ahead and look at the  
5   third page -- the fourth page of Exhibit 9, REY 00070,  
6   if we could.

7                   Do you see here in the appraisal right about  
8   in the middle it says:

9                           Gross living area, 2180 square  
10                          feet.

11          A       Yes.

12          Q       Do you see that?

13          A       Yes.

14          Q       And that meshes with what was on the  
15   Residential Listing Input Form, right?

16          A       Yes.

17          Q       And let's go down into the summary of sales  
18   comparison approach.

19                   Do you see that --

20          A       Yes, I do.

21          Q       -- section?

22          A       Yes.

23          Q       Second paragraph.

24                   The subject also has the utility  
25                   of a guest house. The guest

1                   house is 1460 square foot.

2                   Do you see that?

3           A       Yes.

4           Q       That's not 1700 square feet, is it?

5           A       No.

6           Q       Yet in this case, Ms. Johnson listed that  
7 the property was 3880 square feet, is that right?

8           A       Wasn't there a place that showed an  
9 additional 600 square feet and something?

10          Q       It's a garage.

11          A       Okay.

12          Q       It's a barn.

13          A       Okay. Yes, that's what it says.

14          Q       Would you agree that that was an error by  
15 Ms. Johnson to list it at 3880 square feet?

16          A       No.

17          Q       Why not?

18          A       It would not.

19          Q       Why not?

20          A       Because if you include the square footage,  
21 it does come to 3880, isn't it?

22          Q       No, 2180 plus 1460.

23          A       What is it? Do the math for me.

24          Q       Do you want me to give you a calculator?

25          A       No, just give me a rough.

1 Q It's 3640 square feet, 240 square feet  
2 smaller than the listed square footage.

3 A Okay.

4 Q So it was an error by A.J. Johnson to not  
5 rely upon this appraisal and instead list the property  
6 for 3880 square feet, is that correct?

7 A Well, it sounds like it.

8 Q And let's go back to, let's go back to the  
9 last page of this exhibit, REY 00086.

10 Actually, let's look at the second to last  
11 page. REY 00085. At the bottom it says that the  
12 appraisal was done with A la mode, Inc. software.

13 Are you familiar with that?

14 A No.

15 Q Okay. But does it say that there?

16 A Yes.

17 Q The next page, do you see, right here  
18 towards the bottom?

19 A Yes.

20 Q Area calculation summary --

21 A Yes.

22 Q -- do you see that?

23 A Yes.

24 Q Okay. And then do you also see Total  
25 "something" by A la mode, Inc., right? It's to the

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

4 I, DEBORA L. CECERE, a Certified Court  
5 Reporter in and for the State of Nevada, do hereby  
6 certify:

7 That on Tuesday, the 16th day of January,  
8 2018, at the hour of 9:54 a.m. of said day, at 151  
9 Country Estates Circle, Reno, Nevada, personally  
10 appeared PAMELA BEKO MOLINI, who was duly sworn by me  
11 to testify in the within-entitled proceedings;

12 That said deposition was taken in verbatim  
13 stenotype notes by me and thereafter transcribed into  
14 typewriting as herein appears;

15 That I am not a relative nor an employee of  
16 any of the parties, nor am I financially or otherwise  
17 interested in this action;

18 That the foregoing transcript, consisting of  
19 pages 1 through 75 is a full, true and correct  
20 transcription of my stenotype notes of said deposition.

21 DATED: At Reno, Nevada this 25th day of  
22 January, 2018. *Debora L. Cere*

23 \_\_\_\_\_  
24 DEBORA L. CECERE, NV CCR #324, CA CSR #8821  
25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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,	)	
	)	
vs.	)	Case No. CV15-00281
	)	
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,	)	
et al.,	)	
	)	
Defendants.	)	
_____	)	

DEPOSITION OF FORREST L. BARBEE  
WEDNESDAY, JANUARY 24, 2018  
LAS VEGAS, NEVADA

Reported by: KENDALL KING-HEATH, NV. CCR No. 475  
CA. CSR No. 11861

1           A.    I didn't see that, I'll give you that.

2   And I can give you other examples where this stuff  
3   happens.   Southern Nevada Water Authority, owner of  
4   a property, decides to make a deal and they go from  
5   grass to desert landscape.   They get a conservation  
6   easement put on the property and it's recorded with  
7   the County.   Then they sell the property later.

8           Who should have known?   It's like, seller  
9   decides not to disclose it; they don't think it's  
10   anybody's business.   Listing agent takes the  
11   attitude, wait until the prelim, but I would argue  
12   in this case -- in that case, that's something the  
13   listing agent should have known because it was a  
14   button click within the MLS away.

15           **Q.    This is something the agent knew before**  
16   **the listing was submitted; is that correct?**

17           MR. PEREOS:   Object to the form.

18           MR. MOORE:   Is that correct?

19           MR. PEREOS:   Wait a minute.   You're asking  
20   him to speculate.   Objection.

21           THE WITNESS:   I really don't know.

22   BY MR. MOORE:

23           **Q.    If this agent had received an appraisal,**  
24   **if she had exercised reasonable diligence, should**  
25   **she have known the size of the two buildings that**

1     **were up for sale?**

2           A.     I don't know how she calculated her math.  
3     She might have had some other thing going on in her  
4     head.   I really don't know.

5           **Q.     If she had acted reasonably, should she**  
6     **have known the square footage before she listed the**  
7     **property?**

8           A.     She could have relied upon the  
9     appraisal.

10          **Q.     Should she have known?**

11          A.     Should she have known at that point?   If  
12     she had the appraisal.

13          **Q.     Assume she had the appraisal.**

14          A.     Okay.

15          **Q.     Should she have known?**

16          A.     At that point, she should have known.

17          **Q.     Thank you.   And the statutes require her**  
18     **to disclose information that she should have known;**  
19     **is that right?**

20          A.     That's correct.

21                 MR. MOORE:   No further questions.

22                 MR. PEREOS:   Nothing at this time.

23                 We'll waive.

24                 (Whereupon the deposition was

25                 concluded at 3:37 p.m.)

## REPORTER'S CERTIFICATE

STATE OF NEVADA           )  
  ) ss.  
COUNTY OF CLARK        )

I, KENDALL D. HEATH, CCR No. 475, a  
Certified Court Reporter for the State of Nevada, do  
hereby certify:

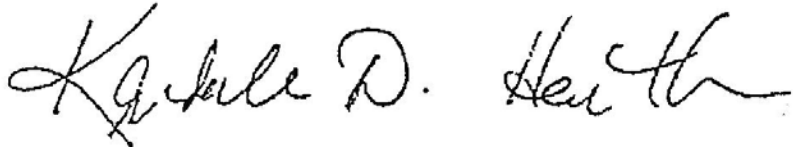
That I reported the taking of the  
deposition of the witness, FORREST L. BARBEE,  
commencing on the 24th day of January, 2018, at the  
hour of 2:02 p.m.

That prior to being examined, the witness  
was duly sworn by me to testify to the truth, the  
whole truth, and nothing but the truth.

That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
typewritten transcript of said deposition is a  
complete, true and accurate transcription of my said  
shorthand notes taken down at said time, and that a  
request has not been made to review the transcript.

I further certify that I am not a relative  
or employee of an attorney or counsel of any of the  
parties, nor a relative or employee of any attorney  
or counsel involved in said action, nor a person  
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto  
set my signature this 7th day of February, 2018.



KENDALL D. HEATH  
CCR No. 475

# EXHIBIT 9

# EXHIBIT 9



Can you get answers to.

leptic Tank

How many tanks are there and what size are they?

How long/many feet is the leach line?

When was the last time when the tanks were pumped?

Whereabouts is the leach field located?

Well

How many Gallons per minute does the well produce?

How deep is the well?

How big is the well shaft casing 6" / 8"?

Is the casing steel or PVC?

When was the last time a well pump was replaced?

When was the last time the well bladder was replaced?

Is there water rights?

Is the water hard or smelly? and do you have a water softener

Propane

What are the monthly cost of propane in the winter?

Is natural gas available? and if so what is the cost to bring it up from the street?

Is there propane hook ups for the clothes dryer? or just electric?

Attic/barn house in back

Is it fully insulated?

Is there a breaker box there?

Is there RV hook ups/power etc...

Tree in the front yard

Did the wind damage the tree?

Has any one looked at the tree and does it have to come down?

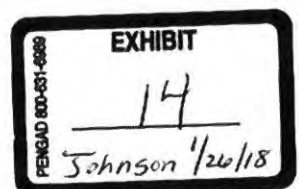
Flood Insurance

Is it required?

Roof

When were the roofs last replaced on all the buildings?

Thursday, January 03, 2013 AOL: AJ4JJ



ubj: Fwd: eston  
date: 1/3/2013 9:58:39 A.M. Pacific Standard Time  
from: bkincannon@kw.com  
to: AJ4JJ@aol.com  
here are the questions.  
hanks,  
rian  
Incannon Team  
eller Williams  
bkincannon@kw.com  
75-338-2527

Brian, good to see you and thanks for taking the time to show us the property. I have a ton of questions I would like to ask, and hope you can get answers to.

Super Tank

- 1) how many tanks are there and what size are they? 1) TANK 15,000 Gallons (both houses)
  - 2) how long/many feet is the leach line? 200+ Feet (Have blue prints)
  - 3) When was the last time when the tanks were pumped? 2 yrs Ago
  - 4) whereabouts is the leach field located? side house (west side)
  - 5) how many Gallons per minute does the well produce? high more than required (longer pump put in)
  - 6) how deep is the well? - 125 ft table 50 ft
  - 7) how big is the well shaft casing 6" 8" 8 in
  - 8) is the casing steel or PVC? - steel
  - 9) when was the last time a well pump was replaced? 6 yrs
  - 10) when was the last time the well bladder was replaced? 3-4 yrs Ago
  - 11) is there water rights? NO
  - 12) is the water hard or smelly? and do you have a water softener Hard water Not smelly NO water softener
  - 13) - Pellet Stove - monthly - 100-200 year 2nd House monthly = 242.00 equal reported p 1m
  - 14) what are the monthly cost of propane in the winter?
  - 15) is natural gas available? and if so what is the cost to bring it up from the street? - NO / electric only - Line about for Hook-up Propane
  - 16) is there propane hook ups for the clothes dryer? or just electric?
  - 17) is it fully insulated? YES
  - 18) is there a breaker box there? NO - runs off separate off mother unit QUARTERS / Barn Has error plug
  - 19) is there RV hook ups/power etc... - electric
  - 20) did the wind damage the tree? Grow front way
  - 21) has any one looked at the tree and does it have to come down? NO
  - 22) Flood Insurance NO
  - 23) is it required?
  - 24) when were the roofs last replaced on all the buildings? 5-7 yrs Ago All at same time
- Thanks Brian

Blue prints  
For  
Leach Field

Water  
Pressure

# EXHIBIT 10

# EXHIBIT 10

Subj: Re: easton  
 Date: 1/3/2013 12:12:24 P.M. Pacific Standard Time  
 From: AJ4JJ@aol.com  
 To: bkincannon@kw.com  
 CC: AJ4JJ@aol.com

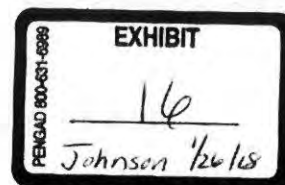
1-3-13

Here are the answers to your questions via my client - Please note, my client is a doctor and has the property fully and professionally maintained. Here are the answers to your questions

1. Tank is 15,000 gallons and services both houses
2. 200+ feet and they have the blue prints for it.
3. 2 years ago
4. West side of house

Well

1. High producing (more then the required amount) a larger pump was put in
2. 125 feet HIGH WATER TABLE 50 Ft.
3. 8"
4. Steel
5. 6 years ago
6. 3-4 years ago
7. No
8. Hard water - No Smell - No Water Softner



Propane -

1. The pellet stove heats the main house and they use it all the time \$100.00 a year on main house. mother in law quarters (on an Equal Payment Plan) is \$242 a month
2. No natural gas to the property at this time. However, when I closed the property on Cooke they discovered the well was geo thermal (I am not sure about this one)
3. Line hook up is available
1. Barn is fully insulated and there is a line hook up for propane
2. No - runs off separate off mother in law quarters and has electrical plugs in barn
3. electrical for RV only

Tree in front yard (grew that way) and the brace is to try and help it straighten  
 No wind damage to tree does not need to be cut down

Flood Insurance - No

Roof - ALL ROOFS WERE DONE ABOUT 5-7 YEARS AGO ALL AT THE SAME TIME

Seller has documents and blue prints all available

Let me know if you have any questions - Thanks AJ

In a message dated 1/3/2013 9:58:39 A.M. Pacific Standard Time, bkincannon@kw.com writes:

| Here are the questions.

JJvl 065

Thursday, January 03, 2013 AOL: AJ4JJ

RA 0165

newer victims  
bkincannon@kw.com  
775-338-2527

Brian, good to see you and thanks for taking the time to show us the property. I have a ton of questions I would like to ask, and hope you can get answers to.

**Septic Tank**

- 1) how many tanks are there and what size are they?
- 2) how long/many feet is the leach line?
- 3) When was the last time when the tanks were pumped?
- 4) whereabouts is the leach field located?

**Well**

- 1) how many Gallons per minute does the well produce?
- 2) how deep is the well?
- 3) how big is the well shaft casing 6" / 8"?
- 4) is the casing steel or PVC?
- 5) when was the last time a well pump was replaced?
- 6) when was the last time the well bladder was replaced?
- 7) is there water rights?
- 8) is the water hard or smelly? and do you have a water softener

**Propane**

- 1) what are the monthly cost of propane in the winter?
- 2) is natural gas available? and if so what is the cost to bring it up from the street?
- 3) is there propane hook ups for the clothes dryer? or just electric?

**little/barn house in back**

- 1) is it fully insulated?
- 2) is there a breaker box there?
- 3) is there RV hook ups/power etc...

**Tree in the front yard**

- 1) did the wind damage the tree?
- 2) has any one looked at the tree and does it have to come down?

**Flood Insurance**

- 1) is it required?

**Roof**

- 1) when were the roofs last replaced on all the buildings?

Thanks Brian

Thursday, January 03, 2013 AOL: AJ4JJ

**JJvl 066**

RA 0166

# EXHIBIT 11

# EXHIBIT 11



**Invoice**

Waters Vacuum Truck Service  
P.O. Box 18160  
Reno, NV 89511

Ph: 775-825-1595  
Fax: 775-825-1692

Cust #	C0060
Site #	55
Date	1/16/2013
Clerk	JS
Term	NET30
P.O. #	
Invoice #	S-129696
Due Date	2/15/2013

Page 1/1

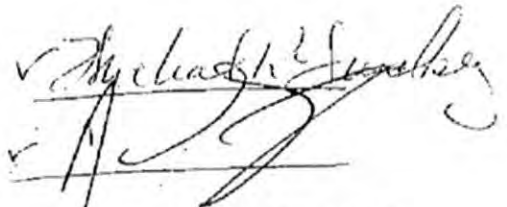
Billing Address
FIRST CENTENNIAL TITLE ESC# 196130 ATTN: GLORIA GRUBIC 1450 RIDGEVIEW DRIVE RENO, NV 89519
Phone: (775) 689-8510 Fax: (775) 689-8520

Service Address
DEANN REYNOLDS (SELLER) 20957 BATON ROAD RENO, NV 89511

Rental &amp; Service Completed Through 1/16/2013

DESCRIPTION	RATE	QTY	AMOUNT
1/16/2013 Work Order=1030099 Date=1/16/2013 PO=Esc# 196130	475.00	1	475.00
Pumped 1,000 gallons \$350.00 Concrete baffled septic tank Inspection \$125.00 20957 Eaton Road			
Total			475.00

Read &amp; Approved:



Statement as of 1/18/2013	Future: 0.00	Current: 475.00	30 Day: 0.00	60 Day: 0.00	90 Day: 0.00	Total Due: 475.00
---------------------------	--------------	-----------------	--------------	--------------	--------------	-------------------

Please detach here and return the bottom portion with your payment.

Div: S Cust #: C0060 Site #: 55 Invoice #: 129696

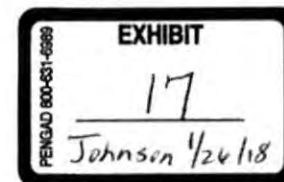
From: FIRST CENTENNIAL TITLE ESC# 196130  
ATTN: GLORIA GRUBIC  
1450 RIDGEVIEW DRIVE  
RENO, NV 89519



Invoice #	S-129696
Invoice Total	475.00
Paid Amt	0.00
Adjustment Amt	0.00
Balance	475.00

To: Waters Vacuum Truck Service  
P.O. Box 18160  
Reno, NV 89511

All invoices more than 30 days old are charged a late fee of 1.5% per month or 18% per year



KW 36

RA 0168

**WATERS VACUUM TRUCK SERVICE****Inspection****Limitations, Terms and Condition**

1. Inspection does not include any testing or evaluation of material or workmanship used in the original installation or subsequent repairs or modifications to the septic tank system, leach lines or leach field.
2. Inspection of the tank lids and covers is limited to a visual inspection of condition and placement at the time of inspection and does not include any testing or analysis of composition, strength or quality.
3. Inspection of the septic tank is limited to a visual inspection of components that are visible from the access ports available or provided by the customer. Inspection does not include any testing or analysis of the tank's composition, strength or quality. Only one tank will be pumped and inspected unless a design or plot map indicates that more than one tank makes up the component parts of the system. No materials test, x-rays, or other means are used to determine the quality of the materials, age, or condition of the tank.
4. Inspection in Washoe County does include the induction of water into the leach field pipe to verify that the field is accepting water at the time of service. Other counties are taken on a case by case basis. Factors such as age, vacancy or minimal use can affect the ability of a leach field to absorb effluent, the fact that the line or lines are accepting water at the date of inspection is no assurance that they will continue to function in the future, that the leach field has not exhausted its useful life or that the absorption capacity in the future will be adequate to meet new or extraordinary demands.
5. Inspection of the septic system does not include a site inspection of the ground surface. It is recommended that the owner or prospective owner examine the ground surface in the vicinity of the tank and leach field to determine whether there is any evidence of percolation.
6. Inspection of the leach field, when a design or plot map is provided, shall be limited to a surface inspection of the exposed ground surface for percolation of effluent in the area where the map shows the leach field to be located, but does not include an inspection below the ground surface or beneath any building, pavement or other natural or man made obstruction.
7. Inspection does not include testing to determine whether any toxic, corrosive or hazardous materials have been disposed of through the septic system or whether the leach field has been contaminated by such discharge.
8. Inspection is limited to a visual examination of those parts of the system which can be visually examined and does not include soil tests, saturation tests, review of design criteria, or any other test or calculation to determine whether the system meets the design criteria, building codes, ordinances or other local, county or state requirements and is limited to a report of the condition of the septic system, leach lines, or leach field as can be determined from visual inspection at the date of inspection.
9. This report of inspection is intended for the use of the person or persons requesting the inspection and paying for the service rendered, any third party reliance on this report is subject to the limitations, terms and conditions herein contained.
10. This report reflects visually observable conditions of the inspected septic system on the date of inspection only and is not warranty of the sufficiency of the system to function or meet the demands to which it may be subjected in the future nor is a guarantee as to the design, construction, installation or usable life of the system expressed or implied hereby.



Jan. 18. 2013 2:54AM

WATERS VACUUM TRUCK SERVICE

No. 6189 P. 5/5

# Waters

## Vacuum Truck Service

Reno (775) 826-1595 / Carson City (775) 882-1577  
Toll Free 1-888-908-PUMP  
P.O. Box 18100  
Reno, Nevada 89511

ACCOUNT NO. C-0060INVOICE NO. 129696

State and County: \_\_\_\_\_

Permit / Manifest #: 17662

NV CONTRACTORS LIC# 28228

CA CONTRACTORS LIC# 646972

DATE 1-17-13

All work is billed per to per and has a 1 hour minimum unless otherwise noted.

CUSTOMER NAME: <u>Dean Reynolds</u>		BILL TO: <u>First Century 41 Talle - Glendale Blvd</u>	
ADDRESS: <u>20957 Eaton Road</u>		ADDRESS: <u>1450 Ridgeview Drive</u>	
CITY: <u>Reno</u>	STATE: <u>NV</u>	CITY: <u>Reno</u>	STATE: <u>NV</u>
ZIP: <u>89511</u>		ZIP: <u>89519</u>	
PHONE #:		PHONE #:	
FAX #:		FAX #:	
TITLE CO.:		PURCHASE ORDER #:	
ESCROW OFFICER:		REAL ESTATE CO.:	
ESCROW #: <u>196120</u>	PARCEL #:	REAL ESTATE AGENT:	
ADDRESS:		ADDRESS:	
CITY:	STATE:	CITY:	STATE:
ZIP:		ZIP:	
PHONE #:		PHONE #:	
FAX #:		FAX #:	

	PRICE
LOCATING/LABOR	
INSPECTION	
INSPECTION FEE	<u>125-</u>
TYPE OF TANK <input checked="" type="checkbox"/> Concrete <input type="checkbox"/> Metal <input type="checkbox"/> Plastic <input type="checkbox"/> Other/ Specify: <u>Polyfilled</u>	
SIZE OF TANK <u>1,000</u>	
LIDS <u>Both - OK</u>	
T'S <u>10 ft</u>	
BAFFLES <u>In let, out let + center all OK</u>	
HYDROSTATIC CHECK <u>OK</u>	
LIQUID LEVEL <u>OK</u>	
VISUAL ON FIELD <u>OK</u>	
PUMPING <u>1,000</u>	
GALLONS PUMPED AND PRICE <u>1,000</u>	<u>350-</u>
LOCATION OF TANK <u>as noted Best found is 7 foot deep</u>	
PERMIT FEE	
OTHER/REMARKS	
TECH. SIGNATURE <u>[Signature]</u>	ACCEPTED BY SIGNATURE: <u>[Signature]</u>
UNIT NO. / NO'S. <u>9869</u>	

Invoices are due and payable 30 days from invoice date. Past due account will be assessed a finance charge at the rate of 1 1/2% PER MONTH

TOTAL PRICE 475-

[Signature]

[Signature]

KW 38

RA 0170

## WATERS VACUUM TRUCK SERVICE

P.O. BOX 18160

RENO, NEVADA 89511

775-825-1595

Nevada Contractors License #26228

DATE: 1/18/13

The following information is provided to facilitate the processing of loan reports and septic tank permits. Note that all residential septic tanks should be pumped every two years to protect tanks and leach fields from damage. This is a report of a visual inspection as dated and is not a guarantee or warranty of the septic system or any of its component parts. This report is subject to the limitations, terms and conditions printed on the back of this form.

Property owner:	Harry & Deann Reynolds		Phone:	775-849-3832	
Address:	20957 Eaton Road	City:	Reno	State:	NV
				Zip:	89511

Title Co:	First Centennial Title Co.	Real Estate Co:	J.E. Johns & Associates
Address:	1450 Ridgeview Drive	Address:	6119 Ridgeview Court #500-B
City:	Reno	City:	Reno
State:	NV	State:	NV
Phone:	775-889-8610	Phone:	775-772-2525
Contact:	Gloria Grubic	Contact:	A.J. Johns
Parcel #		Tank capacity:	1000 gallons
Escrow #	196130	Quantity pumped:	1000 gallons

Date of pumping:	1/17/13
Septic material:	Baffled Concrete
Location of tank on property:	15' out from the clean-out with riser on inlet side only 3" deep. Tank is approximately 2' deep.
Plot map of tank(s) and leach line(s) location provided:	No
Condition of septic tank lids & covers:	Inlet and Outlet Lids are satisfactory.
Condition of tank interior:	Unknown
Condition of inlet & outlet:	N/A
Condition of baffle & baffle vent spouts:	Inlet, Center, and Outlet Baffles are satisfactory.
Repairs required of sewage disposal system:	N/A
Abnormalities observed:	None
Repairs performed on sewage disposal system:	N/A
Other:	Septic system appears to be functioning properly at this time. Performed a 30 minute hydrostatic check with no run back from the leach field. Hydrostatic check was satisfactory.

## NOTICE

This inspection report is based solely on a visual observation by the driver/serviceman. This inspection report is not an express or implied warranty or guarantee of the fitness of the septic system. Septic systems have a limited life span and are subject to failure at any time. Septic systems can be adversely affected by house vacancy, heavy water usage, leaky plumbing, ground water infiltration, abusive usage, improper maintenance and natural conditions. Prospective purchasers should consider the usage and age of the system and do their own site inspection prior to purchase.

WATERS VACUUM TRUCK SERVICE

By: *George Waters* George Waters, President

*Michael R. Lusk*

*[Signature]*

FILED  
Electronically  
CV15-00281  
2018-02-23 03:14:54 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6547673 : swilliam

# EXHIBIT 12

# EXHIBIT 12

January 16, 2018  
Sherrie Cartinella  
RE: Lindberg v Reynolds, et al

I have been retained to offer my opinion regarding the seller's agent's failure to adhere to established standards of REALTORS in the case of Lindberg v. Reynolds, et al. In fulfilling this task, I reviewed the SECOND AMENDED COMPLAINT prepared by John D. Moore, Esq., the offer and supporting documents from the buyers side of the real estate transaction, zoning code documents from Washoe County and Health department regulations.

20957 Eaton Road was listed in the "Residential/Stick built" category through the Multiple Listing Service on September 12, 2012 according to the property history detail report (Exhibit 1). The MLS listing remarks (listing detail report included as Exhibit 2) states there were 3 separate units on the property including "inlaw quarters or guest house, office or studio or tack room or office." Also, the listing states the actual zoning of the property is single family and the source of that information was from the assessor (listing detail report included as Exhibit 2).

In addition to providing information to other Realtor members, the MLS listing remarks are seen by countless potential buyers through syndication to real estate web sites including the top 4, Zillow, Homes.com, Trulia and realtor.com which account for over 90% of all real estate traffic.

A real estate licensee has duty to adhere to NRS 645.252 which states:  
**NRS 645.252 Duties of licensee acting as agent in real estate transaction.** A licensee who acts as an agent in a real estate transaction:

1. Shall disclose to each party to the real estate transaction as soon as is practicable:

(a) *Any material and relevant facts, data or information which the licensee knows, or which by the exercise of reasonable care and diligence should have known, relating to the property which is the subject of the transaction.*

While it is also expected that the seller will disclose material facts, the agent is expected to be informed. In this case, a one acre parcel is allowed one septic in Washoe County according to District of Health regulations. Advertising 3 units on the 1.12 acre lot would elicit the question of how many septic tanks exist on the property. In my opinion, this should have raised a red flag for the listing agent.



In the MLS listing (Exhibit 2) septic is listed in the "utilities" section.

According to The Regulations of the Washoe County District of Health governing sewage, waste water and sanitation (revision approved January 26, 2006 by the Washoe County district board of health) the requirements for septic are as follows:

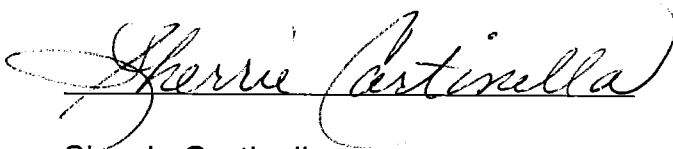
## **SECTION 060 SEPTIC TANKS**

**060.005 A minimum liquid capacity of 1000 gallons is required for single family dwellings with up to three (3) bedrooms. For dwellings with four (4) to six (6) bedrooms, the tank capacity shall be at least 1500 gallons. For each additional bedroom the tank capacity shall be increased at least 250 gallons.**

According to the septic inspection performed by Waters Vacuum Truck Service on January 16, 2013 the property has a 1,000 gallon tank.

In my opinion, the aforementioned facts should have been known by a Real Estate agent and disclosed to a potential buyer. Failure to disclose these facts, in my opinion, was detrimental to the Lindbergs.

Sincerely,

A handwritten signature in cursive script that reads "Sherrie Cartinella". The signature is written in dark ink and is positioned above the printed name and title.

Sherrie Cartinella  
Realtor  
License #BS29532

# EXHIBIT 1

# EXHIBIT 1

# PROPERTY HISTORY DETAIL

## Address

20957 Eaton Road  
Reno, NV Nev -89521

MLS #120014058



MLS # 120014058		Class Residential	List Date 12/1/2012		CDOM 160	DOM 89	
Chg Date	Chg Type		Status	Price	Agent - Agent Name	Listing Office 1 - Office Name	Update Date
03/15/2013 7:03:00 PM	Down Payment Assistance		SOLD	\$385,000	James E Johns Sr.	J.E. Johns & Associates	3/15/2013
03/05/2013 1:28:00 PM	Status, Sold Price		SOLD	\$385,000	James E Johns Sr.	J.E. Johns & Associates	3/5/2013
01/08/2013 10:29:00 AM	Status		Active /Pending -Loan	\$399,900	James E Johns Sr.	J.E. Johns & Associates	1/8/2013
12/07/2012 10:15:00 PM	Status		ACTIVE	\$399,900	James E Johns Sr.	J.E. Johns & Associates	12/7/2012
12/02/2012 9:50:00 PM	Down Payment Assistance		New	\$399,900	James E Johns Sr.	J.E. Johns & Associates	12/2/2012
12/02/2012 3:29:00 PM	First Recorded Entry		New	\$399,900	James E Johns Sr.	J.E. Johns & Associates	12/2/2012

MLS # 12001645		Class Residential	List Date 9/21/2012		DOM 71		
Chg Date	Chg Type		Status	Price	Agent - Agent Name	Listing Office 1 - Office Name	Update Date
05/16/2013 6:19:00 AM	Down Payment Assistance		WITHDRAWN	\$399,999	Amina M Johns	J.E. Johns & Associates	5/16/2013
12/01/2012 11:35:00 AM	Status		WITHDRAWN	\$399,999	Amina M Johns	J.E. Johns & Associates	12/1/2012
09/26/2012 10:14:00 PM	Status		ACTIVE	\$399,999	Amina M Johns	J.E. Johns & Associates	9/26/2012
09/22/2012 12:30:00 AM	Down Payment Assistance		New	\$399,999	Amina M Johns	J.E. Johns & Associates	9/22/2012
09/21/2012 3:52:00 PM	First Recorded Entry		New	\$399,999	Amina M Johns	J.E. Johns & Associates	9/21/2012

MLS # 100003229		Class Residential	List Date 3/8/2010		DOM 93		
Chg Date	Chg Type		Status	Price	Agent - Agent Name	Listing Office 1 - Office Name	Update Date
06/08/2010 10:12:00 PM	Status		EXPIRED	\$479,000	Clay D Belding	First Choice Realty 500	6/8/2010

03/13/2010 03/08/2010 11:32:00 AM	Status First Recorded Entry	ACTIVE New	\$479,000 \$479,000	Belding Clay D Belding	First Choice Realty 500	3/13/2010 3/8/2010
---	--------------------------------	---------------	------------------------	------------------------------	----------------------------	-----------------------

# EXHIBIT 2

# EXHIBIT 2

## MLS All Fields

1694



**MLS #** 120014058  
**Status** SOLD  
**Address** 20957 Eaton Road  
**Unit #**  
**City** Reno  
**State** NV  
**Zip** Nev -89521  
**Area** 174Pleasant Valley  
**Asking Price** \$399,900  
**Class** Residential  
**Type** Site/Stick Built



## Property Information

<b>Bedrooms #</b> 3	<b>County</b> Washoe	<b>Common Interest</b> No
<b>Baths #Full or</b> 2	<b>Parcel #</b> 045337711	<b>Attached Common Wall</b> No
<b># Half Baths</b> 0	<b>Taxes \$</b> \$2,734.10	<b>Water Rights</b> No
<b># Garage</b> 4	<b>Assessment \$</b> 0.00	<b>HOA</b> No
<b># Carport</b> 0		<b>HOA/Mgt Co</b>
<b>Total Parking</b> 4	<b>Zoning Actual</b> Single Family	
<b>Stories</b> 1 Story	<b>Source of Zoning</b> Assessor	<b>Assoc Fee \$</b>
<b>Unit Level</b>	<b>Horses Okay</b> Yes	<b>Assoc Trans Fee \$</b>
<b>Total Living Space</b> 3880	<b>Elementary School</b> Pleasant Valley	<b>Setup Fee</b>
<b>Source of SqFt</b> Assessor	<b>Middle School</b> Depoali	<b>Other Fee</b>
<b>Price per SQFT</b> 103.07	<b>High School</b> Galena	<b>CC/R Restrictions</b> No
<b>Year Built</b> 1986	<b>IPES</b>	
<b>Acreage</b> 1.12	<b>Coverage</b>	
<b>Construction</b> Frame		
<b>Xstreet/Directions</b> Pleasant Valley Road To Eaton		

**Unconverted Manuf. Housing Only**  
**Serial #**  
**HUD #**  
**Width**  
**Skirting**  
**Personal Property Taxes**

## Agent / Showing Information

<b>Agent</b> James E Johns Sr.	<b>Showing Instructions</b> Call Listing Office
<b>Agent E-mail</b>	<b>To Show Contact</b> 775-856-2525
<b>Listing Office 1</b> J.E. Johns & Associates	<b>Office:</b> 775-856-2525
<b>Listing Agent 2</b>	<b>Occupied By</b> Owner
<b>Listing Agent 2 E-</b>	<b>Contact Name</b> James E. Johns
<b>Listing Office 2</b>	<b>Contact Phone</b> 775-856-2525

## Listing Information

<b>Comm to BB</b> 2.50	<b>CBB \$ or %\$</b>	<b>Original Price</b> \$399,900	<b>Listing Date</b> 12/1/2012
<b>Variable Rate</b> Yes		<b>Days on Market</b> 89	<b>Input Date</b> 12/2/2012 3:29 PM
<b>Sliding Scale</b> No		<b>Days On MLS</b> 88	<b>Expiration Date</b>
<b>Sale/Lease</b> For Sale		<b>Cumulative DOM</b> 160	<b>Update Date</b> 2/27/2015
<b>Listing Type</b> Exclusive Right		<b>Cumulative</b> 159	<b>Status Date</b> 3/5/2013
<b>Possession</b> COE		<b>Agent Hit Count</b>	<b>Price Date</b> 3/5/2013
<b>Limited Service Listing</b> No		<b>Client Hit Count</b>	<b>HotSheet Date</b> 3/5/2013
<b>Special Conditions of</b> None			<b>Off Market Date</b> 2/28/2013
<b>Fannie Mae First</b> No			
<b>HUD</b> No			

**Internet Display Options**  
**Internet Display** Y  
**Internet Plus**  
**Automated Valuation**  
**Commentary/Reviews**





120014058  
  
NO IMAGE

  
NO IMAGE

  
NO IMAGE

  
NO IMAGE

11/19/2017  
  
NO IMAGE

Page 1 of 2  
  
NO IMAGE

Features			
<b>GARAGE TYPES</b>	Attached, Detached, Garage Door Opener(s), RV Access/Parking	<b>FOUNDATION</b>	Concrete/Crawl Space
<b>HOA AMENITIES</b>	No Amenities	<b>EXTERIOR</b>	Wood Siding
<b>ADJOINS</b>	Street	<b>ROOF</b>	Asphalt, Composition/Shingle
<b>VIEW</b>	Yes, Mountain, Valley, Desert	<b>HEATING/COOLING</b>	Propane, Hot Water System
<b>PERSONAL PROPERTY INCL</b>	Storage Shed	<b>WATER HEATER</b>	Propane
<b>INTERIOR FIXTURES</b>	Blinds/Shades, Smoke Detector(s), Security System/Owned	<b>WINDOWS</b>	Double Pane
<b>LIVING ROOM</b>	Separate/Formal, Fireplace/Woodstove/Pellet, High Ceiling	<b>FIREPLACE</b>	Yes, Pellet Stove
<b>DINING ROOM</b>	Separate/Formal	<b>UTILITIES</b>	Electricity, Propane, Well-Private, Septic
<b>FAMILY ROOM</b>	None	<b>LANDSCAPED</b>	Fully Landscaped
<b>KITCHEN</b>	Garbage Disposal, Microwave Built-In, Island, Pantry, Breakfast Bar	<b>SPRINKLERS</b>	Full Sprinklers, Front, Back, Drip-Full, Drip-Front, Drip-Back, Automatic
<b>MASTER BEDROOM</b>	Walk-In Closet, Shower Stall	<b>FENCED</b>	Full, Back
<b>LAUNDRY AREA</b>	Garage, Cabinets	<b>PATIO/DECK</b>	Deck
<b>OTHER ROOMS</b>	Yes, Office/Den(not incl bdrm), Bonus Room, Workshop, Guest House, In-Law Quarters	<b>EXTERIOR FEATURES</b>	Dog Run, Barn-Outbuildings, Workshop
<b>FLOOR COVERING</b>	Carpet, Ceramic Tile	<b>WATER TEST</b>	No
		<b>ACCESS</b>	Public
		<b>TOPOGRAPHY</b>	Level, Upslope
		<b>OWNER(S) MAY SELL</b>	Conventional, FHA, VA, Cash
		<b>GREEN FEATURES</b>	None

## MLS Remarks

REGULAR SALE..NO FREEWAY NOISE AND THIS IS A BEAUTIFUL PEACEFUL QUITE GARDEN OF PARADISE. BRING THE HORSE PLENTY OF ROOM AND PASTURE AREA - THREE SEPARATE UNITS ON THE PROPERTY INLAW QUARTERS OR GUEST HOUSE, OFFICE OR STUDIO OR TACK ROOM OR OFFICE. THE POSSIBILITIES ARE ENDLESS. THIS PROPERTY IS LOCATED 30 MINUTES TO ANYWHERE (CARSON CITY, VIRGINIA CITY, LAKE TAHOE) HALF WAY BETWEEN CARSON AND RENO. GREAT SCHOOLS AND THE PROPERTY IS MATICULOUS AND MOVE IN READY. EASY TO SHOW AND COMPLETELY REMODELED...

## Extended Remarks

## Private Remarks

Seller needs a closing to conincide with the close of escrow of their new home.

## Sold Information

**Selling Agent** Brian F Kincannon - 775-338-2527  
**Selling Office 1** Keller Williams Group One Inc. - Office: 775-823-8787  
**Selling Agent 2**

**Sold Price** \$385,000  
**Sold Price per SqFt** 99.23  
**How Sold** Conventional

**Selling Office 2**

120014058

This information is deemed reliable, but not guaranteed.

**Contract Date**  
**Closing Date**

11/19/2017

1/3/2013  
2/28/2013

Page 2 of 2

# **Rèsumè of Sherrie Cartinella**

**Rèsumè of Sherrie Cartinella**

# Sherrie Cartinella

## Real Estate Professional

775-762-2323 | Runs26mi@aol.com | 2330 Sequoia Lane | Reno, Nevada 89502

## Work Experience

Since entering the real estate profession in 1995, I have had the opportunity to serve hundreds of clients in residential and commercial real estate transactions as well as dedicating much of my time to the industry through many volunteer leadership roles in the national, state and local associations of REALTORS. Most recently, I held a Governor's appointment as Commissioner for the Nevada Real Estate Division.

## Experience

Terry Lee Wells Foundation, Trustee	2006-current
Ferrari-Lund Real Estate, Broker/Salesperson	2011-current
CENTURY 21, Goldcrest Realty, Broker/Salesperson	2006-2011
CENTURY 21, Owner/Broker/Salesperson	1992-2006
Sherrie's Nail Corner, Owner	1976-1992

## Volunteer Experience

**State of Nevada Real Estate Division:**  
2013-2016 Commissioner

**National Association of Realtors:**  
2008 Board of Directors  
2006-2010, 2012 Risk Management Committee

**Nevada Association of Realtors:**  
2014 Policy & Bylaws  
2013 Chair Policy & Bylaws  
2011-2012 Audit Committee  
2010, 2012 (Vice Chair) Budget Development  
2011, 2012 Board of Directors  
2002-2004, 2011-2017, Currently Budget & Finance  
2008, 2009 (Chair), 2013 Nominating & Awards  
2005 Forms Committee Chair

**Northern Nevada Regional MLS:**  
2013-2016 Trustee  
2008-2011 Trustee  
2009, 2010 President

**Other:**  
*Washoe High School: Speech class volunteer*  
*Girls Scouts of America: Relocation Seminar*

**Reno/Sparks Association of Realtors:**

2014 & 2015 Legislative Committee  
2013-2015 Communications Chair  
2015 Bylaws & Policy  
2014 Awards Committee  
2011 President  
2000, 2008-2012 Board of Directors  
2001-2017 & Currently Risk Reduction  
2005-2007 Professional Standards  
2006 Commercial Forms Chair  
2008, 2010, 2012 Budget & Finance  
2001, 2003, 2007, 2013, 2014 Credentials Committee  
2004, 2006-2008, 2010-2012 Strategic Planning

**Women's Council of Realtors National:**

2005 Executive Committee  
2003, 2004 Strategic Planning Committee  
2005 Nomination Committee  
2005 Regional Vice President  
2003 & 2010 State Governor  
2008 Outreach & Influence  
2004 Leadership Development  
2011 Broker/Owner/Manager Program  
State: 2002 State Chapter President  
Local: 1999 Local Chapter President



## Accreditations and Licenses

Real Estate Broker	Leadership Training Designation
Performance Management Network Designation	Cosmetology

## Professional Memberships

Reno/Sparks Association of REALTORS	Nevada Association of REALTORS
National Association of REALTORS	Women's Council of REALTORS

## Awards Received

Nevada Distinguished REALTOR Award, State of Nevada  
Member of the Year, Reno/Sparks Association of REALTORS  
Matt Gibbons Award, Reno/Sparks Association of REALTORS  
Member of the Year, Women's Council of REALTORS  
Centurion Agent, CENTURY 21  
Quality Service Award, CENTURY 21



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

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

11 JOHN LINDBERG, MICHAL LINDBERG,  
12 JUDITH L. LINDBERG

13 Plaintiffs,

14 vs.

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

19 Defendants.

Case No. CV15-00281

Dept. No. 3

20 **REPLY ARGUMENT IN SUPPORT OF**  
21 **DEFENDANT'S MOTION IN LIMINE NUMBER TWO**  
22 **AND DEFENDANT'S MOTION IN LIMINE NUMBER THREE**

23 This Defendant files two Motion in Limine which are self-explanatory:

24 Motion in Limine Number Two is to exclude any evidence in connection with  
25 damages sustained by the Plaintiff other than those damages relating to the septic  
26 system that service the mother in law quarters. This motion is relatively simple. The  
27 predicated concept is that the only admissible evidence this Court will receive as to the  
28 failure to meet the standard of care of the licensee regards the septic system, ergo, the  
29 exposure of A. J. Johnson is for damages relating to the septic system servicing the  
30 mother in law quarters.

31 Defendant's Motion in Limine Number Three is to strike the report of Sherrie  
32 Cartinella as failing to meet the mandates of the statute in that her proffered expert

1 testimony is not in compliance with NRS 645.252, NRS 645.257. It goes on to seek an  
2 order of exclusion with regard to any evidence that would not have been covered by the  
3 expert opinion's testimony, to wit, failure to discern the correct septic size of the septic  
4 system for the mother in law quarters.

5 The two motions are relatively clear and simple. When you get beyond the  
6 hyperbole and mis-characterization of Plaintiff's counsel, he opposes these motions on  
7 the following concepts:

- 8 1. There are additional claims of misdeeds consisting of incorrect square  
9 footage and the listing the property as a single family residence as it contains  
10 more than one residential living structure. (Not covered in expert report)
- 11 2. The Plaintiff is entitled to damages for these additional claimed misdeeds  
12 and expert testimony is not required for the same.
- 13 3. Expert report should be read to comply with the statute.

14 Obviously, Plaintiff is acknowledging by his silence on this issue that his expert  
15 has not addressed any other "misdeed" or issues and we can now proceed on the  
16 concept that Plaintiff's expert report only identifies a misdeed as it relates to improperly  
17 discerning the size of the septic system so as to service the mother in law quarters.  
18 The other issues raised by the Plaintiff are a ruse so as to misdirect the thinking of this  
19 Court. For instance, the Plaintiff argues the damages flowing from these other  
20 misdeeds are so clearly identifiable that expert opinion is not required. On the contrary,  
21 the only remedy available to the Plaintiff is a violation of NRS 645.252. In reading that  
22 statute, it is obvious that the subject statute does not provide a measure of relief for  
23 these other misdeeds. Instead, we must read NRS 645.257 which indicates that the  
24 injured party that suffered damages that is identified under NRS 645.252, NRS 645.253  
25 or NRS 645.254 is entitled to collect actual damages. In other words, NRS.645.257  
26 specifically delineates that the damages are a measure of recovery under NRS 645.252  
27 (the only applicable statute discussed by Plaintiff's expert witness). With the abrogation  
28 of the common law, the Plaintiff is not entitled to recover an abatement of the purchase

1 price for claimed misdeeds that do not constitute a violation of NRS 645.252 and this  
2 Court has received no evidence from any expert by the Plaintiff indicating that lack of  
3 square footage or improperly listing the property as a single family residence constitutes  
4 a misdeed under NRS 645.252. In other words, the Plaintiff is smoke screening the  
5 issue. They are not entitled to damages for abatement of the purchase price unless  
6 they can prove that such misdeed was covered by the expert witness opinion under  
7 NRS 645.252. (Its interesting to note that Plaintiff seeks to strike opinions by Forrest  
8 Barbee and others that are not specifically addressed by Plaintiff's expert report but  
9 they also want the right to advance other opinions of misdeeds in their case!). Plaintiff  
10 advances the case of *Ewing v Bissell* to support its argument that they can recover an  
11 abatement of the purchase price for failure to disclose material facts but failed to  
12 demonstrate how that case applies to a real estate agent versus the seller. More  
13 importantly Plaintiff fails to demonstrate how that case decided many years before the  
14 enactment of NRS 645.252 and NRS 645.257 is applicable to claims against the real  
15 estate agent. Once again, it is indicative of the smoke screening.

16 Plaintiff then advances that proposition in its brief that there was an error in the  
17 listing form that listed the property as a single family residence when there are more  
18 structures on the property thereby mistating the nature of the listing. Let's assume that  
19 Plaintiff is correct. So what? Did that constitute a violation of NRS 645.252? Where is  
20 the expert testimony so stating that? After all, it was known to the expert! Where is the  
21 expert evidence that this was the standard of care in place at the time of instructing  
22 licensees to become applicants, NRS 645.257, Subsection 3? Only an expert can  
23 proffer that evidence. Where is the expert opinion? Plaintiff goes on to state on Page 5  
24 of his brief and advances the proposition that there is an improper quantification of  
25 square footage of the property. Where is the expert testimony that this constitutes a  
26 violation of the standard of care? Is Plaintiff suggesting that he has a right to advance  
27 these arguments to support a measure of damages without expert testimony? How  
28 does Plaintiff reconcile the established case law of Nevada that common law has

1 been abrogated and replaced by these statutes? *Davis v Boeing*, 128 Nev. 301, 378  
2 P.3d 501 (2012). The Plaintiff can argue the fact claiming these misdeeds (Pages 5-6  
3 of brief) but how do these misdeeds constitute failure to exercise reasonable care and  
4 diligence under NRS 645.252 as the standard has been set for a reasonable and  
5 prudent licensee under NRS 645.257? Once again, Plaintiff is seeking to advance his  
6 concepts under the common law and not statutory liability! If that is the case, then this  
7 Defendant has the same common law defenses that exist against the Plaintiff and  
8 abatement of the purchase price clearly is not available to the Plaintiff in a claim against  
9 the realtor (which will be demonstrated by case law as the need arises). Plaintiff  
10 advances the proposition that it cost \$27,000 to enlarge the capacity of the existing  
11 septic system but that is not consistent with the response to discovery provided to this  
12 Defendant. Notwithstanding, the issue will be subject to proof and/or impeachment as  
13 need arises. Once again, Plaintiff's counsel is raising a smoke screen. The motions in  
14 limine are designed to eliminate any claim of damages unrelated to the septic systems,  
15 such as, misstating the square footage on the property (I repeat myself that the  
16 common law does not give the Plaintiff an abatement of the purchase price against the  
17 realtor which would be subject to briefing should the issues arise). The motions in  
18 limine also address the legitimacy of the expert's report and demonstrated the  
19 deficiency in the report by the expert that stated that these events were "detrimental" to  
20 the buyer. That is not the standard. Is Plaintiff suggesting that if the expert report is  
21 stricken by this Court consistent with Defendant's Motion in Limine that he can still  
22 proceed to trial showing the misdeeds of the realtor? What will be his proof of the  
23 standard of care required in 2012 (when the offer was made)? Where is his disclosure  
24 pursuant to NRCP 16 of these witnesses?

25 Plaintiff attempts to save the expert's report by demonstrating that the expert  
26 report raised a "red flag" to the listing agent (Page 9 of the brief) and facts should have  
27 been "known" to the licensee. Let's assume that is correct. So what? Did it violate a  
28 standard of care that was then in place for realtors at the time this transaction closed in



1 2013? NRS 645.252 and NRS 645.257. Even if it violated common law claims, so  
2 what? The common law has been abrogated!

3 Plaintiff proceeds in its argument section to smoke screen the issue.  
4 Defendant's motion is relatively easy. Can the Plaintiff proceed against this Defendant  
5 absent of showing misdeeds that are the subject of expert testimony as required under  
6 NRS 645.252 and NRS 645.257? Plaintiff can re-argue the facts as many times as it  
7 wants but can not avoid the underlying question! Any suggestion that Plaintiff can  
8 proceed with a case for misdeeds not discussed by the expert even if pled in the  
9 complaint fails to conform to NRS 645.252 or the concept that the common law has  
10 been abrogated.

11 Plaintiff advances the proposition on Page 12 of its brief that there is nothing in  
12 the statute that mandates use of expert testimony in order to prove a case against this  
13 Defendant disputing the interpretation of NRS 645.257 as it references NRS 645.252.  
14 Let's work Plaintiff's argument through to conclusion. How is Plaintiff going to  
15 demonstrate without an expert opinion violation of the standard of care in order to  
16 comply with NRS 645.252. Is he is going to do it by lay witnesses who have never  
17 practiced in the field of real estate? How is this Court going to reconcile NRS 645.257,  
18 Subsection 3? Plaintiff goes on to contend that this Defendant cites no case law  
19 indicating it mandates expert testimony. Clearly the common law has been abrogated.  
20 *Davis v Boeing*, 128 Nev., 301, 378 P.3d 501 (2012). The only law left to create liability  
21 for a real estate agent is NRS 645.252 and NRS 645.257. The law of other states have  
22 no bearing on the issue absent similar statutes and case law given the statutory  
23 versions of NRS 645 coupled with our Supreme Court decision that the common law  
24 has been abrogated. Plaintiff goes on to cite cases advancing the proposition that he  
25 does not need an expert to show other misdeeds but those states do not have similar  
26 statutes to NRS 645.252. Under that argument, how does the Court reconcile the  
27 mandate of NRS 645.257, Subsection 3? Is the Court going to make its own  
28 determination as to the standard of care for a licensee that was practicing in 2013 when

1 this deal closed? Is it doing so without any evidence? How is the Court going to be  
2 guided on this issue? Is the Court going to say there is a violation based upon the  
3 evidence and its common sense? If that the case, what is the measure of damages?  
4 Under NRS 645.257 the statute declares that the measure of damages for a violation of  
5 that statute is actual damages. What if that statute is contrary to the common law that  
6 identified that a claim against real estate licensee for these claimed misdeeds alleged  
7 by this Plaintiff is not actual damages? What is the Court going to do then? Is the  
8 Court going to apply NRS 645.257 in part but not in full? The common law remedy for  
9 a claim of this nature against a realtor is not actual damages. Abatement of the  
10 purchase price is not a common law remedy for this type of action against a licensee.  
11 Assuming that to be correct, is the Court going to apply parts of NRS 645.257 but not  
12 other parts? In other words, if this Court permits Plaintiff to go forward with this case  
13 without the necessity of expert testimony as it relates to misdeeds of the licensee, then  
14 can Plaintiff go forward with the common law remedy despite the decisions of our  
15 Supreme Court or can Plaintiff go forward under a claim that the judge (as a  
16 gatekeeper) can decide if there has been a violation of the standard of care that was  
17 then in place in 2013 without evidence?

18 Plaintiff advances the proposition that Sherrie Cartinella is an expert even if she  
19 never instructed an applicant who sought to secure a license in the 2013 year. This is  
20 an interesting observation made by Plaintiff who claims in their Motion in Limine #1 that  
21 Pamela Molini shouldn't be an expert because she doesn't have credentials merely  
22 because she has experience in the industry. What precipitated this Defendant's motion  
23 isn't an issue of qualification, it is an issue that the expert report from Sherrie Cartinella  
24 fails to identify she is applying a standard of care that would have been in place in the  
25 2013 year. (See NRS 645.257, Subsection 3 where that concept of a "deficiency" alone  
26 clearly fails to comply with the mandate of NRS 645.257). If Sherrie Cartinella can not  
27 act as an expert, we agree that Defendant's rebuttal experts would not be needed to act



1 as an expert. Notwithstanding, the issue is not one of credentials of acting as an  
2 expert. The issue regarding Sherrie Cartinella's report is whether it complies with NRS  
3 645.252. Where does she state in the report that there has been a failure to exercise  
4 reasonable care and diligence? Instead, she is focusing on what is detrimental to the  
5 buyer. The issue of that which is detrimental to the buyer is not a violation of NRS  
6 645.252. The issue is the failure to maintain a standard of care. The fact that Ms.  
7 Cartinella stated in her deposition that she had no other opinions other than that which  
8 have been identified in her report is indicative of the fact that she has no other opinion  
9 relating to the standard of care of this licensee that is now on trial. Her only opinion  
10 was focusing on that which was detrimental to the buyer as opposed to focusing on  
11 actions of this licensee and the standard of care then in place!

12 Accordingly, this Defendant submits the following:

- 13 1. The common law has been abrogated and the only remedy available to  
14 the Plaintiff is the violation of NRS 645.252 and NRS 645.257 as it incorporates  
15 NRS 645.252.
- 16 2. Sherrie Cartinella's report focuses on the buyer. It does not focus on the  
17 actions of this licensee. It does not identify there has been a violation of the  
18 standard of care that was in place in the 2013 year.
- 19 3. Any other claims of misdeeds of this licensee are not covered by Sherrie  
20 Cartinella's report are not the subject of a claim against this licensee as  
21 mandated by NRS 645.252 and NRS 645.257.
- 22 4. The arguments of Plaintiff's counsel set forth in its opposition are  
23 designed to misdirect the thinking of the Court in connection with the deficiencies  
24 that exist in his case as it relates to this licensee and the statutory prerequisites.
- 25 5. Damages in this case against this licensee are limited to the issue relating  
26 to the alleged wrongdoing as identified by Plaintiff's expert which is the septic  
27 system.

**AFFIRMATION**

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

DATED this 27<sup>th</sup> day of February, 2018.

C. NICHOLAS PEREOS, LTD.



By: \_\_\_\_\_  
C. NICHOLAS PEREOS, ESQ.  
1610 MEADOW WOOD LANE, #202  
RENO, NEVADA 89502  
(775) 329-0678  
ATTORNEY FOR DEFENDANT  
A.J. JOHNSON

**CERTIFICATE OF SERVICE BY ELECTRONIC FILING**

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I caused to be served a true copy of the foregoing pleading on all parties to this action by electronically filing the foregoing with the Clerk of the Court by using the CM/ECF system which served the following parties electronically:

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

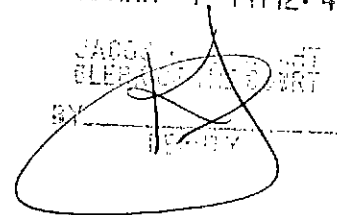
DATED: \_\_\_\_\_

2/27/18

  
\_\_\_\_\_  
Iris M. Norton

1550  
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

2018 MAR -1 PM 12:46



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

JOHN LINDBERG, an individual; MICHAEL  
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

**DEFAULT**

It appearing that J.E. Johns & Associates, Defendant herein, is in default for its failure to  
plead or otherwise defend the Second Amended Complaint dated May 18, 2016 as required by  
law, the Plaintiffs having filed their Notice of Intent to Take Default on February 14, 2018,

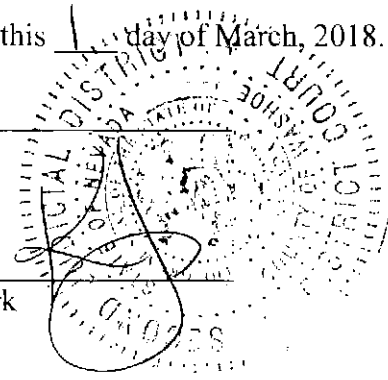
///

///

1 DEFAULT is hereby entered against the said Defendant this 1 day of March, 2018.

2  
3 Jacqueline Bryant  
Clerk of the Court

4  
5 By \_\_\_\_\_  
6 Deputy Clerk



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

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

10  
11 DATED this 1<sup>st</sup> day of March, 2018.

12 MOORE LAW GROUP, PC

13  
14  
15 By: \_\_\_\_\_

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

3795  
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

**PLAINTIFFS' REPLY FILED IN SUPPORT OF THEIR**  
**MOTION IN LIMINE NO. 2 TO EXCLUDE THE**  
**OFFER OF EVIDENCE OR ARGUMENT RELATED**  
**TO SETTLEMENTS REACHED WITH OTHER DEFENDANTS**

Plaintiffs John Lindberg, Michal Lindberg, and Judith L. Lindberg, ("Plaintiffs") hereby file  
this Reply in Support of their Motion in Limine No. 2 to Exclude the Offer of Evidence or Argument  
Related to Settlements Reached with Other Defendants ("Reply"). In their Opposition filed in



1 response to Plaintiffs' Motion in Limine No. 2, Defendants James E. Johns and A.J. Johnson re-argue  
2 motions in limine that these Defendants filed in this case (Defendants' Motions in Limine Nos. 2 and  
3 3), wasting four pages of their Opposition claiming that expert testimony is required in all instances  
4 where violations of NRS 645.252 are alleged or that Plaintiffs' expert report is somehow inadequate.  
5 (Opposition at 1:20 – 4:17). These arguments are baseless and do not touch on the assertions set forth  
6 in Plaintiffs' Motion in Limine No. 2. For the reasons set forth in this Reply and in Plaintiffs' Motion  
7 in Limine No. 2, the Court should not allow these Defendants to introduce any evidence of settlements  
8 reached in this matter with other defendants because there is no right to an off-set for such settlements,  
9 Defendants failed to assert a right of contribution in this matter against the settling defendants, and  
10 Defendants have not set forth any legal basis to support an off-set in their favor.  
11

#### 12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 At the outset, it must be noted that these Defendants *do not argue* in their Opposition that they  
14 are entitled to an off-set of the amount of the settlement that the sellers of the real property that is the  
15 subject of this case reached with the Plaintiffs prior to trial in this case. By remaining silent on this  
16 issue in their Opposition, the Defendants have thus conceded that they cannot off-set this settlement,  
17 which is the correct result in this case because the sellers of this real property faced statutory liability  
18 under NRS 113.150 (and associated treble damages under that statute), not statutory liability arising  
19 under NRS 645.252. Nothing in these two statutes would support an off-set in the Defendants' favor  
20 because the damages arising from these two statutes cannot form one single injury for which  
21 contribution or joint and several liability might be available to the Defendants. Accordingly, because  
22 the Defendants do not dispute the assertions contained in the Plaintiffs' Motion in Limine No. 2  
23 regarding the settlement with the sellers, any evidence of this settlement should not be introduced at  
24 the trial of this matter. This settlement has no relevance to the remaining dispute and would be  
25 prejudicial if offered as evidence at trial.  
26  
27

28 Defendants do argue in their Opposition that the settlement reached with the Plaintiffs' realtor

1 and broker should be used as an off-set in Defendants' favor, going so far as to claim that "seeking a  
2 credit for receipt of proceeds in connection with the settlement against the [Plaintiffs realtor and  
3 broker" is black and white. . ." and required by statute. (Opposition at 4:23-24). Yet, in their  
4 Opposition, the Defendants do not cite any case law or statute that would require such an off-set in the  
5 Defendants' favor. NRS 645.251, et seq., upon which liability against the Defendants is premised,  
6 does not provide for such an off-set. These statutes do not create a right of contribution in Defendants'  
7 favor and do not establish joint and several liability among realtors who are claimed to have violated  
8 these statutes. The Defendants acknowledge in their Opposition that they do not possess a right of  
9 contribution under the common law in this case. (Opposition at 5:5-12).<sup>1</sup> Yet, without such a right of  
10 contribution, and without providing the Court with direction on why they are entitled to an off-set,  
11 Defendants' claim that it is "black and white" that they are entitled to an off-set is discouraging and  
12 unsupported by any evidence or argument existing in this case.  
13

14  
15 The other cases the Defendants cited in their Opposition do not establish that the Plaintiffs  
16 suffered one single injury because of the actions of the Defendants and the Plaintiffs' realtor and broker  
17 or that the Plaintiffs would be obtaining a double recovery if an off-set was not provided. In *Davis v.*  
18 *Boeing*, 128 Nev. 301, 278 P.3d 501 (2012), the Nevada Supreme Court determined what the Nevada  
19 legislature meant by the phrase "actual damages" set forth in NRS 645.257, which are the damages  
20 the Plaintiffs are entitled to recover from the Defendants in this case. When considering this issue,  
21 the Nevada Supreme Court found that the plaintiff in *Davis* was entitled to recover diminution in value  
22 damages of the real property in questions as "actual damages" and consequential damages arising from  
23

---

24  
25 <sup>1</sup> Though acknowledging that the Defendants possess no right of contribution against the settling defendants in this  
26 matter because the claims alleged in this matter are not based in tort, the Defendants nevertheless cite a case in their  
27 Opposition, claiming that it is persuasive, when the cited case deals specifically and solely with contribution rights amongst  
28 tortfeasors and how those rights are affected by a determination of a good faith settlement under NRS 17.245 arising from  
a motorcycle accident. The case cited by the Defendants is found at *Prado-Guajardo v. Perez*, D. Nev. Case No. 2:16-cv-  
00546-GMN-VCF, September 8, 2017, which is an unpublished order of a magistrate judge in Las Vegas that Plaintiffs  
attach hereto as **Exhibit 1**. This order admittedly has no bearing in this matter, as confirmed by the Defendants in their  
Opposition, because this is not a tort action for which contribution is available to Defendants.

1 the realtor's several failures established in that case.<sup>2</sup> In a footnote in the *Davis* matter, the Nevada  
2 Supreme Court also found that the plaintiff in that case could claim as damages the costs incurred to  
3 carry the piece of property that they were defrauded from selling by their realtor (in violation of NRS  
4 645.251, et seq.), but the Court also found that this amount must be off-set by the rental income that  
5 the plaintiff received from the same piece of property in that matter to avoid a double recovery. Thus,  
6 paying the carrying costs was an appropriate measure of "actual damages," but the plaintiff must take  
7 the good with the bad in that situation, and they could not recover carrying costs unless the rental  
8 income received on the piece of property was also considered. *Id* at 319, n. 7. Here, the Plaintiffs do  
9 not have rental income that might be used to off-set carrying costs of retaining the property in question  
10 because the Plaintiffs live in the property that is the subject of this dispute. The Plaintiffs are not  
11 seeking to recover carrying costs in this matter and there should be no off-set for rental income  
12 received because the property is not being rented. *Davis* does not help the Defendants here.  
13

14  
15 *Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. 441, 245 P.3d 547 (2010),<sup>3</sup> also fails to provide  
16 the Defendants with any relief in this case. In *Elyousef*, a client and his attorney entered into a business  
17 relationship that resulted in the client losing his interest in his entire business. The client then sued  
18 the attorney for negligence and other claims for relief and was awarded \$150,000.00 in damages and  
19 over \$200,000.00 in attorney's fees. Ultimately, the client and his attorney settled the matter in  
20 exchange for the payment of \$50,000.00 to the client, plus a return to the client of his interest in the  
21 business. The client then attempted to sue the law firm with which his attorney was affiliated at the  
22 commencement of the business relationship, asserting the same claims and essentially the same  
23 damages against the law firm. The court in that matter granted summary judgment for the law firm,  
24 finding that the claims and damages asserted constituted a "single injury" from which the client could  
25  
26

27  
28 <sup>2</sup> Interestingly, the *Davis* case does not provide that such damages must be established by expert testimony.

<sup>3</sup> Defendants improperly identified this case as *Elyousef v. O'Riley and Ferrario LLC* in their Opposition.

1 not obtain a “double recovery” from both the lawyer and the law firm. *Id.* at 442-443.

2 Here, Plaintiffs are not seeking to sue two parties (i.e., the lawyer and his law firm) that are  
3 responsible for the same injury in different lawsuits. Instead, Plaintiffs have sued the realtor (akin to  
4 the attorney) and the broker (akin to the law firm) in one lawsuit, claiming that these two entities are  
5 both responsible for the Plaintiffs’ actual damages. This is one single injury against these two  
6 Defendants that arises under NRS 645.251, et seq. The claims against the other realtor defendants,  
7 while also arising under NRS 645.251, et seq., do not form one single injury because the actions of  
8 these Defendants are different than the actions of the other realtor defendants who have settled the  
9 claims raised against them. There simply is not a “single injury” existing between these several  
10 defendants. As such, there is no right to an off-set, and *Elyousef* does not require such an off-set.  
11

12 The Defendants also falsely rely upon the dissenting opinion referenced in *Lavi v. Eighth*  
13 *Judicial District Court*, 130 Nev.Adv.Op. 38, 325 P.3d 1265 (2014),<sup>4</sup> wherein two justices of the  
14 Nevada Supreme Court would have applied the “one action rule” under Nevada law to preclude a bank  
15 from foreclosing upon a deed of trust and then pursuing a deficiency judgment against the owner of  
16 property in a separate action. The majority of the Court in *Lavi* found that statutory prescriptions  
17 stated in NRS 40.495 permitted a bank to pursue both a foreclosure upon the property and a deficiency  
18 judgment against a guarantor of a deed of trust, if the “one action rule” was waived. The majority in  
19 *Lavi* upheld the dismissal of *Lavi*, despite the ability to pursue both a foreclosure and a deficiency  
20 judgment, because the bank had failed to pursue its deficiency claim in a timely manner, as also  
21 prescribed by statute. The majority did not assert that the bank’s deficiency judgment was barred  
22 because it would represent a “double recovery,” as Defendants falsely claim in their Opposition.  
23 Defendants also failed to note when citing *Lavi* that this case has been superseded by statute, as  
24 recognized in *Bank of Nevada v. Peterson*, 132 Nev.Adv.Op. 64, 380 P.3d 854 (2016). Regardless,  
25  
26  
27  
28

---

<sup>4</sup> Defendants incorrectly identified this case as *Levy v. 8<sup>th</sup> Judicial District Court* in their Opposition.

1 the *Lavi* case has no bearing in this matter whatsoever because it has nothing to do with realtor liability  
2 set forth in NRS 645.252.

3 Finally, the Defendants' Opposition is devoid of any argument that the settlements in this case  
4 with the other realtor defendants are relevant and not prejudicial. Plaintiffs have presented why these  
5 settlements constitute irrelevant evidence under NRS 48.105 and why the evidence would be  
6 considered prejudicial under NRS 48.015, and the Defendants' failure to address these issues is an  
7 admission that the evidence of settlements should not be admitted at trial.  
8

9 For the reasons stated herein and in Plaintiffs' Motion in Limine No. 2, the Court should not  
10 allow the introduction at trial of evidence or argument that Defendants' liability may be credited or  
11 off-set by any settlements reached with other defendants in this matter.

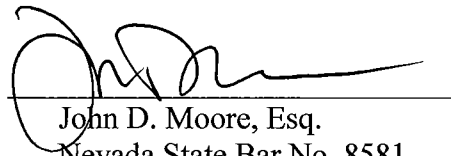
12 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

15 DATED this 5<sup>th</sup> day of March, 2018.

16 MOORE LAW GROUP, PC

17  
18  
19 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

**CERTIFICATE OF SERVICE**

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

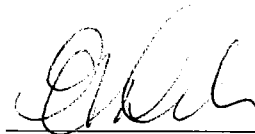
☐ Federal Express/UPS or other overnight delivery

☐ Reno/Carson Messenger Service

☒ E-service via flex filing system

to the following:

C. Nicholas Pereos  
1610 Meadow Wood Lane, Suite 202  
Reno, NV 89502



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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INDEX OF EXHIBITS		
Exhibit Number	Description of Exhibit	No. of Pages
1	<i>Prado-Guajardo v. Perez</i> , D. Nev. Case No. 2:16-cv-00546-GMN-VCF	6

# EXHIBIT 1

# EXHIBIT 1



LAWYER LOGIN

[Home](#) / [Browse Decisions](#) / PRADO-GUAJARDO v. PEREZ

## PRADO-GUAJARDO v. PEREZ

Case No. 2:16-cv-00546-GMN-VCF.

[Email](#) | [Print](#) | [Comments \(0\)](#)
[View Case](#)
[Cited Cases](#)

DEYSSI JANNETH PRADO-GUAJARDO, Plaintiff, v. MARTIN GUZMAN PEREZ and El RAYO, Defendants. MARTIN GUZMAN PEREZ, Third-Party Plaintiff, v. SHAYNA DIAZ, Third-Party Defendant.

United States District Court, D. Nevada.

September 8, 2017.

### Editors Note

Applicable Law: 28 U.S.C. § 1441

Cause: 28 U.S.C. § 1441 Petition for Removal - Personal Injury

Nature of Suit: 360 P.I.: Other

Source: PACER

### Attorney(s) appearing for the Case

Deyssi Janneth Prado-Guajardo, Plaintiff, represented by [Preston P. Rezaee](#), The Firm.

Deyssi Janneth Prado-Guajardo, Plaintiff, represented by [David F. Sampson](#), Law Office of David Sampson, LLC.

Martin Guzman Perez, Defendant, represented by [Kym S. Cushing](#), Wilson Elser Moskowitz Edelman & Discker & [Virginia T. Tomova](#), Wilson Elser Moskowitz Edelman & Dicker LLP.

El Rayo, Defendant, represented by [Kym S. Cushing](#), Wilson Elser Moskowitz Edelman & Discker.

Martin Guzman Perez, ThirdParty Plaintiff, represented by [Kym S. Cushing](#), Wilson Elser Moskowitz Edelman & Discker & [Virginia T. Tomova](#), Wilson Elser Moskowitz Edelman & Dicker LLP.

Shayna Diaz, ThirdParty Defendant, represented by [Michael J. Shannon](#), Hall Jaffe & Clayton, LLP, [Ryan M. Venci](#), Hall Jaffe & Clayton, LLP & [Riley A. Clayton](#), Hall Jaffe & Clayton, LLP.

## REPORT AND RECOMMENDATION

**CAM FERENBACH**, Magistrate Judge.

Before the Court is Third-Party Defendant Shayna Diaz's Supplemental Brief (ECF No. 44) and Defendant/Third-Party Plaintiff Martin Guzman Perez and Defendant El Rayo's (collectively, "Perez") Response (ECF No. 45) regarding Diaz's Motion for Determination of Good Faith Settlement (ECF No. 38). Plaintiff Deyssi Janneth Prado-Guajardo moved to join Diaz's Motion for Good Faith Settlement (ECF No. 39). Perez filed a Response to Diaz's Motion for Determination of Good Faith Settlement (ECF No. 40), and Diaz filed a Reply (ECF No. 42). The Court held a hearing about the Motion for Determination of Good Faith Settlement on May 2, 2017 and denied that motion without prejudice. *See* Mins. Proceedings (ECF No. 43).<sup>1</sup>

At the conclusion of the May 2, 2017 hearing, the Court raised two main issues with the Motion for Determination of Good Faith Settlement: (1) whether a settlement between a plaintiff and a third-party defendant against whom the plaintiff did not assert a direct claim could support a finding of good faith; and (2) whether Defendant/Third-Party Plaintiff Perez would still have the right to argue at trial (if the case proceeded to trial) pursuant to Nev. Rev. Stat. § 41.141 that Diaz's comparative fault due to negligent entrustment reduces the percentage of the liability attributable to Perez. *See* Mins. Proceedings (ECF No. 43). In other words, assuming the Court approves the good faith settlement and Perez's indemnity and contribution claim against Diaz based on negligent entrustment is discharged, should the issues of fault attributable to Diaz remain in the case as a defense for Perez even though recovery against Diaz would be precluded? *Id.* The Court granted the parties two weeks to file new motions addressing these issues. *Id.* The Court has reviewed and considered the moving and responsive papers. A hearing was held on September 8, 2017. For the reasons stated below, the Court

RA 0206

reconsiders Diaz's Motion for Good Faith Settlement (ECF No. 38) and recommends that it should be conditionally GRANTED.

## A. Relevant Facts

The parties are familiar with the facts of the case and the Court will repeat them only as necessary. This action arises from a non-contact accident between a 2012 Yamaha Cruiser XV250 motorcycle driven by Prado-Guajardo and Perez's 2010 Kenworth T800 DS-Tractor Truck on December 5, 2013. See ECF No. 32. Due to injuries Prado-Guajardo sustained from this accident, which she alleges Perez caused, Prado-Guajardo brought a personal injury suit against Perez on December 4, 2015 in Nevada District Court. See ECF No. 1 at 1. Perez removed the action to Federal District Court on March 11, 2016. *Id.* Prado-Guajardo filed an Amended Complaint in February 2017, naming El Rayo as an additional defendant. See ECF No. 32 at 1.

In August 2016, Perez filed a Third-Party Complaint for indemnity and contribution against Third-Party Defendant Shayna Diaz. See ECF No. 19. The Third-Party Complaint alleges that Diaz was the registered owner of the motorcycle that Prado-Guajardo operated and the insured under a motorcycle insurance policy on the day of the accident. The Third-Party Complaint alleges that Diaz negligently entrusted the motorcycle to Prado-Guajardo because Prado-Guajardo did not have a license to operate the motorcycle. *Id.* at 2. The motorcycle was insured by State Farm Automobile Insurance Company with policy limits of \$15,000. See ECF Nos. 38-2; 38-3. After being served with the Third-Party Complaint, Diaz filed an answer on October 26, 2017. See ECF No. 27. Diaz "made a Demand for Prior Pleadings and Discovery and began her investigation into the allegations." See ECF No. 38 at 3. Based on that investigation, Diaz "made an offer to Prado to tender her \$15,000 policy limits to settle the third-party claim asserted against her." *Id.* Prado-Guajardo accepted Diaz's offer, subject to the Court's determination that the settlement was made in good faith. Prado-Guajardo and Diaz are engaged to be married. See ECF No. 38-2.

On March 24, 2017, Diaz brought the instant Motion for Determination of Good Faith Settlement, which Prado-Guajardo moved to join. See ECF Nos. 38; 39. The Court held a hearing on Diaz's Motion on May 2, 2017. See ECF No. 43. The Court denied Diaz's Motion, but granted the parties two weeks to file moving and responsive papers on the issues identified by the Court at the hearing. On May 16, 2017, Diaz filed a Supplemental Brief In Support of Her Motion for Determination of Good Faith Settlement. See ECF No. 44. On June 8, 2017, Perez filed a Response to Third-Party Defendant Shayna Diaz' Supplemental Brief in Support of Her Motion for Determination of Good Faith Settlement. See ECF No. 45.

## B. Relevant Law

Plaintiff Prado-Guajardo and Third-Party Defendant Diaz seek a determination from this Court that the proposed settlement between them was made in good faith. Under Nev. Rev. Stat. § 17.245(1)(a) and (b):

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

(a) It does not discharge any of the other tortfeasors from liability for the 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; and

(b) It discharges the tortfeasor to whom it is given from all liability for contribution and for equitable indemnity to any other tortfeasor.

...

Under Nev. Rev. Stat. § 17.245(2), equitable indemnity means "a right of indemnity that is created by the court rather than expressly provided for in a written agreement." The goal of Nev. Rev. Stat. § 17.245 is "to encourage settlements by discharging all liability for contribution by a settling tortfeasor to others upon a finding that the settlement was entered in 'good faith.'" See *Kerr v. Wanderer & Wanderer*, 211 F.R.D. 625, 631 (D. Nev. 2002) (quoting *In re MGM Grand Hotel Fire Litig.*, 570 F.Supp. 913, 926 (D. Nev. 1983)).

The statute also considers the interests of non-settling defendants. Indeed, even if a court determines that a settlement was entered into in good faith, under Nev. Rev. Stat. § 17.245(1), the "non-settling defendant receives a credit in the amount contributed by the settling defendant in any subsequent verdict against that defendant." See *In re MGM Grand Hotel Fire Litig.*, 570 F. Supp. at 927; see also Nev. Rev. Stat. § 17.245(1). The determination of good faith under Nevada law is "left to the discretion of the . . . court based upon all relevant facts available. . . ." See *Velsicol Chem. Corp. v. Davidson*, 811 P.2d 561, 563 (1991); see also *Otak Nevada, L.L.C. v. Eight Jud. Dist. Ct.*, 312 P.3d 491, 497 (2013) ("[T]he . . . court is vested 'with considerable discretion' in approving good-faith settlements. . . .").

In *The Doctors Co. v. Vincent*, the Nevada Supreme Court stated that, as evidenced by the ruling *In re MGM Grand Hotel Fire Litigation*, the following factors may be considered in evaluating good-faith issues under Nev. Rev. Stat. § 17.245: "[1] [t]he amount paid in settlement, [2] the allocation of the settlement proceeds among plaintiffs, [3] the insurance policy limits of settling defendants, [4] the financial condition of settling defendants, and [5] the existence of collusion, fraud or tortious conduct aimed to injure the interests of non-settling defendants." See *The Doctors Co. v. Vincent*, 98 P.3d 681, 686 (2004) (quoting *In re MGM Grand Hotel Fire Litig.*, 570 F. Supp. at 927). These factors are not exhaustive. See *Duk v. MGM Grand Hotel, Inc.*, 320 F.3d 1052, 1060-61 (9th Cir. 2003), as amended on denial of reh'g (Apr. 17, 2003); see also *Velsicol Chem. Corp.* 811 P.2d at 563. In the court's exercise of its discretion, among the relevant facts it may choose to consider, the court may indeed take into account the factors discussed by *MGM*, but "Nevada law includes no requirement that a court consider or limit its analysis to the *MGM* factors. . . ." See *Clark County School District v. Travelers Casualty and Surety Company of America*, No. 2:13-cv-01100-JCM-PAL, 2016 WL 4443160, at \*4 (D. Nev. Aug. 18, 2016) (citation omitted).

## C. Discussion

Applying the Nevada Supreme Court's list of non-exhaustive factors and the policy that underlies them for determining whether a settlement agreement was reached in good faith and considering the relevant points and authorities, including the parties' supplemental briefs and the representations of counsel at the hearing, the Court finds pursuant to Nev. Rev. Stat. § 17.245 that the proposed \$15,000 settlement between Third-Party Defendant Diaz and Plaintiff Prado-Guajardo was made in good faith subject to the conditions described below.

RA 0207

At the May 2, 2017 hearing, the Court explained that the proposed settlement on its face satisfies Nev. Rev. Stat. § 17.245's good-faith requirement. The Court predicated its finding on, *inter alia*, the *MGM* factors. The settlement amount is for \$15,000 which Diaz's insurance company would pay toward Prado-Guajardo's damages if any are awarded to her at the conclusion of this case. Diaz made an offer to Prado-Guajardo to tender her \$15,000 insurance policy limits to settle the third-party claim asserted against Diaz by Perez, which Diaz alleges is "the extent of coverage that [she] [was] able to afford." See ECF No. 38-2 at 2; see also ECF No. 38-3 at 1. Diaz also claims that she does "not have funds sufficient to pay any judgment rendered against [her] in excess of \$15,000." *Id.* Although discovery is still ongoing, at the May 2, 2017 hearing, Counsel for Diaz represented Diaz's occupation as a cashier at local auto parts store. See Mins. Proceedings (ECF No. 43). If the Court approves the settlement, Perez would receive a credit in the amount contributed by Diaz through her insurer in any subsequent verdict against Perez. See *In re MGM Grand Hotel Fire Litig.*, 570 F. Supp. at 927; see also Nev. Rev. Stat. § 17.245(1). Perez's ultimate liability, if there is any, would be reduced by \$15,000.

Perez argues that the amount of the proposed settlement is disproportionately lower than Diaz's fair share of Prado-Guajardo's damages. See ECF No. 40 at 5. Perez points out that Prado-Guajardo is seeking more than \$2,724,819.29 in damages. *Id.* Perez argues that Diaz bears some liability for negligently entrusting the motorcycle to Prado-Guajardo, who had neither formal motorcycle training nor a motorcycle license. *Id.* at 7. Given the amount of damages Prado-Guajardo is claiming, Perez argues that the proposed settlement is disproportionately lower than Diaz's fair share of Prado-Guajardo's alleged damages. *Id.*

A settlement is in good faith so long as it is not "disproportionately lower than [the settling defendant's] fair share of damages." See *Velsicol Chem. Corp.*, 811 P.2d at 564. So, a settlement for less than what the other defendants paid will generally be in good faith when the settling defendant's potential liability is minimal. See *Otak Nevada, L.L.C.*, 312 P.3d at 497 (citing *Bay Dev. Ltd. v. Superior Court*, 791 P.2d 290, 299 (1990) (upholding a settlement of \$30,000 in a case seeking damages in excess of \$1 million because there was evidence that the settling defendant "bore only minor responsibility" for the plaintiffs' injuries)).

To the extent Diaz bears any liability, the Court finds that, based on the totality of circumstances in this case, Diaz's liability exposure would likely be minimal and considerably less than the liability exposure for Perez. See *The Doctors Co.*, 98 P.3d at 690 ("Good-faith determinations are governed by a myriad of considerations . . . , including the liability permutations arising from the merits of the contribution and indemnity claims."). Perez's responsive papers do not address Diaz's argument that, in the absence of a good faith determination, any claim for equitable indemnity would, as a practical matter, be barred because of (1) the absence of a pre-existing legal relationship between Diaz and Perez and (2) Perez's active fault for the accident at issue.<sup>2</sup> Diaz acknowledges that, in the absence of a good faith determination, a claim for contribution may not be similarly barred, but argues that such a claim is weak. Though a contribution claim based on a theory of negligent entrustment has more room for argument, a review of the facts of the case shows the merits of such a claim to lack vigor. Diaz's liability for the accident is likely to be minimal, at most, relative to Perez.<sup>3</sup>

The unique facts of this case raise a concern regarding collusion which the Court removes by conditionally granting the Motion. Perez argues that the settlement is the result of collusion between Prado-Guajardo and Diaz because Prado-Guajardo never asserted a claim against Diaz, nor can she because the statute of limitations has run and it is too late for Prado to add Diaz as a defendant. See ECF No. 40 at 9-10. Perez argues that "the only purpose that Diaz could possibly have for entering into the purported settlement with [Prado-Guajardo] is to injure Defendants' right of contribution and equitable indemnity against Diaz." *Id.* Diaz responds that the purpose of every motion for good faith determination under Nev. Rev. Stat. 17.245 is at bottom "to cut off third party indemnity and contribution rights." See ECF No. 42 at 8. Diaz asserts that she "has an interest in buying her peace and precluding indemnity and contribution claims against her," but this interest is not evidence of collusion. *Id.*

The Court agrees. In *Otak Nevada, L.L.C. v. Eight Jud. Dist. Ct.*, some of the defendants ("P & R") challenged another defendant's ("Otak Nevada, LLC's") settlement with the plaintiffs on the ground that the settlement was a tactical decision designed to cut off P & R's equitable indemnity and contractual rights. See *Otak Nevada, L.L.C.*, 312 P.3d at 497. The Nevada Supreme Court rejected this argument and held that "[a] settlement is not considered made in bad faith simply because its purpose is to eliminate third-party liability." See *id.* (citing *Dixon v. Nw. Publ'g Co.*, 166 Ill.App.3d 745, 520 N.E.2d 932, 937 (1988)); see also *The Doctors Co.*, 98 P.3d at 687 (providing that the district court may consider the strengths and weaknesses of any known contribution or equitable indemnity claims). The desire to avoid indemnity and contribution is a significant motive in encouraging settlement. Consequently, to say that a settlement prompted by a party's wish to avoid indemnity and contribution is necessarily in bad faith could hardly be correct. See *Vertecs Corp. v. Fiberchem, Inc.*, 669 P.2d 958, 961 (Alaska 1983). The Court also notes that Prado-Guajardo and Diaz are engaged to be married. See ECF No. 38-2. This is undoubtedly a strong indicator of collaboration or cooperation in this lawsuit, but not necessarily collusive conduct showing bad faith.

Based on the Nevada Supreme Court's list of non-exhaustive factors, the Court is inclined to find that Diaz's release pursuant to the proposed settlement between Diaz and Prado-Guajardo was made in good faith. The Court is not limited in its analysis to the *MGM* factors, however. See *Velsicol Chem. Corp.*, 811 P.2d at 563 (declining to adopt the "California rule," contrary to this court's conclusion in *MGM*); see also *Clark County School District*, 2016 WL 4443160, at \*4. The Court must use its "considerable discretion" to consider the "fairness and overall appropriateness of the proposed settlement" and determine whether a settlement was reached in good faith "based upon all relevant facts available. . . ." See *id.*; see also *Duk*, 320 F.3d at 1060. At the May 2, 2017 hearing the Court voiced its concerns about the proposed settlement involving a plaintiff and a third-party defendant against whom the plaintiff did not assert a direct claim and if the Court found good faith, Perez's comparative fault defense based on Diaz's negligent entrustment would be precluded by Nevada law. See Nev. Rev. Stat. § 41.141. The Court found that Defendant/Third-Party Plaintiff Perez should be allowed to argue at trial pursuant to Nev. Rev. Stat. § 41.141 that Diaz's comparative fault due to negligent entrustment should reduce Perez's percentage of liability. The Court held that it would find the proposed settlement to be made in good faith only to the extent that the issues of fault attributable to Diaz remain in the case as an empty chair defense for Perez although recovery against Diaz would be precluded.

Diaz argues that a third-party defendant like her can settle directly with a plaintiff, even where the plaintiff has not made direct claims against that third-party defendant. See ECF No. 44 at 5. In *Duk v. MGM Grand Hotel, Inc.*, Fernando Duk suffered a heart attack after being detained by the MGM Grand Hotel, Inc.'s ("MGM Grand's") security for drunk and belligerent behavior. See *Duk*, 320 F.3d at 1054-55. Duk sued MGM Grand. *Id.* MGM Grand subsequently filed a third-party complaint against American Medical Response (ambulance company), Las Vegas Metropolitan Police Department, and Clark County Detention Center. *Id.* Although Duk did not bring direct claims against these third-party defendants, Duk subsequently reached settlements with each of them. *Id.* MGM challenged Duk's settlement with third-party defendants which the district court found was in good faith. *Id.* The Ninth Circuit Court of Appeals found no abuse of discretion with respect to the district court's good faith determination. *Id.* at 1060-61. In Perez's supplemental brief (ECF No. 45), Perez does not address the merits of *Duk v. MGM Grand Hotel, Inc.* or Diaz's argument that a third-party defendant can settle directly with a plaintiff even where no direct claims have been asserted.

The Court was also concerned with the impact that a finding of good faith would have on Perez's ability to argue Diaz's comparative fault as a defense at trial with Diaz no longer a party to the case. *See* Mins. Proceedings (ECF No. 43). Diaz argues that under "relevant case law, there is no impediment to [Perez's] ability to put forth a full and complete defense, including that of Diaz's negligence." *See* ECF No. 44 at 5. Perez responds that if Diaz is dismissed from the case under Nev. Rev. Stat. § 17.245, he will be stripped of his right to argue that Diaz was *partially* at fault for the accident. *But see Banks v. Sunrise Hosp.*, 102 P.3d 52, 67 (Nev. 2004) ("NRS 17.245 does not prevent a defendant from pointing the blame at another defendant or from arguing that it was not responsible for the plaintiff's injury" and that the remaining defendant is "free to argue that [settling defendant's] negligence proximately caused [the plaintiff's] injury, rather than the [remaining defendant's]. . ."); *Thompson v. Autoliv Safety Tech., Inc.*, No. 2:09-cv-1375-JAD-PAL, 2013 WL 6086658, at \*3, fn.8 (D. Nev. Nov. 19, 2013) ("Nev. Rev. Stat. Ann. § 17.245 does not bar non-settling defendants from empty chairing settling defendants. . ."). In particular, Perez asserts that a finding of good faith here would prohibit him from including Diaz's name on the jury verdict form and from asking the jurors to apportion away from Perez Diaz's degree of fault for this accident. *See* ECF No. 45 at 4.

Under Nev. Rev. Stat. § 41.141(2)(b)(2), the jury may only apportion fault as between parties to the case. A jury may not apportion fault to non-parties, and evidence and argumentation directed to showing a non-party's comparative fault is therefore not admissible. *See Banks*, 102 P.3d at 67 ("We conclude that NRS 41.141(3) has no bearing on the issues of whether [Defendant] could argue a nonparty's fault . . . and whether such an argument per force leads to the conclusion that the jury [may] reduce[ ] [an] award based upon the nonparty's relative culpability. First, NRS 41.141 only prevents admission of evidence in support of a "comparative fault" or apportionment analysis of the case as to nonparties, and a jury may only "compare" the negligence as between parties and nonparties."); *see also Phillips v. C.R. Bard, Inc.*, No. 3:12-cv-00344-RCJ, 2015 WL 260873, at \*4 (D. Nev. Jan. 21, 2015). Under Nev. Rev. Stat. § 41.141, Perez may not argue that Diaz was *partially* at fault or adduce evidence tending only to show comparative fault. *See Phillips*, 2015 WL 260873, at \*4.

However, "[n]othing in NRS 41.141 prohibits a party defendant from attempting to establish that either no negligence occurred or that the *entire* responsibility for a plaintiff's injuries rests with nonparties. . . ." *See id.* (emphasis added); *see also* Nev. Rev. Stat. § 41.141(2)(b)(2) ("If the jury determines the plaintiff is entitled to recover, it shall return . . . [a] special verdict indicating the percentage of negligence attributable to each party remaining in the action."). That is, Perez may argue that Diaz was entirely at fault and that Perez was not at fault at all, and Perez may adduce otherwise admissible evidence in support of that argument. *See* ECF No. 40 at 7 ("[T]here is evidence from which the jury could find that . . . Diaz has significant liability for the subject no-contact incident. If Diaz had not negligently entrusted her motorcycle to [Prado-Guajardo] on the day of this no-contact incident, this incident would not have happened in the first place.").

As noted by Justice Michael L. Douglas of the Nevada Supreme Court, in many cases "[a]ny unsuccessful effort made by a [non-settling] defendant to show that a settled defendant is 100 percent at fault is essentially an argument of comparative negligence." *See Piroozzi v. Eighth Jud. Dist. Ct.*, 363 P.3d 1168, 1175, fn.7 (2015) (Douglas, J., Cherry, J., and Gibbons, J., dissenting); *see also* Restatement (Third) of Torts: Apportionment Liab. § 26 (2000) ("No party should be liable for harm it did not cause, and an injury caused by two or more persons should be apportioned according to their respective shares of comparative responsibility.").<sup>4</sup> Even if the settling defendants' names are excluded from the jury verdict forms and the jury is directed not to attribute fault to nonparties, that such efforts lead to some jury speculation and affect judgments is not only possible, but likely. As a practical matter, however, in this case there is no basis for an argument that Diaz was entirely at fault. Perez was cited for failing to yield the right of way to oncoming traffic as he turned his semi-truck onto the street. *See* ECF No. 38-1 at 1. To avoid a potential collision, Prado-Guajardo veered her motorcycle out of the way of the semi-truck and fell off. *Id.* Although Prado-Guajardo was cited for driving without a license, she was not cited for her maneuvering of the motorcycle to avoid a collision with Perez. *Id.* Because the fault attributable to Diaz is likely minimal, any argument that Diaz was entirely at fault (as opposed to partially at fault) or that Perez was not at fault at all would not be persuasive, and indeed, may even adversely affect the jury.

If the proposed settlement is found not to have been made in good faith, Perez will be able to argue at trial that Diaz was partially at fault and adduce evidence in support of a "comparative fault" or apportionment analysis of the case. If good faith is found, the strict application of Nev. Rev. Stat. § 41.141(3) would rob Perez of his ability to argue at trial that (1) Third-Party Defendant Diaz was partially at fault — as opposed to entirely at fault — for the motorcycle accident due to negligent entrustment, and (2) Diaz's name should be inserted on the applicable jury verdict forms and that the jury should apportion fault. This result is particularly harsh in light of the unique circumstances of this case. Further complicating matters is that if a non-settling defendant could argue a theory of comparative negligence as to settled defendants, then he or she would only be liable for his or her proportional fault in relation to them. *See Piroozzi*, 363 P.3d at 1174. Because any judgment issued against this non-settling defendant in theory would amount to his or her exact liability, he or she would then receive a windfall when Nev. Rev. Stat. § 17.245(1)(a) reduced that judgment by all settlement amounts. *Id.*

With that said, in applying the *In re MGM Grand Hotel Fire Litig.* factors and the policy underlying them, the Court finds that Diaz's release pursuant to the proposed settlement was made in good faith under Nev. Rev. Stat. § 17.245. As a result, Perez's claims against Diaz for contribution and equitable indemnity should be dismissed. State Farm Automobile Insurance Company will pay \$15,000 toward Prado's damages. Perez's ultimate liability, if there is any, will be reduced pursuant only to the extent that the fault allocated to Diaz by the jury, if any, exceeds \$15,000. This avoids any potential windfall to Perez. In considering "the fairness and overall appropriateness of the proposed settlement" and in the exercise of its "considerable discretion," the Court finds that the settlement is in good faith and that Perez should be permitted to argue as a defense at trial, assuming this case proceeds to trial, that Diaz's comparative fault for the accident due to negligent entrustment should reduce the percentage of liability attributable to Perez. Permitting the issue of fault attributable to Diaz to remain in the case as a defense gives Prado-Guajardo and Diaz the benefit of their settlement without depriving Perez of defenses he has properly asserted in this case. *See Velsicol Chem. Corp.*, 811 P.2d at 563 (emphasis added); *see also Otak Nevada, L.L.C.*, 312 P.3d at 497.

Accordingly, and for good cause shown,

IT IS HEREBY RECOMMENDED that Third-Party Defendant Shayna Diaz and Plaintiff Deyssi Janneth Prado-Guajardo's Motion for Determination of Good Faith Settlement (ECF No. 38) be GRANTED. If the Honorable Gloria M. Navarro adopts the Report and Recommendation: (1) Defendant/Third-Party Plaintiff Martin Guzman Perez and Defendant El Rayo should be allowed to argue that Diaz was partially at fault and adduce evidence tending to show comparative fault even though Diaz would no longer be a part of this case and further recovery against Diaz is precluded, and (2) Perez's ultimate liability, if there is any, should be reduced pursuant to Nev. Rev. Stat. § 17.245(1)(a) only to the extent that the fault allocated to Diaz by the jury, if any, exceeds \$15,000.

IT IS SO RECOMMENDED.

RA 0209



## FootNotes

1. At the May 2, 2017 hearing on Motion for Determination of Good Faith Settlement, the Court granted the parties two weeks to file new *motions* with points and authorities to address the issues raised at the hearing. See Mins. Proceedings, at 24:29 (ECF No. 43). The parties instead filed supplemental briefs, as opposed to new *motions*. When parties file "motions," the Clerk provides notices to chambers. No such notices are provided when filings are characterized as "supplemental briefs."

2. Equitable indemnity "allows a defendant to seek recovery from other potential tortfeasors" only when a defendant "who has committed no independent wrong, is held liable for the loss of a plaintiff caused by another party." See *Pack v. LaTourette*, 277 P.3d 1246, 1248-49 (Nev. 2012) (quotation omitted). Equitable indemnity "is not usually available between joint tortfeasors." See *Black & Decker (U.S.), Inc. v. Essex Grp., Inc.*, 775 P.2d 698, 699 (Nev. 1989). However, an exception to this rule exists where there is a "preexisting legal relation" between the joint tortfeasors, or the primary tortfeasor has "some duty . . . to protect the secondary tortfeasor." See *Pack*, 277 P.3d at 1249 (quotation omitted). Even under this exception, if a party is "actively negligent," it "has no right to indemnity from other tortfeasors." *Pack*, 277 P.3d at 1249. A claim of active fault on the part of the party seeking indemnity in connection with monies paid in settlement is an affirmative defense to the separate indemnity action. See *The Doctors Co.*, 98 P.3d at 689; see also *Reid v. Royal Insurance Co.*, 80 Nev. 137, 143-46, 390 P.2d 45, 48-49 (1964) (noting that a person may not seek implied indemnity when found in pari delicto with the person against whom indemnity recovery is sought).

3. To show negligent entrustment, Perez must prove that Diaz knowingly entrusted the motorcycle to "an inexperienced or incompetent person" causing Prado-Guajardo's damages. See *Zugel by Zugel v. Miller*, 688 P.2d 310, 312 (1984); see also *Connell v. Carl's Air Conditioning*, 634 P.2d 673 (1981) (holding that negligent entrustment in Nevada "does not extend to one who neither entrusts nor places a vehicle with another (citation omitted) or one who has no right to control the vehicle." (citing *Drake v. Morris Plan Company of California*, 53 Cal.App.3d 208, 125 Cal.Rptr. 667 (Ct. App. 1975) (no liability on part of one who financed sale of automobile to allegedly incompetent driver)); *Terrell v. Cent. Washington, Asphalt, Inc.*, 168 F.Supp.3d 1302, 1310 (D. Nev. 2016). The parties dispute whether Diaz entrusted the motorcycle to Prado-Guajardo, whether the entrustment was negligent, and whether there is a causal connection between the negligence and the resulting damages. With regard to the latter, Perez was cited for failing to yield the right of way to oncoming traffic as her turned his semi-truck onto the street. See ECF No. 38-1 at 1 ("[Perez] failed to yield the right of way to oncoming [Prado-Guajardo] and a non-collision had occurred. To avoid a potential collision into [Perez], [Prado-Guajardo] veered to the left and fell to the left."). Prado-Guajardo was not cited for her maneuvering of the motorcycle to avoid a collision with Perez. But see ECF No. 38-1 at 1 ("[Perez] indicated on scene [that] . . . he ensured the roadway was cleared and [Prado-Guajardo] was at a safe distance, prior to entering the roadway."). Prado-Guajardo was cited for operating the motorcycle without a license.

4. Compare Nev. Rev. Stat. § 41.141(4) ("Where recovery is allowed against more than one defendant in such an action, . . . each defendant is severally liable to the plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to that defendant."), with Restatement (Third) of Torts: Apportionment of Liability § B19 (2000) ("If one or more defendants may be held severally liable for an indivisible injury, and at least one defendant and one other party, settling tortfeasor, or identified person may be found by the factfinder to have engaged in tortious conduct that was a legal cause of the plaintiff's injury, each such party, settling tortfeasor, and other identified person is submitted to the factfinder for an assignment of a percentage of comparative responsibility"), and *id.* § 11, cmt. (a) (2000) ("[B]ecause liability is limited to defendants' several share of damages, other nonparties may be submitted to the factfinder for an assignment of a percentage of comparative responsibility . . . [,] not to adjudicate their liability, but to enable defendants' comparative share of responsibility to be determined.").

## Comment

Your Name

Your Email

Comments

Submit

1000 Characters Remaining

Leagle.com reserves the right to edit or remove comments but is under no obligation to do so, or to explain individual moderation decisions.



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

JOHN LINDBEG, MICHAL LINDBERG,  
JUDITH L. LINDBERG,

Plaintiff,

Case No. CV15-00281

Dept. No. 3

vs.

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

Defendants.

ORDER

Currently before the Court are PLAINTIFFS JOHN LINDBERG, MICHAL  
LINDBERG, and JUDITH LINDBERG's (hereinafter collectively "Plaintiffs") MOTION IN  
LIMINE 1 TO EXCLUDE OR LIMIT EXPERT TESTIMONY, MOTION IN LIMINE 2 TO  
EXCLUDE THE OFFER OF EVIDENCE OR ARGUMENT RELATED TO SETTLEMENTS  
REACHED WITH OTHER DEFENDANTS, MOTION IN LIMINE 3 TO EXCLUDE THE  
OFFER OF EVIDENCE OR ARGUMENT THAT JAMES E. JOHNS' DEATH CAUSES THIS  
COURT TO LACK JURISDICTION, all filed February 9, 2018.

1 DEFENDANTS J.E. JONES AND ASSOCIATES and A.J. JOHNSON (hereinafter  
2 collectively “Defendants”) filed OPPOSITIONS to Motions 1 and 2 on February 22, 2018.

3 All three were submitted by Defendants to the court February 27, 2018.<sup>1</sup>

4 Plaintiffs filed REPLIES to Motion in Limine 1 and 2 on March 5, 2018, and filed a Request  
5 for Submission on these Motion the same day. Defendants filed a Supplement to their Opposition to  
6 Motion in Limine 1 on March 5.  
7

8 This matter relates to a Complaint filed February 10, 2015, and amended on February 12,  
9 2015, asserting numerous causes of action arising out of the sale of certain residential property. In  
10 doing so, Plaintiffs allege that they purchased the property upon reliance of the information which  
11 was provided to them which was later found to be incorrect. Specifically, Plaintiffs allege that the  
12 instant Defendants acted as the broker and agent for the sellers and incorrectly provided the square  
13 footage of “total living space” and indicated that the property included “inlaw quarters or guest  
14 home.” As such, Plaintiff asserts two causes of action against the instant Defendants in its First  
15 Amended Complaint: (4) Action Pursuant to NRS 645.252 and NRS 645.257; and (5) Action  
16 Pursuant to NRS 645.252, NAC 645.600, and NRS 645.257.  
17  
18

19 Plaintiffs have settled with all defendants save for the sellers’ realty agents and broker,  
20 Defendants A.J. Johnson, James E. Johns, and J.E. Johns and Associates.

21 Plaintiffs file three exclusionary Motions. Motions in limine are meant as a device or vehicle  
22 by which a party may seek to preclude the introduction of evidence prior to trial to avoid undue  
23 prejudice. It is recognized and agreed by the parties that the primary purpose of a motion in limine  
24 is to assure all parties a fair and impartial trial by prohibiting inadmissible evidence, prejudicial  
25 statements, and improper questions by counsel. The court has authority to issue a preliminary ruling  
26  
27

28 <sup>1</sup> On February 28, 2017, the day after Defendants’ submission, Defendants filed an Opposition to Motion in Limine 3.  
Given that Defendants submitted Motion in Limine 3 before they filed their Opposition, it is not considered here.

1 on the admissibility of evidence outside the presence of the jury. NRS 47.080. Such rulings are  
2 provisional in nature, and the court may always change his mind if the evidence unfolds in an  
3 unanticipated manner. *Ohler v. U.S.*, 529 U.S. 753, 758 n 3 (2000). Motions in limine are not meant  
4 to take the place of dispositive motions. See *Blanks v. Shaw*, 89 Cal. Rptr. 3d 710,741 (2009).

5  
6 A. Motion In Limine 1 To Exclude Or Limit Expert Testimony

7 Plaintiffs argue that since Defendants did not offer any original opinions on the initial expert  
8 witness disclosure deadline, the Court should exclude any testimony from any of the Defendants'  
9 experts that is not meant solely to contradict or rebut their own expert witness' testimony. Plaintiffs  
10 further argue that the Court should exclude or limit the testimony of Defendants' expert witness  
11 Forrest Barbee because Barbee was disclosed as a rebuttal witness but does not confine himself to  
12 rebuttal opinions in his report, his testimony is cumulative to the opinions of Defendants' first  
13 expert witness, and because he did not sign the report he seeks to rely on at trial. Plaintiffs finally  
14 argue that expert witness Wardell's report is conclusory and not addressed to rebut Cartinella's  
15 opinions, and that Wardell did not sign his report either.<sup>2</sup>

16  
17 Defendants argue that there is no way to determine what the Plaintiffs' expert is going to  
18 testify about or how they are going to cross examine her until trial. Defendants further argue that all  
19 of their witnesses address different perspectives of the issues, and are therefore not cumulative.  
20 Defendants finally argue that the unsigned reports were ratified during the witnesses' depositions  
21 and should not be excluded.

22  
23 Plaintiffs reply that as Barbee's original opinion testimony relates to Defendants' affirmative  
24 defenses, for which Defendants bear the burden of proof, they were required to submit an original  
25

26  
27  
28 <sup>2</sup> Plaintiffs also object to witness Pamela Molini as not complying with NRCP 16.1(a)(2)(B). In Defendants' Supplement  
to Opposition to Motion in Limine 1, filed March 5, 2018, the Defendants withdraw Molini as an expert.

1 expert report and not a rebuttal report. Plaintiffs also point out that Defendants fail to oppose the  
2 contention that Wardell's report offers conclusions but not support for those conclusions.

3 Plaintiffs' arguments have merit. As Defendants' witnesses were disclosed and styled as  
4 rebuttal witnesses, allowing them to testify on matters beyond the scope of Plaintiffs' expert  
5 testimony is inappropriate. Defendants are broadly correct that witness testimony cannot be  
6 anticipated perfectly before trial. However, motions in limine are provisional, and the court may  
7 always change its mind if the evidence unfolds in an unanticipated manner. *Ohler v. U.S.*, 529 U.S.  
8 753, 758 n 3. Defendants' apparent worry that their experts will not be allowed to testify within the  
9 framework of Cartinella's opinions is misplaced.  
10

11 Plaintiff's Motion to limit Defendants' expert testimony to only rebuttal testimony is  
12 therefore granted.  
13

14 B. Motion In Limine 2 To Exclude The Offer Of Evidence Or Argument Related To  
15 Settlements Reached With Other Defendants

16 All claims against the remaining Defendants are statutory in nature. Plaintiffs argue that  
17 Defendants' affirmative defenses regarding credit for settlements already entered are inappropriate,  
18 as Nevada's contribution statute, NRS 17.225, specifies tort claims for injuries to persons or  
19 property. Plaintiffs argue that evidence of a settlement is inadmissible to disprove liability, and is  
20 further irrelevant to the statutory claims in this case. Plaintiffs finally argue that evidence of a  
21 settlement would unfairly prejudice them before a jury.  
22

23 Defendants acknowledge that the only basis for liability against the Defendants is statutory.  
24 Defendants argue that they are entitled to a credit in the amount of \$7500<sup>3</sup> to prevent a double  
25 recovery by the Plaintiffs.  
26

27  
28 

---

<sup>3</sup> The amount of the Plaintiffs' settlement with their own realtor and broker in this case.



1 Plaintiffs reply that Defendants only address liability under NRS 645.252 in their  
2 opposition, and not Plaintiffs' claims under NRS 113.150. Plaintiffs further point out that NRS  
3 645.251 et seq. do not provide for such an offset in the text of the statutes or create a right of  
4 contribution or joint and several liability. Plaintiffs also note that the caselaw cited by Defendants is  
5 not on point. Finally, they note that Defendants fail to address their contentions that the information  
6 is prejudicial and irrelevant.  
7

8 Plaintiffs' arguments have merit. Their claims are purely statutory, and the statutes involved  
9 do not contain provisions for joint liability or contribution. Further, the Defendants have not cited  
10 any binding authority that would entitle them to offset the \$7500. Finally, testimony of prior  
11 settlements in a case is disfavored because it confuses a jury as to liability of the remaining  
12 defendants, and Defendants here have not offered any argument at all as to why the evidence is  
13 relevant or why it would not prejudice Plaintiffs to include the testimony.  
14

15 The Motion in Limine to exclude evidence and argument on prior settlements in the case is  
16 therefore granted.  
17

18 C. Motion In Limine 3 To Exclude The Offer Of Evidence Or Argument That James E. Johns'  
19 Death Causes This Court To Lack Jurisdiction

20 Plaintiff files this Motion to prevent Defendants from arguing that Johns' death deprives the  
21 Court of jurisdiction or causes Plaintiff's claims to be abated or unenforceable. Further, they wish to  
22 prevent any information about the state of A.J. Johnson's finances resulting from Johns' death from  
23 being admitted at trial as irrelevant or would overly prejudice the Plaintiffs.  
24

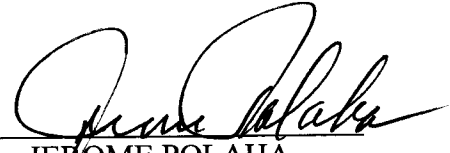
25 No Opposition to this Motion was timely filed. D.C.R. 13(3) provides, the failure of an  
26 opposing party "to serve and file his written opposition may be construed as an admission that the  
27 motion is meritorious and a consent to granting the same." The Motion here is unopposed and the  
28

1 court may construe the lack of a written opposition as an admission the Motion is meritorious and  
2 consent to granting said Motion.

3 Accordingly, and good cause appearing,

4 IT IS HEREBY ORDERED that Plaintiffs' Motions in Limine # 1, 2, and 3 are GRANTED.

5 Dated this 19th day of March, 2018.

6  
7   
8 JEROME POLAHA  
9 DISTRICT JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
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 20 day of March, 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:

C. NICHOLAS PEREOS, ESQ. for J.E. JOHNS & ASSOCIATES

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:

\_\_\_\_\_