

1 Defendant by Stipulation, Motion, or Order in the District Court. In this
2 connection, Plaintiffs-Appellants would respectfully show the Court as follows:

3 **I. Summary of the Response and Alternative Request**

4 The subject motion Plaintiff filed in the District Court was, in form and
5 substance, nothing more than a request for an extension of time to file a tolling
6 motion; however, such time extensions were not allowed. Therefore, the deadline to
7 appeal was not tolled, this appeal was not prematurely taken, and it should not be
8 dismissed.
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11 All the same, to resolve the potential jurisdictional defect identified in this
12 Court's Order to Show Cause, Plaintiffs' counsel has conferred with Defendants-
13 Respondents' attorney in an attempt to cure by stipulation. Thus far, Defendants'
14 attorney has taken the position that the appeal is premature; however, to be fair, it
15 appears that Defendants' attorney is still considering the matter. Thus, Plaintiffs
16 alternatively seek additional time to cure any jurisdictional defect by stipulation,
17 motion, or order in the District Court.
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21 **II. Background**

- 22 1. On March 22, 2019, the District Court entered its Order Granting
23 Defendants Countermotion for Summary Judgment and Attorneys
24 Fees and Costs. The notice of entry of that order was served and filed
25 the same day. (See attached *Exhibit 1* [hereinafter "Summary
26 Judgment Order" or "MSJ Ord."]).
27
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1 2. Prior to retaining new counsel,¹ on April 1, 2019, Plaintiffs filed their
2 Motion to Vacate Entry of Order or Motion for Extension of Time to
3 File Reconsideration to the Entry of Order Granting Defendants’
4 Countermotion for Summary Judgment and Attorney Fees and Costs.
5 (See attached ***Exhibit 2*** [hereinafter “Motion to Vacate/Extend Time”
6 or “Mot. Vac./Extend Time”]).
7

8 3. Also on April 1, 2019, the District Court entered a Minute Order on a
9 separate motion. In the Minute Order, the District Court explained:
10 “[T]he Court finds that there is nothing pending in this litigation. The
11 Court has granted Summary Judgment in favor of Defendants and
12 dealt with all claims pending in this litigation.” (See attached ***Exhibit***
13 ***3*** [hereinafter “Minute Order” or “Min. Ord.”]).
14

15 4. Later, still without new counsel, on April 22, 2019, Plaintiffs filed
16 their Notice of Appeal and Case Appeal Statement.
17

18 5. On November 14, 2019, this Court recently entered an Order to Show
19 Cause (“Order to Show Cause” or “OSC”), in which it directed
20 Plaintiffs-Appellants “to show cause why this appeal should not be
21 dismissed for lack of jurisdiction.”
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27 ¹ Plaintiffs’ previous counsel withdrew on March 21, 2019. (See Order Granting
28 Motion to Withdraw as Counsel of Record (filed with separate notice of entry on
 Mar. 21, 2019)).

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1 for new trial); NRCP 59(e) (motion to alter or amend judgment). The 28-day
2 deadline may not be extended. *See* NRCP 6(b)(2), 50(b), 52(b), 59(f).

3 In their *pro se* Motion to Reconsider, Plaintiffs sought only an extension of
4 time to find a new attorney who could review the District Court's Summary
5 Judgment Order and then file an actual motion for reconsideration. (Mot.
6 Reconsider ¶ 4, at p.2). Plaintiffs requested two alternative means to achieve this
7 end: (1) vacate the Summary Judgment Order for one month or (2) extend the time
8 to file a motion for reconsideration. (*Id.*). Here are Plaintiffs' exact words:
9
10

11 ... Plaintiff Betty Chan and Asian American Realty and Property
12 Management respectfully requests this Court to vacate the entry of
13 order so Plaintiff can have a month to locate an attorney to review
14 before the entry of order as originally ordered by the Court. Or in the
15 alternative Plaintiff is requesting the Court to grant a reconsideration of
16 the Order and allow extension of reconsideration time ... so that
[Plaintiffs'] can locate a replacement attorney and put this
reconsideration on hold until then if the request is granted.

17 (*Id.*) (emphases added).
18

19 It is clear that, in substance and form, Plaintiffs' so-called Motion to
20 Vacate/Extend Time as nothing more than a request an extension of time to file a
21 tolling motion (motion for reconsideration). (*Id.*). Nevertheless, as shown above, no
22 such time extensions are allowed. *See* NRCP 6(b)(2), 50(b), 52(b), 59(f). Plaintiffs'
23 Motion to Vacate/Extend Time did not address the merits of the Summary
24 Judgment Order. Subsequently, Plaintiffs never filed any motion for
25 reconsideration or other tolling motion. Hence, Plaintiffs' Motion to Vacate/Extend
26
27
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1 Time did not toll the deadline to appeal, Plaintiffs' Notice of Appeal was not
2 premature, and this appeal should not be dismissed.

3 ***B. Alternatively, Plaintiffs Seek Additional Time to Cure Any***
4 ***Jurisdictional Defect by Stipulation, Motion, or Order.***

5 This Court may allow Plaintiffs additional time to cure any jurisdictional
6 defects. "A premature notice of appeal does not divest the district court of
7 jurisdiction.... If ... a written order or judgment, or a written disposition of the last-
8 remaining timely motion listed in Rule 4(a)(4), is entered before dismissal of the
9 premature appeal, the notice of appeal shall be considered filed on the date of and
10 after entry of the order, judgment or written disposition of the last-remaining timely
11 motion." NRAP 4(a)(6).
12
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15 The appeal was taken as a an "order[] confirming or denying confirmation of
16 an [arbitration] award," NRS 38.247(1)(c), and as a "final judgment entered
17 pursuant to [the Uniform Arbitration Act of 2000]," NRS 38.247(1)(f); *see also*
18 NRAP 3A(b)(1). (*See* Docketing Statement Civil Appeals (filed Jun. 3, 2019)).
19 Moreover, as explained by the District Court: "The Court has granted Summary
20 Judgment in favor of Defendants and dealt with all claims pending in this
21 litigation." (Min. Ord.).
22
23

24 To resolve the potential jurisdictional defect identified in this Court's Order
25 to Show Cause, Plaintiffs' counsel has conferred with Defendants-Respondents'
26 attorney in an attempt to cure by stipulation. (*See* emails between counsel (Nov.
27 20, 2019 to Dec. 16, 2019) [attached hereto as ***Exhibit 4***]). Thus far, Defendants'
28

1 attorney has taken the position that the Summary Judgment Order is not
2 appealable; however, to be fair, it appears that Defendants' attorney is still
3 considering the matter. (*See id.*)
4

5 In the event the Court determines that there is an actual jurisdictional defect,
6 Plaintiffs are hereby requesting an additional 60 days (due to the holidays) to cure
7 it by stipulation, motion, or order in the District Court. Plaintiff thus seek leave to
8 that end.
9

10 **IV. Request for Relief**

11 WHEREFORE, Plaintiffs-Appellants BETTY CHAN ("Chan") and ASIAN
12 AMERICAN REALTY & PROPERTY MANAGEMENT ("Asian American" or
13 "Asian Am.") hereby request this Court as follows:
14

15 A. not to dismiss this appeal;

16
17 B. alternatively, to grant Plaintiffs-Appellants' Request for Leave and
18 Additional Time to Cure Any Jurisdictional Defendant by Stipulation,
19 Motion, or Order in the District Court, and allow them an additional
20 60 days (due to the holidays) to that end; and
21

22 ///

23 ///

[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

1 C. to grant Plaintiffs-Appellants all such other and further relief to which
2 they may justly deserve at law or in equity.

3 DATED: December 16, 2019.

4
5 Respectfully submitted,

6 **FRIZELL LAW FIRM**
7 400 N. Stephanie St., Suite 265
8 Henderson, Nevada 89014
9 Telephone (702) 657-6000
Facsimile (702) 657-0065

10 By: /s/ R. Duane Frizell
11 **R. DUANE FRIZELL, ESQ.**
12 Nevada Bar. No 9807
13 DFrizell@FrizellLaw.com
14 *Attorney for Plaintiffs-Appellants*
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CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on December 16, 2019, I served a true and correct copy of the forgoing ***PLAINTIFFS-APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE—AND—ALTERNATIVE REQUEST FOR LEAVE AND ADDITIONAL TIME TO CURE ANY JURISDICTIONAL DEFENDANT BY STIPULATION, MOTION, OR ORDER IN THE DISTRICT COURT***, together with any and all exhibits and attachments, via the Supreme Court's Electronic Filing System to the following:

MICHAEL A. OLSEN, ESQ.

Nevada State Bar No. 6076

THOMAS R. GROVER, ESQ.

Nevada State Bar No. 12387

KEITH D. ROTSONG, ESQ.

Nevada State Bar No. 14944

BLACKROCK LEGAL, LLC

10155 W. Twain Ave., Suite 100

Las Vegas, Nevada 89147

Attorneys for Defendants-Respondents

Wayne Wu, Judith Sullivan, Nevada

Real Estate Corp., and Jerrin Chiu

/s/ R. Duane Frizell

R. DUANE FRIZELL, ESQ.

Nevada Bar. No 9807

DFrizell@FrizellLaw.com

Attorney for Plaintiffs-Appellants

EXHIBIT 1

EXHIBIT 1

Steven D. Grierson

ORDR

MICHAEL A. OLSEN, ESQ.

Nevada Bar No: 6076

THOMAS R. GROVER, ESQ.

Nevada Bar No. 12387

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mike@blackrocklawyers.com

tom@blackrocklawyers.com

Attorneys for Defendants/Counterclaimants

Wayne Wu, Judith Sullivan, Nevada

Real Estate Corp. and Jerrin Chiu

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN
REALTY & PROPERTY MANAGEMENT,

Plaintiffs/Counterdefendants,
v.

WAYNE WU, JUDITH SULLIVAN,
NEVADA REAL ESTATE CORP., JERRIN
CHIU, KB HOME SALES – NEVADA INC.,

Defendants/Counterclaimants.

) Case No: A-16-744109-C

) Dept. No: XX

) **ORDER GRANTING**

) **DEFENDANTS**

) **COUNTERMOTION FOR**

) **SUMMARY JUDGMENT AND**

) **ATTORNEY FEES AND COSTS**

)

)

APPEARANCES

- Michael A. Olsen, Esq. of Goodsell & Olsen, LLP, on behalf of Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu, Defendants/Counterclaimants (hereinafter “Defendants”).
- Janiece S. Marshall, Esq. of Gentile Cristalli Miller Armeni Savarese on behalf of Betty Chan and Asian American Realty & Property Management, Plaintiffs/Counterdefendants (hereinafter “Plaintiffs”).

1 This matter came on for hearing on October 31, 2018 before the Honorable Eric Johnson
2 presiding on the Defendants *Countermotion for Summary Judgment, and for Attorney Fees [and*
3 *costs]* (hereafter “Countermotion”) and Plaintiffs *Opposition to recognize Wu as the Procuring*
4 *Cause, for Summary Judgment, and for Attorney Fees*. The Court having read and considered the
5 papers and pleadings on file, having heard oral arguments made at the time of hearing, and good
6 cause appearing, therefore the Court makes the following findings of fact and conclusions of
7 law:
8

9 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

10
11 1. The underlying dispute in this matter involves realtor commission funds totaling
12 \$13,795.32 for the real estate transaction on January 8, 2016 for the purchase of the home
13 located at 477 Cabral Peak Street, Las Vegas, Nevada 89138, APN # 137-34-119-012 by Dr.
14 Jerrin Chiu. This matter came before a GLVAR arbitration panel on April 17, 2018. The
15 arbitration panel heard all evidence and arguments of the parties and found that Wu (respondent)
16 was to be paid the \$10,346.49 of the commission funds due from the sale and Betty Chan
17 (complainant) was to be paid \$3448.83.
18

19 **A. COUNTERMOTION FOR SUMMARY JUDGMENT GRANTED**

20 2. This matter initially came on for hearing on August 22, 2018 before the
21 Honorable Eric Johnson regarding Plaintiffs *Motion to Vacate or Modify Arbitration Award*
22 (hereafter “Motion to Vacate”), and Defendants *Opposition to Motion to Vacate or Modify*
23 *Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for Summary*
24 *Judgment, and for Attorney Fees* (hereafter “Countermotion”).
25

26 3. During the August 22, 2018 hearing, this Court denied Plaintiffs Motion to Vacate
27 or Modify Arbitration award finding: “that Nevada law does not prohibit splitting a commission
28 between two individuals both claiming to be the procuring cause and therefore

1 Plaintiffs/Counterdefendants have failed to meet their burden of demonstrating clear and
2 convincing evidence of a violation under any of the standards asserted in the Motion to Vacate
3 that would justify modifying or vacating the Award.” *See September 18, 2108 Order Denying*
4 *Motion to Vacate or Modify Arbitration Award.*

5
6 4. During that same August 22, 2018 hearing the Court further found that Wayne
7 Wu was the procuring cause and: “That pursuant to NRS 38.241(4) and NRS 38.242(2) the
8 Arbitration Award of the GLVAR arbitration panel is CONFIRMED; and That the Counter-
9 Motion seeking summary judgment and an award of attorney fees is taken under advisement,
10 with supplemental briefing to be filed by the Defendants/Counterclaimants by September 5,
11 2018.” *Id.* The Court hereby affirms its Order dated on or about September 18, 2018 Denying
12 Plaintiffs Motion to Vacate or Modify Arbitration Award and finding Wu to be the procuring
13 cause. The Court further notes the allowable time frame for Plaintiffs to file a Motion to
14 Reconsider the September 18, 2018 Order has passed.

15
16
17 5. The Court set the remaining Countermotion for Summary Judgment and For
18 Attorney’s fees and Costs to be heard on October 31, 2018, at which time all supplemental
19 briefing regarding the Defendants Countermotion for Summary Judgment and for Attorney’s
20 fees and costs, along with the Opposition to the same, was considered.

21
22 6. NRCP 56(c) provides that summary judgment shall be rendered if “the pleadings,
23 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
24 any, show that there is no genuine issue as to any material fact and that the moving party is
25 entitled to judgment as a matter of law.” The Nevada Supreme Court stated that a factual dispute
26 is “genuine” when the evidence is such that a rational trier of fact could return a verdict for the
27 nonmoving party. *Wood v. Safeway, Inc.*, 121 P.3d 1026 (2005). Once the moving party has
28 shown that there is no genuine dispute as to material facts, the burden shifts to the nonmoving

1 party to set forth specific facts demonstrating the existence of a genuine issue for trial or have
2 summary judgment entered against that party. In meeting this burden, the nonmoving party, "is
3 not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture." *Id.*

4
5 7. The Arbitration Panel's award resolved all disputes the plaintiffs had against these
6 defendants, Wu, Sullivan, Nevada Real Estate Corp and Chiu. For the reasons stated above the
7 award is confirmed and Wu is confirmed as the procuring cause. This resolves the Plaintiff's
8 request for declaratory relief and claim of unjust enrichment. Because there are no genuine issues
9 as to any material fact left to be decided against these defendants in this case, summary judgment
10 in favor of the defendants is proper.
11

12 **B. COUNTERMOTION FOR ATTORNEY FEES AND COSTS GRANTED**

13 8. Defendants requested the Court award them their attorney fees and costs. After
14 considering the pleadings and arguments of counsel, attorney fees and cost are awarded in the
15 amounts of \$920.83 for costs and \$21,435.00 for legal fees.
16

17 9. The Court finds that the Defendants fees are reasonable and were actually
18 incurred in the confirmation and enforcement of the award of the Arbitration Panel. The Court
19 finds that the contractual provision contained in the Arbitration Agreement signed by both
20 Plaintiff and Defendant provided that "In the event [a party does] not comply with the award and
21 it is necessary for any party to obtain judicial confirmation and enforcement of the award against
22 me, [the party] agree[s] to pay that party costs and reasonable attorney's fees incurred in
23 obtaining such confirmation and enforcement."
24

25 10. The Court further finds that provision was reasonable and enforceable. As costs
26 were never challenged, the Court hereby ORDERS costs in the amount of \$920.83 pursuant to
27 Defendants' Memorandum of Costs and Disbursements, which was unopposed.
28

11. The Court hereby ORDERS attorney's fees in the amount of \$21,435.00. The Court finds this amount is reasonable and actually incurred by Defendants in enforcing the arbitration award. The Court is awarding attorney fees after the entry of the arbitration award and Plaintiffs' filing of its Motion to Vacate or Modify Arbitration Award, starting on July 25, 2018. The Court declines to award fees requested on the invoices dated December 31, 2016, January 31, 2017, and February 28, 2017, as the redactions made to Plaintiffs' counsel's billing records prevent the Court from determining if those fees were reasonable and necessary. The Court has reviewed the remaining fees and finds they were reasonable and appropriate for litigating the matter and in keeping with attorney fees for such work in Southern Nevada. The Court further finds that the Brunzell factors have been met for the reasons stated in Defendant's Countermotion for Attorney Fees and Costs as set forth below.

12. When determining an award of attorneys' fees and costs, Nevada courts have long relied upon the factors in *Brunzell v. Golden Gate Nat'l Bank*. These four factors analyze (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

13. **Brunzell Factor #1:** "the qualities of the advocate: his ability, his training, education, experience, professional standing and skill". Counsel for Defendants, Michael A. Olsen, Esq. is a founding partner of his firm and has been a member of the State Bar of Nevada for over twenty years. He is a graduate of Utah State University and BYU's J. Reuben Clark Law School. His abilities as an advocate have been recognized through numerous awards and honors,

1 and Mr. Olsen's abilities have been honed through, among other experience, regular appearances
2 in the Eighth Judicial District Court on contested matters.

3 14. **Brunzell Factor #2:** "the character of the work to be done: its difficulty, its
4 intricacy, its importance, time and skill required, the responsibility imposed and the prominence
5 and character of the parties where they affect the importance of the litigation" This matter
6 involved complex legal issues including a determination of procuring cause and whether the
7 Arbitration Panel exceeded its authority pursuant to Nevada statute. Because the Plaintiff elected
8 to contest the validity of the Arbitration award it became incumbent on Defendant to defend the
9 award and have it confirmed by the Court. Defendant was successful in confirming and
10 enforcing the Arbitration Award.
11

12 15. **Brunzell Factor #3:** "the work actually performed by the lawyer: the skill, time
13 and attention given to the work". The Plaintiffs attempt to set aside the Arbitration Award and to
14 further litigate against the Defendants has required investment of a substantial amount of time
15 and effort to prepare and provide a proper defense, including against motion practice initiated by
16 the Plaintiffs. The fees and costs awarded were reasonably incurred in defending the actions
17 taken by Plaintiffs in this matter as set forth in detail above.
18

19 16. **Brunzell Factor #4:** "the result: whether the attorney was successful and what
20 benefits were derived". Defendants were ultimately successful in upholding and enforcing the
21 Arbitration Award, recognizing Wu as the procuring cause and thereby securing summary
22 judgment in favor of the Defendants.
23

24 17. While "good judgment would dictate that each of these factors be given
25 consideration by the trier of fact and that no one element should predominate or be given undue
26 weight," each factor strongly supports an award of attorneys' fees and costs in the favor of
27 Defendants.
28

1 **IT IS HEREBY ORDERED, AJUDICATED, AND DECREED:**

- 2 a. That the September 18, 2018 Order is affirmed wherein Wu was determined the
3 procuring cause and the Arbitration Award was confirmed.
4
5 b. That the *Countermotion for Summary Judgment* is GRANTED
6
7 c. That the *Motion for Attorney's Fees and Costs* is GRANTED and that Attorney's
8 fees in the amount of \$21,435.00 and Costs in the amount of \$920.83 are hereby awarded
9 to Defendants.

10 IT IS SO ORDERED this 19 of ^{MARCH}~~FEBRUARY~~ 2019.

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14 DISTRICT COURT JUDGE ^{SS}
15 ERIC JOHNSON

16
17 Prepared and submitted by:


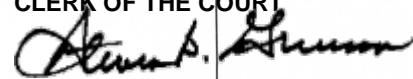
18 
19 MICHAEL A. OLSEN, ESQ.
20 Nevada Bar No. 6076
21 THOMAS R. GROVER, ESQ.
22 Nevada Bar No. 12387
23 **GOODSELL & OLSEN, LLP**
24 Attorneys for Wayne Wu, Judith Sullivan,
25 Nevada Real Estate Corp. and Jerrin Chiu
26
27
28

EXHIBIT 2

EXHIBIT 2



MOTION

Betty Chan and Asian American Realty and Property Management
(Name)

4651 Spring Mountain Road
(Address)

Las Vegas, NV89102
(City, State, Zip)

702-222-0078
(Telephone)

aarpm09@gmail.com
(E-mail Address)

☐ Plaintiff/ ☐ Defendant, In Proper Person

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

Betty Chan and Asian American Realty and
Property Management

Plaintiffs/Counterdefendants,

vs.

Wayne Wu, Judith Sullivan, Nevada Real Estate Corp
Jerrin Chiu, KB Homes Sales-Nevada Inc,

Defendant(s)/Counterclaimants.

Case No.: A-16-744109-C

Dept. No.: xx

**MOTION to Vacate entry of Order or Motion for extension of time to file reconsideration to the
entry of Order Granting DefendantsCounter Motion For Summary Judgment and Attorney Fees and Costs**

Plaintiff/Counterdefendants Betty Chan and Asian American Realty and Property
Management appear in Proper Person submit this Motion based on the following:

1) The hearing took place back in October 31 2018 and the Court find for the Defendants and
Court directed Defendants'Counsel to draft the proposed order and to circulate it to Counsel prior
to submission to chambers.(Exhibit 1)

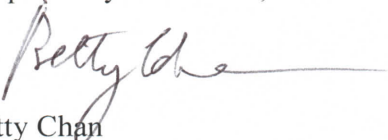
2) Without any explanation or reasons, Defendant Counsel never produced the draft order for
5 months. As soon as the Plaintiff's Counsel was granted withdrawal, then Defendant Counsel
conveniently seized the opportunity to submit the Order without circulating to Plaintiff's former.
counsel or Plaintiff herself in ProSe. With the experience of the Denfendant's Counsel as
illustrated in the Order there is no reason he would not know that Plaintiff should be informed.

If that was not an intentional misconduct, then what else?

1 3) Plaintiff's due process right is now severely prejudiced and deprived of any fair
2 chance to review and object. Further, Plaintiff is entitled to have the notice and review with her
3 attorney. At this time, Plaintiff does not have any legal representation to help achieve that
4 purpose to explain, to correct and to advise any legal deficiency to the Plaintiff.
5 4) Under such circumstances, Plaintiff Betty Chan and Asian American Realty and Property
6 Management respectfully requests this Court to vacate the entry of order so Plaintiff can have a
7 month to locate an attorney to review before the entry of order as originally ordered by the Court.
8 Or in the alternative Plaintiff is requesting the Court to grant a reconsideration of the Order and
9 allow extension of reconsideration time beyond the 10 day period so that I can locate a
10 replacement attorney and put this reconsideration on hold until then if the request is granted.
11

12 Dated this April 1, 2019
13

14 Respectfully Submitted,
15

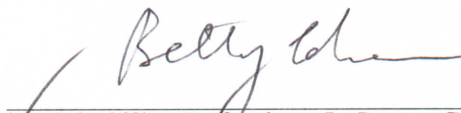
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Betty Chan
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CERTIFICATE OF MAILING

Pursuant to Nev. R. Civ. P. 5(b), I HEREBY CERTIFY that on April 1 2019
I placed a true and correct copy of the above **MOTION to reconsider Order Granting
Defendants Countermotion FOR Summary Judgment and Attorney Fees and Costs**
in the United States Mail at Las Vegas, Nevada, with first-class postage prepaid, addressed to the
following:

Michael A Olsen Esq
10155 W Twain Ave., #100
Las Vegas, NV 89147

DATED: April 1, 2019.


☒ Plaintiff/ ☐ Defendant, In Proper Person (Signature)

From: Sullivan, Skyler [mailto:Dept20LC@clarkcountycourts.us]
Sent: Friday, November 30, 2018 2:03 PM
To: Michael Cristalli <mcristalli@gcmaslaw.com>; 'olsenlaw@lvcm.com' <olsenlaw@lvcm.com>;
Janiece Marshall <jmarshall@gcmaslaw.com>
Subject: A744109 Chan v. Wu Motion for Attorney's Fees

Good Afternoon,

Please be advised that the Court will be issuing a Minute Order in the above matter. The Motion for Attorney's Fees has been GRANTED. The Court's reasoning will be contained in the Minute Order. Counsel for the Defendants is directed to prepare a proposed order and circulate it to counsel prior to submission to chambers. Please let me know if you have any further questions or concerns.

Thank you,

Skyler Sullivan

Law Clerk to the Honorable Eric Johnson

Eighth Judicial District Court, Department XX

702.671.4437 (phone)

702.671.4439 (fax)

Dept20LC@clarkcountycourts.us

Exhibit 1

EXHIBIT 3

EXHIBIT 3

REGISTER OF ACTIONS

CASE NO. A-16-744109-C

Betty Chan, Plaintiff(s) vs. Wayne Wu, Defendant(s)

§
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§

Case Type: **Other Contract**
Date Filed: **09/27/2016**
Location: **Department 20**
Cross-Reference Case Number: **A744109**
Supreme Court No.: **78666**

PARTY INFORMATION

Counter Claimant	Chiu, Jerin	Lead Attorneys Michael A. Olsen <i>Retained</i> 702-855-5658(W)
Counter Claimant	Nevada Real Estate Corp	Michael A. Olsen <i>Retained</i> 702-855-5658(W)
Counter Claimant	Sullivan, Judith	Michael A. Olsen <i>Retained</i> 702-855-5658(W)
Counter Claimant	Wu, Wayne	Michael A. Olsen <i>Retained</i> 702-855-5658(W)
Counter Defendant	Chan, Betty	R Duane Frizell <i>Retained</i> 702-657-6000(W)
Defendant	Chiu, Jerin	Michael A. Olsen <i>Retained</i> 702-855-5658(W)
Defendant	KB Home Sales-Nevada Inc	Janice M Michaels <i>Retained</i> 702-251-4100(W)
Defendant	Nevada Real Estate Corp	Michael A. Olsen <i>Retained</i> 702-855-5658(W)
Defendant	Sullivan, Judith	Michael A. Olsen <i>Retained</i> 702-855-5658(W)
Defendant	Wu, Wayne	Michael A. Olsen <i>Retained</i> 702-855-5658(W)
Plaintiff	Asian American Realty & Property Management	R Duane Frizell <i>Retained</i> 702-657-6000(W)
Plaintiff	Chan, Betty	R Duane Frizell

04/01/2019 **Minute Order** (7:15 AM) (Judicial Officer Johnson, Eric)
Minute Order Re: Plaintiff's Motion for Reconsideration

Minutes

04/01/2019 7:15 AM

- Plaintiffs Betty Chan and Asian American Realty & Property Management filed a Motion to Reconsider Order Granting Motion to Withdraw and Late-Filed Opposition to Motion to Withdraw on February 19, 2019. The matter was subsequently scheduled for hearing on April 3, 2019. After considering the pleadings and argument of counsel, the Court DENIES Plaintiffs' Motion to Reconsider Order Granting Motion to Withdraw and Late-Filed Opposition to Motion to Withdraw. The Court finds that Plaintiffs have not provided "substantially different evidence" or demonstrated that the Court's decision was "clearly erroneous" as required for a motion for reconsideration. Further, the Court finds that there is nothing pending in this litigation. The Court has granted Summary Judgment in favor of Defendants and dealt with all claims pending in this litigation. Therefore, allowing counsel to withdraw at this time does not place Plaintiffs in a materially adverse position. The Court further finds that counsel had good cause for withdrawing from this matter. The Court finds that there was a significant breakdown in both communication and in the attorney-client relationship such that the representation could not continue. Therefore, withdrawal was appropriate in this instance and the Court declines to reconsider its ruling. The Court hereby VACATES the April 3, 2019 hearing. Janiece Marshall, Esq., is directed to prepare a proposed order and submit it to chambers for signature. Law Clerk to notify the parties.

[Return to Register of Actions](#)

EXHIBIT 4

EXHIBIT 4

Duane Frizell

From: Duane Frizell
Sent: Monday, December 16, 2019 9:52 PM
To: Mike Olsen
Subject: RE: Chan v. Wu, et al.
Attachments: 2019-04-01 Minute Order.pdf

Hey Mike:

Here's an easier read: They Court's April 1, 2019 Minute Order (attached). In the Minute Order, the District Court explained: "Further, the Court finds that there is nothing pending in this litigation. The Court has granted Summary Judgment in favor of Defendants and dealt with all claims pending in this litigation."

Let me know.

--Duane



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From: Mike Olsen <Mike@blackrocklawyers.com>
Sent: Thursday, December 5, 2019 10:40 AM
To: Duane Frizell <dfrizell@frizelllaw.com>
Subject: RE: Chan v. Wu, et al.

Duane:

Since you have reviewed this much more recently than I have, could you please send me the transcript indicating a ruling on my client's counterclaims? I do not recall the judge addressing our counterclaims at all.

Mike

Michael A. Olsen, Esq.



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From: Duane Frizell [<mailto:dfrizell@frizelllaw.com>]
Sent: Wednesday, December 04, 2019 4:35 PM
To: Mike Olsen <Mike@blackrocklawyers.com>
Subject: RE: Chan v. Wu, et al.

Mike:

Hope you had a fantastic Thanksgiving.

So, I just want to make sure I understand – you are taking the position that the Court’s Order on your MSJ does not resolve the counterclaims? Because, as I read the briefing and transcripts for the hearings on the MSJ, it looks to me that the Court was rendering a final order as to all claims between Plaintiff and your clients. Please let me know.

--Duane



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From: Mike Olsen <Mike@blackrocklawyers.com>
Sent: Monday, November 25, 2019 5:48 PM
To: Duane Frizell <dfrizell@frizelllaw.com>
Subject: RE: Chan v. Wu, et al.

Duane:

Assuming a remand (which looks inevitable) my clients want me to go ahead and file an MSJ on our counterclaims. That should clear up any remaining issues and make the judgment final. There really are no issues of material fact with regard to my claims.

Mike

Michael A. Olsen, Esq.



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From: Duane Frizell [<mailto:dfrizell@frizelllaw.com>]
Sent: Wednesday, November 20, 2019 6:08 PM
To: Mike Olsen <Mike@blackrocklawyers.com>
Subject: Chan v. Wu, et al.
Importance: High

Senor Olsen:

Que pasa?

I'm sure you've seen the S Ct's OSC. Pretty standard. (As you may recall, I did not file the notice of appeal.)

Without any authority, I am just floating an idea here: Would you be willing to stipulate that (1) the tolling motion is denied and (2) the judgment is certified as final as to your clients. I would think that you would want to reach finality on all that. So, I presuming that you would be fine with the idea, but what do I know? Obviously, my client would have to approve too.

Just let me know.

Thanks.

--Duane



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