

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; and JOHN ALLEN
LYTLE, as trustees of the Lytle Trust,

Appellants,

vs.

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST AND JOLIN G.
ZOBRIST, as trustees of the GERRY R.
ZOBRIST AND JOLIN G. ZOBRIST FAMILY
TRUST; RAYNALDO G. SANDOVAL AND
JULIE MARIE SANDOVAL GEGEN, as
Trustees of the RAYNALDO G. AND
EVELYN A. SANDOVAL JOINT LIVING
AND DEVOLUTION TRUST DATED MAY
27, 1992; DENNIS A. GEGEN AND JULIE S.
GEGEN, Husband and wife, as joint
tenants,

Respondents.

No 81689

Electronically Filed
Sep 17 2020 05:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

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

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

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

1. Judicial District County Eighth Department 16
County Clark Judge Timothy C. Williams
District Ct. Case No. A-16-747800-C, consolidated with A-17-765372-C

2. Attorney filing this docketing statement:

Attorney Joel D. Henriod, Daniel F. Polsenberg, and Dan R. Waite

Telephone 702-949-8200

Firm LEWIS ROCA ROTHGERBER CHRISTIE LLP

Address 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Client(s) Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust

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

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

Attorney Kevin B. Christensen and Wesley J. Smith Telephone 702-255-1718

Firm CHRISTENSEN JAMES & MARTIN

Address 7440 W. Sahara Avenue
Las Vegas, Nevada 89117

Client(s) September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, husband and wife, as joint tenants

(List additional counsel on separate sheet if necessary)

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

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

5. Does this appeal raise issues concerning any of the following? No.

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

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Lytle v. Boulden, Case No. 73039

Lytle v. September Trust, Dated March 23, 1972, Case No. 76198

Lytle v. September Trust, Dated March 23, 1972, Case No. 77007

Lytle v. Disman, Case No. 79753

Lytle v. Boulden, Case No. 79776

Lytle v. September Trust, Dated March 23, 1972, Case No. 81390

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

September Trust v. Lytle Trust, Eighth Judicial District Court Case No. A-17-765372-C, consolidated with Case No. A-16-747800-C on March 2, 2018.

Lytle v. Rosemere Estates Property Owners' Association, Eighth Judicial District Court Case No. A-18-775843-C.

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

In other lawsuits, the defendant Lytle Trust obtained three judgments (totaling approx. \$1.8 million) against the judgment-debtor Rosemere Estate Property Owners Association (“Association”). The Lytle Trust is a member of the Association. This action stems from a dispute over the validity and legal effect of abstracts of judgments the Lytle Trust recorded against certain residential property owned by other Association members. The district court (Judge T. Williams) granted summary judgment in favor of plaintiffs and entered a permanent injunction against the Lytle Trust precluding action to enforce their judgments directly against the other Association members.

The Lytle Trust now appeals from an order granting fees and costs in favor of respondents, who are several of the association members, arising from various post-judgment proceedings.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

Whether the district court abused its discretion in awarding fees and costs.

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

N/A.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

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

This matter is presumptively assigned to the Court of Appeals under NRAP 17(b)(7), but appellants contend that the Supreme Court should retain the case due to its familiarity with the issues and the related cases that have been and are pending before it.

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

N/A

Was it a bench or jury trial? N/A

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

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 8/11/20
(Exhibit A)

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

17. Date written notice of entry of judgment or order was served 8/11/20
(Exhibit A)

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing N/A

☒ NRCP 52(b) Date of filing 9/8/20 (Exhibit B)

☐ NRCP 59 Date of filing N/A

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

(b) Date of entry of written order resolving tolling motion

After appellants initiated this appeal, respondents filed a motion in the district court that substantively moves for reconsideration but is styled as a “Motion to Amend . . . Pursuant to NRCP 52(b)”. The motion remains pending. For jurisdictional purposes, assuming the motion is a tolling Rule

52(b) motion, “the notice of appeal shall be considered filed on the date of and after entry of the order . . . or written disposition” resolving that motion.
NRAP 4(a)(6).

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

Was service by: N/A

☐ Delivery

☐ Mail/Electronic/Fax

19. Date notice of appeal filed 8/26/20 (Exhibit C)

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

N/A

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

The time limit for filing the notice of appeal from a special post-judgment order is governed by NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

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

- (a) ☐ NRAP 3A(b)(1) ☐ NRS 38.205
☐ NRAP 3A(b)(2) ☐ NRS 233B.150
☐ NRAP 3A(b)(3) ☐ NRS 703.376
☒ Other (specify) NRAP 3A(b)(8) (order after final judgment)

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

This appeal is from a post-judgment order awarding attorneys’ fees and costs pursuant NRAP 3A(b)(8).

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

(a) Parties:

Marjorie B. Boulden, trustee of the Marjorie B. Boulden Trust
Linda Lamothe and Jacques Lamothe, trustees of the Jacques & Linda Lamothe Living Trust
Trudi Lee Lytle and John Allen Lytle, as trustees of The Lytle Trust September Trust, Dated March 23, 1972
Gerry R. Zobrist and Jolin G. Zobrist, as trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust
Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992
Dennis A. Gegen and Julie S. Gegen
Robert Z. Disman
Yvonne A. Disman

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

Appellants appeal from a special order entered after final judgment (NRAP 3A(b)(8)) in favor of particular parties, the respondents.

No claims remain pending between any of the parties, including those who are not recipients of this special order nor aggrieved by it.

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

Plaintiffs Marjorie B. Boulden, trustee of the Marjorie B. Boulden Trust and Linda Lamothe and Jacques Lamothe, trustees of the Jacques & Linda Lamothe Living Trust filed their "Second Amended Complaint" in case no. A-16-747800-C on July 25, 2017 (Exhibit D). Defendants Trudi Lee Lytle, Johan Allen Lytle, and the Lytle Trust filed their "Answer to Plaintiffs' Second Amended Complaint and Counterclaim" on August 11, 2017 (Exhibit E). Robert Z. Disman and Yvonne A. Disman's filed their "Answer and Crossclaim" on September 26, 2017 (Exhibit F).

Plaintiffs' claims for quiet title and declaratory relief are resolved with the July 25, 2017 "Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law" (Exhibit G). The counter- and crossclaims involving Robert Z. Disman and Yvonne A. Disman were resolved with the

January 14, 2019 “Stipulation and Order to Dismiss All Remaining Claims Without Prejudice” (Exhibit H).

Plaintiffs the September Trust, Dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen filed their “Complaint” in case no. A-17-765372-C on November 30, 2017 (Exhibit I). Those claims were resolved with the May 24, 2018 “Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment” (Exhibit J).

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

☐ Yes

☒ No

25. If you answered “No” to question 24, complete the following: N/A

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

This is an appeal from is an independently appealable order awarding fees and costs after all of the underlying claims, rights and liabilities were resolved by other orders. NRAP 3A(b)(8).

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

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

VERIFICATION

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

Trudi Lee Lytle and John Allen Lytle,
as Trustees of the Lytle Trust
Name of appellants

Joel D. Henriod
Name of counsel of record

September 17, 2020
Date

/s/ Joel D. Henriod
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

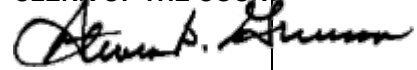
I hereby certify that this “Docketing Statement” was filed electronically with the Nevada Supreme Court on the 17th day of September, 2020. Electronic service of the foregoing “Docketing Statement” shall be made in accordance with the Master Service List as follows:

KEVIN B. CHRISTENSEN
WESLEY J. SMITH
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
KBC@CJMLV.com
Wes@CJMLV.com

*Attorneys for Respondents September
Trust, dated March 23, 1972, Gerry R.
Zobrist and Jolin G. Zobrist, as trustees
of the Gerry R. Zobrist and Jolin G.
Zobrist Family Trust, Raynaldo G.
Sandoval and Julie Marie Sandoval
Gegen, as trustees of the Raynaldo G.
and Evelyn A. Sandoval Joint Living
and Devolution Trust dated May 27,
1992, and Dennis A. Gegen and Julie S.
Gegen, husband and wife, as joint
tenants*

/s/ Lisa M. Noltie
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A TO
DOCKETING
STATEMENT



NEOJ
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
LAURA J. WOLFF, ESQ.
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, *et*
al.,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR ATTORNEY'S
FEES AND COSTS**

SEPTEMBER TRUST, DATED MARCH 23,
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

Defendants.

Case No.: A-17-765372-C
Dept. No.: XVI

CONSOLIDATED

NOTICE IS HEREBY GIVEN, that an Order Granting in Part and Denying in Part
Plaintiffs' Motion for Attorney's Fees and Costs was entered in the above-captioned matter on
August 11, 2020. A copy of the Order is attached hereto.

1 DATED this 11th day of August 2020.

CHRISTENSEN JAMES & MARTIN

2
3 By: /s/ Wesley J. Smith
4 Wesley J. Smith, Esq.
5 Nevada Bar No. 11871
6 *Attorneys for September Trust, Zobrist*
7 *Trust, Sandoval Trust and Gegen*
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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On August 11, 2020, I caused a true and correct copy of the foregoing Notice of Entry of Stipulation and Order to Release Cash Supersedeas Bond, to be served in the following manner:

☒ **ELECTRONIC SERVICE:** electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

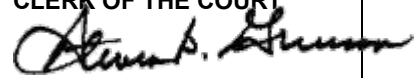
Liz Gould (liz@foleyoakes.com)
Daniel Foley (Dan@foleyoakes.com)
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Daniel F. Polsenberg (DPolsenberg@LRRC.com)
Dan R. Waite (DWaite@LRRC.com)

☐ **UNITED STATES MAIL:** depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address(es):

☐ **FACSIMILE:** By sending the above-referenced document via facsimile as follows:

☐ **E-MAIL:** electronic transmission by email to the following address(es):

/s/ Natalie Saville
Natalie Saville



1 **ORDR**

2 **CHRISTENSEN JAMES & MARTIN**

3 KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

4 WESLEY J. SMITH, ESQ.

Nevada Bar No. 11871

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Attorneys for September Trust, Zobrist Trust, Sandoval Trust

and Dennis & Julie Gegen

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 MARJORIE B. BOULDEN, TRUSTEE OF
12 THE MARJORIE B. BOULDEN TRUST,
13 LINDA LAMOTHE AND JACQUES
14 LAMOTHE, TRUSTEES OF THE
15 JACQUES & LINDA LAMOTHE LIVING
16 TRUST,

17 Plaintiffs,

18 vs.

19 TRUDI LEE LYTLE, JOHN ALLEN
20 LYTLE, THE LYTLE TRUST, DOES I
21 through X, and ROE CORPORATIONS I
22 through X,

23 Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR ATTORNEY'S FEES
AND COSTS**

Date: July 7, 2020

Time: 9:00 a.m.

24 SEPTEMBER TRUST, DATED MARCH 23,
25 1972; GERRY R. ZOBRIST AND JOLIN G.
26 ZOBRIST, AS TRUSTEES OF THE GERRY
27 R. ZOBRIST AND JOLIN G. ZOBRIST
28 FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Attorney's Fees and Costs ("Motion"),
13 Defendant's Opposition, and Plaintiffs' Reply, as well as the Plaintiffs' Memorandum of Costs and
14 Disbursements ("Memorandum"), which came on for hearing on July 7, 2020 at 9:00 a.m. in
15 Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

16 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of September Trust,
17 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
18 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
19 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
20 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
21 Husband and Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and
22 Gegens, collectively, the "Plaintiffs"). Christina H. Wang, Esq. of Fidelity National Law Group
23 appeared on behalf of Robert Z. Disman and Yvonne A. Disman ("Dismans"). Dan R. Waite, Esq. of
24 Lewis Roca Rothgerber Christie LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as
25 Trustees of the Lytle Trust ("Lytle Trust").

26 The Court having considered the Motion and filings related thereto, having heard the arguments
27 of counsel, and with good cause appearing therefore, the Court hereby grants the Motion in part and
28 denies the Motion in part and enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1
2 1. On May 24, 2018, this Court entered its Order Granting Motion for Summary Judgment
3 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary
4 Judgment (“May 2018 Order”) in favor of the September Trust, Zobrist Trust, Sandoval Trust, and
5 Gogens and against the Lytle Trust. The May 2018 Order is hereby incorporated by reference.

6 2. On September 11, 2018, this Court signed an Order in favor of the Plaintiffs and against
7 the Lytle Trust for attorney’s fees, litigation costs and expenses incurred through May 22, 2018 pursuant
8 to NRS 18.010(2) (“First Fees Order”).

9 3. The Original CC&Rs provide a basis for attorney fee recovery. More specifically,
10 section 25 of the Original CC&Rs provides: “In any legal or equitable proceeding for the enforcement of
11 or to restrain the violation of the [CC&Rs] or any provision thereof, the losing party or parties shall pay
12 in such amount as may be fixed by the court in such proceeding.”

13 4. The Court has also awarded attorney’s fees and costs to other parties in these
14 consolidated Cases, including the Findings of Fact, Conclusions of Law and Order Granting Robert Z.
15 Disman and Yvonne A Disman’s Motion for Attorney’s Fees entered on September 6, 2019 (“Disman
16 Fees Order”) in favor of the Dismans and the Order Granting Plaintiffs’ Motion for Attorneys’ Fees and
17 Costs and order Denying Defendants’ Motion to Retax and Settle Costs entered on September 20, 2019
18 (“Boulden Lamothe Fees Order”) in favor of Boulden and Lamothe. There, this Court awarded
19 attorney’s fees and costs to the other parties under Section 25 of the Original CC&Rs.

20 5. Since May 23, 2018, the Plaintiffs have incurred additional attorney’s fees and costs in
21 this action, including briefing and argument on the Lytle Trust’s Motion to Stay and Motion for
22 Reconsideration, status hearings, and motions related to the other parties to the consolidated case.

23 6. On October 24, 2019, the Lytle Trust filed its Renewed Application for Appointment of
24 Receiver in *Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust v. Rosemere Estates*
25 *Property Owners’ Association*, Case No. A-18-775843-C, Eighth Judicial District Court, Clark County,
26 Nevada, which case was assigned to Judge J. Kishner (the “Receivership Action”).
27
28

1 7. On December 18, 2019, Judge Kishner entered her Order Appointing a Receiver of
2 Defendant Rosemere Property Owners Association (the “Order Appointing Receiver”). Among other
3 rights, powers, and duties, the Order Appointing Receiver instructed the receiver to “[i]ssue and collect a
4 special assessment upon all owners within the Association to satisfy the Lytle Trust’s judgments against
5 the Association.” (Order Appointing Receiver at 2:19-20).

6 8. Upon learning of the Lytle Trust’s actions related to the Receivership Action, the
7 Plaintiffs incurred additional attorney’s fees and costs both in this consolidated case and in the
8 Receivership Action, including filing a Motion for Order to Show Cause Why the Lytle Trust Should
9 Not Be Held in Contempt for Violation of Court Orders (“Contempt Motion”) on March 4, 2020 in this
10 Case. The Lytle Trust opposed the Contempt Motion and the Plaintiffs incurred additional fees and costs
11 to respond to the Lytle Trust’s arguments, present oral argument, and prepare proposed orders.

12 9. On May 22, 2020, this Court entered its Findings of Fact, Conclusions of Law, and Order
13 Granting Plaintiffs’ Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in
14 Contempt for Violation of Court Orders (“Contempt Order”) against the Lytle Trust. The Contempt
15 Order is hereby incorporated by reference.

16 10. In the Contempt Order, the Court relevantly ruled that a party may be held in contempt
17 for violating its orders, and that the Court may impose fines and award “reasonable expenses, including,
18 without limitation, attorney’s fees, incurred by the party as a result of the contempt.” Contempt Order at
19 11:9-23 (quoting NRS 22.100(3)). The Court Ordered that the Lytle Trust violated the May 2018 Order,
20 is in contempt of the May 2018 Order, shall pay a fine of \$500 to each movant, and that the Plaintiffs
21 may file applications for their reasonable expenses, including, without limitation, attorney’s fees,
22 incurred as a result of the contempt. The Court now finds that Plaintiffs are entitled to an award of their
23 reasonable expenses, including reasonable attorney’s fees and costs, incurred as a result of obtaining the
24 Contempt Order.

25 11. Plaintiffs also seek additional attorney’s fees and costs related to the Lytle Trust’s
26 appeals of the May 2018 Order and First Fees Order, which were affirmed by the Nevada Supreme
27 Court, as well as attorney’s fees and costs related to the Receivership Action.
28

12. The Plaintiffs filed the instant Motion requesting an award of all attorney's fees in the total amount of \$149,403.20 and costs in the total amount of \$4,145.08 that they have incurred from May 23, 2018 to the present date pursuant to the Original CC&Rs, NRS 18.020, 18.050 and 18.010(2)(b) and NRAP 39(e).

13. Plaintiffs have attached billing statements and a Declaration from their counsel to the Motion to support the request.

CONCLUSIONS OF LAW

1. NRS 18.010(1) provides that, "[t]he compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law."

2. Section 25 of the CC&Rs is a mandatory provision regarding the award of attorney's fees and costs being paid by the losing party in any legal equitable proceeding for the enforcement of or to restrain the violation of the CC&Rs or any provision thereof.

3. The legal disputes in this case were based on the parties' rights under the Original CC&Rs and whether the CC&Rs created a Limited Purpose Association which excluded most of NRS 116, especially NRS 116.3117, from having any application to the Rosemere Subdivision.

4. Throughout this litigation, the Plaintiffs sought to restrain the Lytle Trust from recording abstracts of judgment against their properties and collecting judgments by alternative means because the Lytle Trust had no right pursuant to the CC&Rs to do so

5. Applying the language of the CC&Rs, the Court concludes that the Plaintiffs are the winning or prevailing parties in this litigation, the Lytle Trust was the losing party in this litigation, and the assessment of attorney's fees against the losing party is mandatory under Section 25.

6. NRS 18.010(2)(b) provides that, "the court may make an allowance of attorney's fees to a prevailing party: . . . (b) Without regard to the recovery sought, when the court finds that the claim . . . or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." This Court based the First Fees Award on NRS 18.010(2) and does so again now as a basis for awarding additional fees.

1 7. NRS 22.100(3) provides a basis for awarding fees associated with the contempt
2 proceedings in this case.

3 8. The Court analyzed the Plaintiffs' attorney's fees utilizing the factors identified in
4 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), including the qualities of
5 the advocate, the character of the work to be done, the work actually performed by the lawyer, and the
6 result obtained.

7 9. The Plaintiffs have satisfied the *Brunzell* factors. More specifically, based on the record
8 and the Declaration of the Plaintiffs' counsel in support of the Motion, the Court finds that the qualities
9 of counsel, character of the work to be done and its difficulty, the work actually performed by Plaintiffs'
10 counsel, and the result obtained establish the reasonableness of the Plaintiffs' attorney's fees to the
11 extent awarded in this Order.

12 10. However, the Court finds that certain time and amounts billed are not compensable in this
13 matter and will reduce the award accordingly.

14 11. The Court has reviewed the Plaintiffs' submitted billing statements, which the fees
15 charged total \$149,403.20.

16 12. The Plaintiffs' fee statements include entries that are commonly defined as block billing
17 that make it difficult for the Court to determine the exact amount billed for each individual task and the
18 reasonableness of the request.

19 13. The Court denies an award of fees incurred in the Receivership Action before Judge
20 Kishner. Plaintiffs' counsel represented this amount was \$36,259.00, which the Court accepts. The
21 denial of fees incurred in the Receivership Action is without prejudice to either party's right to seek an
22 award of fees from Judge Kishner in the Receivership Action.

23 14. The Court also denies any charges related to the appeal and will not award fees for work
24 described in the briefing as clerical work, which the Court has determined total \$23,374.00.

25 15. In light of the findings above, the \$149,403.20 is reduced by \$36,259.00 and \$23,374.00,
26 which leaves a difference of \$89,770.20.

1 16. Further, as suggested by the Defendant, the Court will apply a 15% discount to the
2 \$89,770.20 to further account for the block billing in the fee statements. The difference after the
3 discount is \$76,304.67.

4 17. Consequently, the Court grants Plaintiffs' Motion for Attorney's Fees and Costs, but with
5 modifications, resulting in a total fee award of \$76,304.67.

6 18. Additionally, the Court grants costs in the sum of \$4,145.08.

7 **ORDER**

8 Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing
9 therefore,

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Findings of Fact shall be
11 treated as Conclusions of Law and the Conclusions of Law shall be treated as Findings of Fact to any
12 extent necessary to effectuate the intent of this Order.

13 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Motion for
14 Attorney's Fees and Costs is GRANTED IN PART AND DENIED IN PART.

15 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are
16 awarded in favor of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G.
17 Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval
18 and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living
19 and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife,
20 as Joint Tenants, in the total aggregate amount of \$76,304.67 against Trudi Lee Lytle and John Allen
21 Lytle, as Trustees of the Lytle Trust;

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs are awarded in favor
23 of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G. Zobrist, as Trustees
24 of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie
25 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution
26 Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint
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1 Tenants, in the total aggregate amount of \$4,145.08 against Trudi Lee Lytle and John Allen Lytle, as
2 Trustees of the Lytle Trust.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is ordered
4 to pay the attorney's fees and costs as ordered herein by certified check made payable to Christensen
5 James & Martin Special Client Trust Account in the amount of \$80,449.75 and delivered to Christensen
6 James & Martin within ten (10) days of the Notice of Entry of this Order.

7 **IT IS SO ORDERED.**

8 Dated this 10th day of August, 2020.

9 
DISTRICT COURT JUDGE Cg

10
11 **Submitted by:**

12 **CHRISTENSEN JAMES & MARTIN**

13 /s/ Wesley J. Smith

14 Wesley J. Smith, Esq.

15 Nevada Bar No. 11871

16 Laura J. Wolff, Esq.

17 Nevada Bar No. 6869

18 7440 W. Sahara Ave.

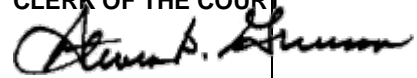
19 Las Vegas, NV 89117

20 *Attorneys for Plaintiffs September Trust,*

21 *Zobrist Trust, Sandoval Trust, and*

22 *Dennis & Julie Gegen*

EXHIBIT B TO
DOCKETING
STATEMENT



MAMJ
CHRISTENSEN JAMES & MARTIN
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Attorneys for September Trust, Zobrist Trust, Sandoval Trust,
and Dennis & Julie Gegen

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, *et*
al.,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

**PLAINTIFFS' MOTION TO
AMEND ORDER GRANTING IN
PART AND DENYING IN PART
PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES AND COSTS
PURSUANT TO NRCP 52(B)**

Hearing Requested

SEPTEMBER TRUST, DATED MARCH 23,
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

Defendants.

Case No.: A-17-765372-C
Dept. No.: XVI

Consolidated

Plaintiffs September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992

1 (“Sandoval Trust”), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint
2 Tenants (“Gegen”) (collectively the “Plaintiffs”), by and through their attorneys, Christensen
3 James & Martin, hereby move this Court to Amend the Order Granting in Part and Denying in
4 Part Plaintiffs’ Motion for Attorney’s Fees and Costs pursuant to NRCP 52(b)(“Motion”). This
5 Motion is based upon the following Memorandum of Points and Authorities, Declaration and
6 Exhibits filed herewith and the pleadings and papers on file.

7 DATED this 8th day of September, 2020. CHRISTENSEN JAMES & MARTIN

8 By: /s/ Wesley J. Smith, Esq.
9 Wesley J. Smith, Esq.
10 Nevada Bar No. 11871
11 *Attorneys for September Trust, Zobrist*
12 *Trust, Sandoval Trust and Gegen*

13 NOTICE OF MOTION

14 You will please take Notice that September Trust, Zobrist Trust, Sandoval Trust and
15 Gegen shall bring the above and foregoing Plaintiffs’ Motion to Amend Order Granting in Part
16 and Denying in Part Plaintiffs’ Motion for Attorney’s Fees and Costs Pursuant to NRCP 52(b)
17 before Department XVI on the date and time to be set by the Court. Plaintiffs have requested a
18 hearing. Should a hearing be set by the Court, the parties registered for service will receive
19 notice through the “Clerk’s Notice of Hearing.”

20 DATED this 8th day of September, 2020. CHRISTENSEN JAMES & MARTIN

21 By: /s/ Wesley J. Smith, Esq.
22 Wesley J. Smith, Esq.
23 Nevada Bar No. 11871
24 *Attorneys for September Trust, Zobrist*
25 *Trust, Sandoval Trust and Gegen*
26
27
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiffs seek the Court's Order amending the Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs ("Second Fees Order"),¹ entered on August 11, 2020, in one of two ways. First, the Plaintiffs request that the Court amend the Second Fees Order to state that "The Court also grants an award of fees and costs related to the appeal..." instead of "The Court also denies any charges related to the appeal..." See Second Fees Order at 6, ¶ 14. Second, and alternatively, the Plaintiffs request that the Court make additional findings of fact and conclusions of law as to why the Court denied an award of fees and costs incurred by the Plaintiffs related to the previous appeals. If the Court is inclined to grant the relief requested herein, the Court may so certify under the procedures outlined in *Foster v. Dingwall*, 126 Nev. 49, 52–53, 228 P.3d 453, 455 (2010). See discussion *infra* Part III.B.

II.

STATEMENT OF FACTS

On May 26, 2020, Plaintiffs filed their Motion for Attorney's Fees and Costs. The Motion was opposed by the Lytle Trust on June 9, 2020 and Plaintiffs filed a Reply in support on June 29, 2020. In the Motion, Plaintiffs requested an award of attorney's fees and costs for, among other things, amounts incurred by the Plaintiffs successfully defending this Court's Orders on appeal in Nevada Supreme Court case nos. 76198 and 77007, consolidated, *Trudi Lee Lytle v. September Trust, Dated March 23, 1972*. See Motion at 16:24-17:25. The basis for this request was the fee shifting provision of the Original CC&Rs. *Id.* at 17:11-25.

¹ This Order is denoted as the "Second" Order to avoid confusion with the previous Fees Order entered in favor of Plaintiffs on September 11, 2018.

1 A hearing was held on the Motion and Court Minutes were entered on July 7, 2020
2 wherein the Court stated “The Court also denies any charges related to the appeal.” Court
3 Minutes at 1. Consistent with this express conclusion in the Minute Order, Plaintiffs drafted the
4 Second Order with the following Conclusion of Law: “The Court also denies any charges related
5 to the appeal...” See Second Fees Order at 6, ¶ 14. The Second Fees Order, and Notice of Entry
6 of the Order, were entered on August 11, 2020. On August 21, 2020, ten (10) day later, the
7 Defendants filed their Case Appeal Statement and their Notice of Appeal of the Second Fees
8 Order (“Appeal”). *Id.*

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III.
ARGUMENT

The Plaintiffs bring the instant Motion pursuant to NRCP 52(b), requesting that the court amend its findings or make additional findings in its Second Fees Order with regard to the appeal fees.² NRCP 52(b) provides that “on a party’s motion filed no later than 28 days after service of written notice of entry of judgment, the court may amend its findings – or make additional findings – and may amend the judgment accordingly.” Plaintiffs served the Notice of Entry of the Second Fees Order on August 11, 2020 and this Motion is being filed no later than 28 days later on September 8, 2020, so the Motion is timely.

A. The Court should amend or make additional findings.

The Second Fees Order granted attorney’s fees and costs to the Plaintiffs pursuant to, among other bases, Section 25 of the CC&Rs. Second Fees Order at 5, ¶¶ 1-5. Plaintiffs have brought this Motion to request that the Court grant instead of deny fees and costs incurred on appeal or, in the alternative, to provide findings of fact and conclusions of law to support the

² Plaintiffs acknowledge that they drafted the Second Fees Order, with revisions and input from Defendants’ counsel. However, anything the Plaintiffs could have added about the fees and costs on appeal would have been based on assumptions or would have directly contradicted what was in the Minutes. Therefore, Plaintiffs submitted the Second Fees Order consistent with the Minutes.

denial of the appeal fees so that Plaintiffs may preserve their rights on appeal. *See Solar, Inc. v. Electric Smith Const. & Equipment Co.*, 88 Nev. 457, 459, 499 P.2d 649, 650 (1972) (“Appellant failed to move to amend the findings or judgment (NRCP 52(b)) regarding privity. Therefore, the question was not preserved for appellate consideration.”). To be clear, Plaintiffs are requesting that either the Second Fees Order be amended to state that the attorney’s fees on appeal are granted, or to give some detailed reasons behind the denial so that the Plaintiffs have a clear record on appeal.

In its Minute Order, the only direction the Court gave with regard to the appeal fees was that, “The Court also denies any charges related to the appeal.” *See* Minute Order at 1, ¶ 2. The Second Fees Order mimics this statement in the Conclusions of Law section: “The Court also denies any charges related to the appeal . . .” Second Fees Order at 6, ¶ 14.

The Second Fees Order contains the following Findings of Fact:

3. The Original CC&Rs provide a basis for attorney fee recovery. More specifically, section 25 of the Original CC&Rs provides: “In any legal or equitable proceeding for the enforcement of or to restrain the violation of the [CC&Rs] or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.”
4. The Court has also awarded attorney’s fees and costs to other parties in these consolidated Cases, including the Findings of Fact, Conclusions of Law and Order Granting Robert Z. Disman and Yvonne A Disman’s Motion for Attorney’s Fees entered on September 6, 2019 (“Disman Fees Order”) in favor of the Dismans and the Order Granting Plaintiffs’ Motion for Attorneys’ Fees and Costs and order Denying Defendants’ Motion to Retax and Settle Costs entered on September 20, 2019 (“Boulden Lamothe Fees Order”) in favor of Boulden and Lamothe. There, this Court awarded attorney’s fees and costs to the other parties under Section 25 of the Original CC&Rs.

Id. at 3, ¶¶ 3-4. It also contains these Conclusions of Law:

1. NRS 18.010(1) provides that, “[t]he compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.”
2. Section 25 of the CC&Rs is a mandatory provision regarding the award of attorney’s fees and costs being paid by the losing party in any legal equitable proceeding for the enforcement of or to restrain the violation of the CC&Rs or any provision thereof.

3. The legal disputes in this case were based on the parties' rights under the Original CC&Rs and whether the CC&Rs created a Limited Purpose Association which excluded most of NRS 116, especially NRS 116.3117, from having any application to the Rosemere Subdivision.
4. Throughout this litigation, the Plaintiffs sought to restrain the Lytle Trust from recording abstracts of judgment against their properties and collecting judgments by alternative means because the Lytle Trust had no right pursuant to the CC&Rs to do so.
5. Applying the language of the CC&Rs, the Court concludes that the Plaintiffs are the winning or prevailing parties in this litigation, the Lytle Trust was the losing party in this litigation, and the assessment of attorney's fees against the losing party is mandatory under Section 25. . . .

Id. at 5-6, ¶¶ 1-5, 14.

Additionally, case law supported an award of fees and costs incurred on appeal. The long-standing rule in Nevada is that attorney fees should be awarded when authorized by statute, rule, or agreement. *Elwardt v. Elwardt*, No. 69638, 2017 WL 2591349 *2 (Nev. Ct. App. June 9, 2017) (unpublished disposition) (citing *First Interstate Bank of Nev. v. Green*, 101 Nev. 113, 116, 694 P.2d 496, 498 (1985)). Contract provisions for attorney's fees include an award of fees for successfully bringing or defending an appeal. *See Musso v. Binick*, 104 Nev. 613, 614-15, 764 P.2d 477, 477 (1988) (holding that a contractual provision awarding attorney fees to a prevailing party in the event of litigation included appellate attorney fees); *See also WMCV Phase 3, LLC v. Shushok & McCoy, Inc.*, 2015 WL 1000373, (D. Nev. * 2) ("In *Musso v. Binick*, the Nevada Supreme Court unequivocally held that a respondent was entitled to attorneys' fees, pursuant to a contractual provision, for costs incurred in defending an appeal and filing post-appeal motions" (citations omitted)). "Parties are free to provide for attorney fees by express contractual provisions." *Davis v. Beling*, 278 P.3d 501, 515 (Nev. 2012) (citing *Musso v. Binick*, 764 P.2d at 477.) "The Nevada Supreme Court has acknowledged that attorney fees award made pursuant to contract includes fees incurred on appeal." *In re Estate & Living Trust of Miller*, 216 P.3d 239, 243 (Nev. 2009) (citing *Musso*, 764 P.2d at 477-78); *see also Mann v. Morgan Stanley Smith Barney, LLC*, 2016 WL 1254242 (D. Nev. * 2)(citing *Miller*, 216 P.3d at 243 and *Musso*,

1 764 P.2d at 477–78)(“The Nevada Supreme Court has acknowledged that attorney fees award
2 made pursuant to contract includes fees incurred on appeal”).

3 Consistent with this case law, this Court awarded Boulden, Lamothe and the Dismans
4 their attorney’s fees and costs, including their fees and costs on appeal, pursuant to Paragraph 25
5 of the Original CC&Rs. *See Id.* at 3, ¶ 4. It is unclear from either the Court Minutes or Second
6 Fees Order why the Court would change course and deny the Plaintiffs fees and costs incurred on
7 appeal. Given the Findings of Fact, Conclusions of Law, and case law set forth above, it is
8 unclear how or why the Court came to the conclusion that “The Court also denies any charges
9 related to the appeal . . .” *Id.* at 6, ¶ 14.

10 Thus, this Motion is necessary to either change the conclusion or provide the basis for the
11 Court’s ruling. In order to make the Second Fees Order internally consistent and to harmonize it
12 with controlling case law and this Court’s prior Orders, the Second Fees Order should be
13 amended to state that “The Court also grants an award of fees and costs related to the appeal...”
14 In the alternative, Plaintiffs request additional findings regarding why the attorney’s fees
15 incurred for appellate work were denied.

16 **B. The Appeal was filed prematurely and this Court may hear this Motion.**

17 Motions to amend or make additional findings of fact under NRCP 52(b) are considered a
18 tolling motion. *In re Duong*, 118 Nev. 920, 923, 59 P.3d 1210 (2002). NRAP 4(a)(4)(B) provides
19 that if a party timely files in the district court a motion under Rule 52(b), “the time to file a
20 notice of appeal runs for all parties from entry of an order disposing of the last such remaining
21 motion, and the notice of appeal must be filed no later than 30 days from the date of service of
22 written notice of entry of that order.” Timely motions filed pursuant to NRCP 52(b) toll the
23 running of the appeal period and “render ineffective all the notices of appeal which were filed
24 before the formal disposition of the timely post-judgment motions.” *Chapman Industries v.*
25 *United Ins. Co. of America*, 110 Nev. 454, 457, 874 P.2d 739 (1994). NRAP 4(a)(6) provides
26 that a premature notice of appeal does not divest the district court of jurisdiction and the “court
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1 may dismiss as premature a notice of appeal filed before entry of the written disposition of the
2 last-remaining timely motion listed in Rule 4(a)(4).”

3 The Nevada Supreme Court clarified the procedure when a notice of appeal is filed
4 *before* a timely Rule 52(b) motion in *Foster v. Dingwall*, 126 Nev. 49, 52–53, 228 P.3d 453, 455
5 (2010). There, the Court held that “In considering such motions, the district court has jurisdiction
6 to direct briefing on the motion, hold a hearing regarding the motion, and enter an order denying
7 the motion, but lacks jurisdiction to enter an order granting such a motion.” *Id.* If the Court is
8 inclined to grant the 52(b) Motion, the Court may “certify its intent to do so.” 126 Nev. at 53,
9 228 P.3d at 455. “At that point, it would be appropriate for the moving party to file a motion (to
10 which the district court’s certification of its intent to grant relief is attached) with [the Nevada
11 Supreme Court] seeking a remand to the district court for entry of an order granting the requested
12 relief.” *Id.*; *see, e.g., Cottonwood Homeowners Ass’n, Inc. v. Holland*, 128 Nev. 890, 381 P.3d
13 604 (2012) (Table).

14 Even though the Lytle Trust already filed a Notice of Appeal of the Second Fees Order,
15 Plaintiffs have timely filed this Rule 52(b) Motion. The Notice of Appeal cannot be used to
16 circumvent the Plaintiffs’ rights to seek such relief. This Court is not divested of jurisdiction.
17 The Court may direct briefing, hold a hearing, and enter an order denying the motion or certify to
18 the Nevada Supreme Court that it would grant the motion should the Second Fees Order be
19 remanded. Plaintiffs respectfully request that the Court do so.

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1 IV.

2 CONCLUSION

3 Based upon the foregoing, the Second Fees Order should be amended to state that the
4 attorney's fees on appeal are granted, or, in the alternative, additional findings of fact and
5 conclusions of law should be provided regarding the denial so that the Plaintiffs have a clear
6 record on appeal. If the Court is inclined to grant this relief, it may so certify in accordance with
7 *Foster v. Dingwall*, 126 Nev. 49, 52–53, 228 P.3d 453, 455 (2010).

8 DATED this 8th day of September, 2020.

9 CHRISTENSEN JAMES & MARTIN

10 By: /s/ Wesley J. Smith, Esq.
11 Wesley J. Smith, Esq.
12 Nevada Bar No. 11871
13 *Attorneys for September Trust, Zobrist*
14 *Trust, Sandoval Trust and Gegen*
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CERTIFICATE OF SERVICE

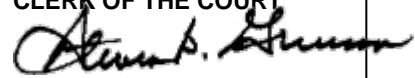
I am an employee of Christensen James & Martin. On September 8, 2020, I caused a true and correct copy of the foregoing PLAINTIFFS' MOTION TO AMEND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRCP 52(B), to be served in the following manner:

☒ ELECTRONIC SERVICE: electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

Liz Gould (liz@foleyoakes.com)
Daniel Foley (Dan@foleyoakes.com)
Maren Foley (maren@foleyoakes.com)
Jennifer Martinez (jennifer.martinez@fnf.com)
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Dan R. Waite (DWaite@LRRC.com)

/s/ Natalie Saville
Natalie Saville

EXHIBIT C TO
DOCKETING
STATEMENT



1 **NOAS**
2 JOEL D. HENRIOD
3 Nevada Bar No. 8492
4 DANIEL F. POLSENBERG
5 Nevada Bar No. 2376
6 DAN R. WAITE
7 Nevada Bar No. 4078
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12 JHenriod@LRRC.com
13 DPolsenberg@LRRC.com
14 DWaite@LRRC.com

15 *Attorneys for Defendants Trudi Lee Lytle and*
16 *John Allen Lytle, as Trustees of the Lytle Trust*

17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

19 MARJORIE B. BOULDEN, trustee of the
20 Marjorie B. Boulden Trust; LINDA
21 LAMOTHE; and JACQUES LAMOTHE,
22 Trustees of the Jacques & Linda
23 Lamothe Living Trust,

24 Plaintiffs,

25 v.

26 TRUDI LEE LYTLE; and JOHN ALLEN
27 LYTLE, as trustees of the Lytle Trust,
28 DOES I through X, inclusive, and ROE
CORPORATIONS I through X,

Defendants.

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST and JOLIN G.
ZOBRIST, as Trustees of the Gerry R.
Zobrist and Jolin G. Zobrist Family
Trust; RAYNALDO G. SANDOVAL and
JULIE MARIE SANDOVAL GEGEN, As
Trustees of the Raynaldo G. and
Evelyn A. Sandoval Joint Living and
Devolution Trust Dated May 27, 1992;
and DENNIS A. GEGEN and JULIE S.
GEGEN, husband and wife, as joint
tenants,

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN

Case No. A-16-747800-C

Dep't No. 16

NOTICE OF APPEAL

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

1 LYTLE, as trustees of the Lytle Trust,
2 JOHN DOES I through V, inclusive, and
3 ROE ENTITIES I through V, inclusive,
4 Defendants.

5 Please take notice that defendants Trudi Lee Lytle and John Allen Lytle,
6 as Trustees of the Lytle Trust hereby appeal to the Supreme Court of Nevada
7 from:

8 1. "Order Granting in Part and Denying in Part Plaintiffs' Motion for
9 Attorney's Fees and Costs," filed August 11, 2020, notice of entry of which was
10 served electronically on August 11, 2020 (Exhibit A); and

11 2. All judgments, rulings and interlocutory orders made appealable by
12 the foregoing.

13 Dated this 21st day of August, 2020.

14 LEWIS ROCA ROTHGERBER CHRISTIE LLP

15
16 By: /s/Joel D. Henriod

17 JOEL D. HENRIOD (SBN 8492)
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(702) 949-8200

20 *Attorneys for Defendants Trudi Lee Lytle and*
21 *John Allen Lytle, as Trustees of the Lytle*
22 *Trust*
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 21st day of August, 2020, I served the
3 foregoing "Notice of Appeal" on counsel by the Court's electronic filing system
4 to the persons and addresses listed below:

5 KEVIN B. CHRISTENSEN
6 WESLEY J. SMITH
7 CHRISTENSEN JAMES & MARTIN
8 7440 W. Sahara Avenue
9 Las Vegas, Nevada 89117
10 KBC@CJMLV.com
11 Wes@CJMLV.com

12 *Attorneys for September Trust,*
13 *dated March 23, 1972, Gerry R.*
14 *Zobrist and Jolin G. Zobrist, as*
15 *trustees of the Gerry R. Zobrist and*
16 *Jolin G. Zobrist Family Trust,*
17 *Raynaldo G. Sandoval and Julie*
18 *Marie Sandoval Gegen, as trustees*
19 *of the Raynaldo G. and Evelyn A.*
20 *Sandoval Joint Living and*
21 *Devolution Trust dated May 27,*
22 *1992, and Dennis A. Gegen and*
23 *Julie S. Gegen, husband and wife,*
24 *as joint tenants*

Christina H. Wang
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Attorneys for Robert Z. Disman and
Yvonne A. Disman

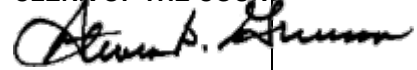
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Attorneys for Marjorie B. Boulden, trustee
of the Marjorie B. Boulden Trust, and
Linda Lamothe and Jacques Lamothe,
trustees of the Jacques & Linda Lamothe
Living Trust

25 /s/ Lisa M. Noltie
26 An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP
27
28

EXHIBIT A

EXHIBIT A



NEOJ
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, *et*
al.,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR ATTORNEY'S
FEES AND COSTS**

SEPTEMBER TRUST, DATED MARCH 23,
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

Defendants.

Case No.: A-17-765372-C
Dept. No.: XVI

CONSOLIDATED

NOTICE IS HEREBY GIVEN, that an Order Granting in Part and Denying in Part
Plaintiffs' Motion for Attorney's Fees and Costs was entered in the above-captioned matter on
August 11, 2020. A copy of the Order is attached hereto.

1 DATED this 11th day of August 2020.

CHRISTENSEN JAMES & MARTIN

2
3 By: /s/ Wesley J. Smith
4 Wesley J. Smith, Esq.
5 Nevada Bar No. 11871
6 *Attorneys for September Trust, Zobrist*
7 *Trust, Sandoval Trust and Gegen*
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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On August 11, 2020, I caused a true and correct copy of the foregoing Notice of Entry of Stipulation and Order to Release Cash Supersedeas Bond, to be served in the following manner:

☒ **ELECTRONIC SERVICE:** electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

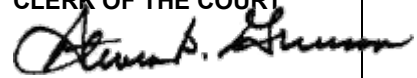
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☐ **UNITED STATES MAIL:** depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address(es):

☐ **FACSIMILE:** By sending the above-referenced document via facsimile as follows:

☐ **E-MAIL:** electronic transmission by email to the following address(es):

/s/ Natalie Saville
Natalie Saville



1 **ORDR**

2 **CHRISTENSEN JAMES & MARTIN**

3 KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

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Attorneys for September Trust, Zobrist Trust, Sandoval Trust

and Dennis & Julie Gegen

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 MARJORIE B. BOULDEN, TRUSTEE OF
12 THE MARJORIE B. BOULDEN TRUST,
13 LINDA LAMOTHE AND JACQUES
14 LAMOTHE, TRUSTEES OF THE
15 JACQUES & LINDA LAMOTHE LIVING
16 TRUST,

17 Plaintiffs,

18 vs.

19 TRUDI LEE LYTLE, JOHN ALLEN
20 LYTLE, THE LYTLE TRUST, DOES I
21 through X, and ROE CORPORATIONS I
22 through X,

23 Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR ATTORNEY'S FEES
AND COSTS

Date: July 7, 2020

Time: 9:00 a.m.

24 SEPTEMBER TRUST, DATED MARCH 23,
25 1972; GERRY R. ZOBRIST AND JOLIN G.
26 ZOBRIST, AS TRUSTEES OF THE GERRY
27 R. ZOBRIST AND JOLIN G. ZOBRIST
28 FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Attorney's Fees and Costs ("Motion"),
13 Defendant's Opposition, and Plaintiffs' Reply, as well as the Plaintiffs' Memorandum of Costs and
14 Disbursements ("Memorandum"), which came on for hearing on July 7, 2020 at 9:00 a.m. in
15 Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

16 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of September Trust,
17 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
18 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
19 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
20 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
21 Husband and Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and
22 Gegens, collectively, the "Plaintiffs"). Christina H. Wang, Esq. of Fidelity National Law Group
23 appeared on behalf of Robert Z. Disman and Yvonne A. Disman ("Dismans"). Dan R. Waite, Esq. of
24 Lewis Roca Rothgerber Christie LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as
25 Trustees of the Lytle Trust ("Lytle Trust").

26 The Court having considered the Motion and filings related thereto, having heard the arguments
27 of counsel, and with good cause appearing therefore, the Court hereby grants the Motion in part and
28 denies the Motion in part and enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1
2 1. On May 24, 2018, this Court entered its Order Granting Motion for Summary Judgment
3 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary
4 Judgment (“May 2018 Order”) in favor of the September Trust, Zobrist Trust, Sandoval Trust, and
5 Gogens and against the Lytle Trust. The May 2018 Order is hereby incorporated by reference.

6 2. On September 11, 2018, this Court signed an Order in favor of the Plaintiffs and against
7 the Lytle Trust for attorney’s fees, litigation costs and expenses incurred through May 22, 2018 pursuant
8 to NRS 18.010(2) (“First Fees Order”).

9 3. The Original CC&Rs provide a basis for attorney fee recovery. More specifically,
10 section 25 of the Original CC&Rs provides: “In any legal or equitable proceeding for the enforcement of
11 or to restrain the violation of the [CC&Rs] or any provision thereof, the losing party or parties shall pay
12 in such amount as may be fixed by the court in such proceeding.”

13 4. The Court has also awarded attorney’s fees and costs to other parties in these
14 consolidated Cases, including the Findings of Fact, Conclusions of Law and Order Granting Robert Z.
15 Disman and Yvonne A Disman’s Motion for Attorney’s Fees entered on September 6, 2019 (“Disman
16 Fees Order”) in favor of the Dismans and the Order Granting Plaintiffs’ Motion for Attorneys’ Fees and
17 Costs and order Denying Defendants’ Motion to Retax and Settle Costs entered on September 20, 2019
18 (“Boulden Lamothe Fees Order”) in favor of Boulden and Lamothe. There, this Court awarded
19 attorney’s fees and costs to the other parties under Section 25 of the Original CC&Rs.

20 5. Since May 23, 2018, the Plaintiffs have incurred additional attorney’s fees and costs in
21 this action, including briefing and argument on the Lytle Trust’s Motion to Stay and Motion for
22 Reconsideration, status hearings, and motions related to the other parties to the consolidated case.

23 6. On October 24, 2019, the Lytle Trust filed its Renewed Application for Appointment of
24 Receiver in *Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust v. Rosemere Estates*
25 *Property Owners’ Association*, Case No. A-18-775843-C, Eighth Judicial District Court, Clark County,
26 Nevada, which case was assigned to Judge J. Kishner (the “Receivership Action”).
27
28

1 7. On December 18, 2019, Judge Kishner entered her Order Appointing a Receiver of
2 Defendant Rosemere Property Owners Association (the “Order Appointing Receiver”). Among other
3 rights, powers, and duties, the Order Appointing Receiver instructed the receiver to “[i]ssue and collect a
4 special assessment upon all owners within the Association to satisfy the Lytle Trust’s judgments against
5 the Association.” (Order Appointing Receiver at 2:19-20).

6 8. Upon learning of the Lytle Trust’s actions related to the Receivership Action, the
7 Plaintiffs incurred additional attorney’s fees and costs both in this consolidated case and in the
8 Receivership Action, including filing a Motion for Order to Show Cause Why the Lytle Trust Should
9 Not Be Held in Contempt for Violation of Court Orders (“Contempt Motion”) on March 4, 2020 in this
10 Case. The Lytle Trust opposed the Contempt Motion and the Plaintiffs incurred additional fees and costs
11 to respond to the Lytle Trust’s arguments, present oral argument, and prepare proposed orders.

12 9. On May 22, 2020, this Court entered its Findings of Fact, Conclusions of Law, and Order
13 Granting Plaintiffs’ Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in
14 Contempt for Violation of Court Orders (“Contempt Order”) against the Lytle Trust. The Contempt
15 Order is hereby incorporated by reference.

16 10. In the Contempt Order, the Court relevantly ruled that a party may be held in contempt
17 for violating its orders, and that the Court may impose fines and award “reasonable expenses, including,
18 without limitation, attorney’s fees, incurred by the party as a result of the contempt.” Contempt Order at
19 11:9-23 (quoting NRS 22.100(3)). The Court Ordered that the Lytle Trust violated the May 2018 Order,
20 is in contempt of the May 2018 Order, shall pay a fine of \$500 to each movant, and that the Plaintiffs
21 may file applications for their reasonable expenses, including, without limitation, attorney’s fees,
22 incurred as a result of the contempt. The Court now finds that Plaintiffs are entitled to an award of their
23 reasonable expenses, including reasonable attorney’s fees and costs, incurred as a result of obtaining the
24 Contempt Order.

25 11. Plaintiffs also seek additional attorney’s fees and costs related to the Lytle Trust’s
26 appeals of the May 2018 Order and First Fees Order, which were affirmed by the Nevada Supreme
27 Court, as well as attorney’s fees and costs related to the Receivership Action.
28

12. The Plaintiffs filed the instant Motion requesting an award of all attorney's fees in the total amount of \$149,403.20 and costs in the total amount of \$4,145.08 that they have incurred from May 23, 2018 to the present date pursuant to the Original CC&Rs, NRS 18.020, 18.050 and 18.010(2)(b) and NRAP 39(e).

13. Plaintiffs have attached billing statements and a Declaration from their counsel to the Motion to support the request.

CONCLUSIONS OF LAW

1. NRS 18.010(1) provides that, "[t]he compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law."

2. Section 25 of the CC&Rs is a mandatory provision regarding the award of attorney's fees and costs being paid by the losing party in any legal equitable proceeding for the enforcement of or to restrain the violation of the CC&Rs or any provision thereof.

3. The legal disputes in this case were based on the parties' rights under the Original CC&Rs and whether the CC&Rs created a Limited Purpose Association which excluded most of NRS 116, especially NRS 116.3117, from having any application to the Rosemere Subdivision.

4. Throughout this litigation, the Plaintiffs sought to restrain the Lytle Trust from recording abstracts of judgment against their properties and collecting judgments by alternative means because the Lytle Trust had no right pursuant to the CC&Rs to do so

5. Applying the language of the CC&Rs, the Court concludes that the Plaintiffs are the winning or prevailing parties in this litigation, the Lytle Trust was the losing party in this litigation, and the assessment of attorney's fees against the losing party is mandatory under Section 25.

6. NRS 18.010(2)(b) provides that, "the court may make an allowance of attorney's fees to a prevailing party: . . . (b) Without regard to the recovery sought, when the court finds that the claim . . . or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." This Court based the First Fees Award on NRS 18.010(2) and does so again now as a basis for awarding additional fees.

1 7. NRS 22.100(3) provides a basis for awarding fees associated with the contempt
2 proceedings in this case.

3 8. The Court analyzed the Plaintiffs' attorney's fees utilizing the factors identified in
4 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), including the qualities of
5 the advocate, the character of the work to be done, the work actually performed by the lawyer, and the
6 result obtained.

7 9. The Plaintiffs have satisfied the *Brunzell* factors. More specifically, based on the record
8 and the Declaration of the Plaintiffs' counsel in support of the Motion, the Court finds that the qualities
9 of counsel, character of the work to be done and its difficulty, the work actually performed by Plaintiffs'
10 counsel, and the result obtained establish the reasonableness of the Plaintiffs' attorney's fees to the
11 extent awarded in this Order.

12 10. However, the Court finds that certain time and amounts billed are not compensable in this
13 matter and will reduce the award accordingly.

14 11. The Court has reviewed the Plaintiffs' submitted billing statements, which the fees
15 charged total \$149,403.20.

16 12. The Plaintiffs' fee statements include entries that are commonly defined as block billing
17 that make it difficult for the Court to determine the exact amount billed for each individual task and the
18 reasonableness of the request.

19 13. The Court denies an award of fees incurred in the Receivership Action before Judge
20 Kishner. Plaintiffs' counsel represented this amount was \$36,259.00, which the Court accepts. The
21 denial of fees incurred in the Receivership Action is without prejudice to either party's right to seek an
22 award of fees from Judge Kishner in the Receivership Action.

23 14. The Court also denies any charges related to the appeal and will not award fees for work
24 described in the briefing as clerical work, which the Court has determined total \$23,374.00.

25 15. In light of the findings above, the \$149,403.20 is reduced by \$36,259.00 and \$23,374.00,
26 which leaves a difference of \$89,770.20.

1 16. Further, as suggested by the Defendant, the Court will apply a 15% discount to the
2 \$89,770.20 to further account for the block billing in the fee statements. The difference after the
3 discount is \$76,304.67.

4 17. Consequently, the Court grants Plaintiffs' Motion for Attorney's Fees and Costs, but with
5 modifications, resulting in a total fee award of \$76,304.67.

6 18. Additionally, the Court grants costs in the sum of \$4,145.08.

7 **ORDER**

8 Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing
9 therefore,

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Findings of Fact shall be
11 treated as Conclusions of Law and the Conclusions of Law shall be treated as Findings of Fact to any
12 extent necessary to effectuate the intent of this Order.

13 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Motion for
14 Attorney's Fees and Costs is GRANTED IN PART AND DENIED IN PART.

15 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are
16 awarded in favor of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G.
17 Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval
18 and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living
19 and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife,
20 as Joint Tenants, in the total aggregate amount of \$76,304.67 against Trudi Lee Lytle and John Allen
21 Lytle, as Trustees of the Lytle Trust;

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs are awarded in favor
23 of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G. Zobrist, as Trustees
24 of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie
25 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution
26 Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint
27
28

1 Tenants, in the total aggregate amount of \$4,145.08 against Trudi Lee Lytle and John Allen Lytle, as
2 Trustees of the Lytle Trust.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is ordered
4 to pay the attorney's fees and costs as ordered herein by certified check made payable to Christensen
5 James & Martin Special Client Trust Account in the amount of \$80,449.75 and delivered to Christensen
6 James & Martin within ten (10) days of the Notice of Entry of this Order.

7 **IT IS SO ORDERED.**

8 Dated this 10th day of August, 2020.

9 
DISTRICT COURT JUDGE Cg

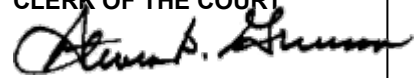
10
11 **Submitted by:**

12 **CHRISTENSEN JAMES & MARTIN**

13 /s/ Wesley J. Smith

14 Wesley J. Smith, Esq.
15 Nevada Bar No. 11871
16 Laura J. Wolff, Esq.
17 Nevada Bar No. 6869
7440 W. Sahara Ave.
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*Attorneys for Plaintiffs September Trust,
Zobrist Trust, Sandoval Trust, and
Dennis & Julie Gegen*

EXHIBIT D TO
DOCKETING
STATEMENT



ACOM
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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF)
THE MARJORIE B. BOULDEN TRUST,)
LINDA LAMOTHE AND JACQUES)
LAMOTHE, TRUSTEES OF THE)
JACQUES & LINDA LAMOTHE)
LIVING TRUST)

Plaintiff,)

Case No. A-16-747800-C

Dept. No. XVI

v.)

TRUDI LEE LYTLE AND JOHN ALLEN)
LYTLE, AS TRUSTEES OF THE LYTLE)
TRUST, DOES I through X; and ROE)
CORPORATIONS I through X,)

Defendants.)

SECOND AMENDED COMPLAINT

COMES NOW Marjorie Boulden as Trustee of the Marjorie Boulden Trust (Mrs. Boulden”), Linda Lamothe and Jacques Lamothe as Trustees of the Jacques & Linda Lamothe Living Trust (“Mr. and Mrs. Lamothe”), by and through their attorneys Foley & Oakes, PC, as and for a Complaint against Trudi Lee Lytle, and John Lytle, as Trustees of the Lytle Trust (collectively the “Lyttles”), DOES I through X; and ROE CORPORATIONS I through X and allege as follows:

1 1. Mrs. Boulden is the owner of the residential property known as parcel number
2 163-03-313-008 also known as 1960 Rosemere Ct., Las Vegas, NV 89117 (the “Boulden
3 Property”)

4 2. Mr. and Mrs. Lamothe are the owners of the residential property in Clark County
5 Nevada known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas,
6 NV 89117 the (“Lamothe Property”).
7

8 3. Mr. and Mrs. Lytle are residents of Clark County, and are co-trustees of the Lytle
9 Trust.

10 4. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of the Defendants herein designated as DOES I through V individuals and/or ROE V
12 through X Corporations, inclusive, are unknown to Plaintiff, who therefore sues said Defendants
13 by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of
14 the Defendants designated herein as DOES I through V individuals and/or ROE V through X
15 Corporations is responsible in some manner for the events and happenings herein referred to, or
16 claim an interest in said property. Plaintiff will seek leave to amend this Complaint to show the
17 true names and capacities of said Defendants DOES I through V individuals and/or ROE V
18 through X Corporations when the same have been ascertained by Plaintiff, together with
19 appropriate charges and allegations and to join such Defendants in this action.
20

21 5. Plaintiff is informed, believes, and thereon alleges, that at all times relevant,
22 Defendants, and each of them, including those fictitiously named DOES or ROE, were the agents
23 or sureties of the other and in doing the things alleged herein, were acting within the course and
24 scope of such agency and with the consent and permission of the other co-defendants and/or are
25 liable under the doctrine of respondeat superior. Accordingly, Defendants are liable to Plaintiff
26 for each other’s actions as set forth in this Second Amended Complaint. For ease of reference,
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1 the named Defendants may be referred to collectively in the singular as “Defendant,” and
2 reference to one shall constitute reference to the others as well.

3 6. The Boulden Property and the Lamothe Property are located in the Rosemere
4 Court subdivision and are subject to the CC&R’s recorded January 4, 1994 (the “CC&Rs”).

5 7. The CC&Rs provide in paragraph 21 that a property owners committee shall be
6 established by all owners of lots within the subdivision to determine the landscaping on the four
7 exterior wall planters and the entrance way planters, and to determine the method and cost of
8 watering the planters.
9

10 8. A non-profit corporation, the Rosemere Estates Property Owners Association,
11 was formed in 1997 in order to open a bank account to handle the owners committee’s funds for
12 the landscaping described above. The corporate charter of the Rosemere Estates Property
13 Owners Association was revoked by the Nevada Secretary of State’s office in 2015.

14 9. The CC&Rs provided in paragraph 24 that in order to enforce the CC&Rs any
15 appropriate judicial proceeding in law or in equity could be used by any lot owner suing directly
16 any other lot owner or owners for any violation of the CC&Rs.
17

18 10. In 2009, the Lytles filed suit against the Rosemere Estates Property Owners
19 Association directly in case # A09-593497-C (the “Rosemere Litigation”).

20 11. A number of lot owners within the Rosemere Subdivision had attempted to amend
21 the CC&R’s. The Lytles and the Plaintiffs did not vote in favor of amending the CC&Rs.

22 12. The Lytles did not name the Plaintiffs or any other lot owners as defendants in the
23 Rosemere Litigation.
24

25 13. On or about July 29, 2016 the Lytles obtained a Judgment in their favor against
26 the Rosemere Estates Property Owners Association in the amount of \$361,238.59 (the
27 “Rosemere Judgment”).
28

1 14. Thereafter, in August and September of 2016, the Lytles recorded with the Clark
2 County Recorder's office three different abstracts of the Rosemere Judgement against the
3 Rosemere Estates Property Owners Association specifically listing the parcel numbers of the
4 Boulden Property and the Lamothe Property as properties to which the Rosemere Judgment was
5 to attach (the "Abstracts of Judgment").

6 15. When the Lytles recorded the Abstracts of Judgment, the Lytles specifically
7 included the parcel numbers of the Boulden Property and the Lamothe Property even though
8 Plaintiffs were not parties to the Rosemere Litigation from which the Rosemere Judgment arose.

9 16. The Plaintiffs have no legal duty to pay the Rosemere Judgment and advised the
10 Lytles of this fact.

11 17. The Lytles knew or should have known that the Plaintiffs did not have a legal
12 duty to pay the Rosemere Judgment.

13 18. The Abstracts of Judgment were wrongfully recorded against the Boulden
14 Property and the Lamothe Property and the Lytles knew or should have known the Abstracts of
15 Judgment were wrongfully recorded.

16 19. A Purchase and Sale Agreement to purchase the Boulden Property was executed
17 by a third party buyer and Mrs. Boulden and deposited into the escrow (the "PSA").

18 20. The buyer under the PSA terminated Escrow because of the recorded Abstracts of
19 Judgment.

20 21. In May 2017, the Lytles recorded two *lis pendens* against the Plaintiffs' property.

21 22. On June 15, 2017, Mr. Haskin, counsel for the Lytles, sent an email to Mr. Foley,
22 counsel for the Plaintiffs, enclosing a different judgment the Lytles obtained against the
23 Rosemere Estates Property Owners Association in the amount of \$274,608.28, in case # 10-
24 631355-C (the "Rosemere II Litigation"), a different case from the Rosemere Litigation (the
25 "Rosemere II Judgment").
26
27
28

1 23. The Plaintiffs were not named parties in the Rosemere II Litigation and did not
2 have notice of the same.

3 24. In his June 15, 2017 email, Mr. Haskin stated “the Lytle Trust more recently
4 obtained another judgment against the Association in another case. The Lytle Trust was awarded
5 its attorneys’ fees. A copy of that award is attached hereto. We trust your clients will honor
6 their obligation to disclose all judgments and litigation to any buyer.”
7

8 **FIRST CAUSE OF ACTION**
9 **(Slander of Title, Mrs. Boulden)**

10 25. Plaintiffs repeat and re-allege each and every allegation set forth above.

11 26. The Lytles’ recording of the Abstracts of Judgment were false and malicious
12 communications that disparaged Mrs. Boulden’s title to the Boulden Property.

13 27. As a proximate result of the Lytles’ actions, Mrs. Boulden has been damaged due
14 to a third-party buyer cancelling escrow due to the existence of the recorded Abstracts of
15 Judgment.

16 28. As a proximate result of the Lytles’ actions, the vendibility of the Boulden
17 Property was impaired.

18 29. As a proximate result of Lytles’ actions Mrs. Boulden is entitled to special
19 damages in an amount in excess of \$10,000.00.
20

21 30. As a proximate result of Lytles’ actions Mrs. Boulden is entitled to punitive
22 damages in an amount in excess of \$10,000.00.

23 31. As a proximate result of Lytles’ actions, Mrs. Boulden has been required to retain
24 the services of Foley & Oakes, PC to prosecute this action, and is entitled to an award of
25 attorney’s fees and costs.

26 **SECOND CAUSE OF ACTION**
27 **(Injunction, All Plaintiffs)**

28 32. Plaintiffs repeat and re-allege each and every allegation set forth above.

1 33. Plaintiffs do not owe any money whatsoever to the Lytles.

2 34. Plaintiffs do not have an adequate remedy at law because they cannot sell their
3 property with the Abstracts of Judgment recorded against their property.

4 35. Plaintiffs will suffer irreparable harm if they are not able to sell their property due
5 to the recording of the Abstracts of Judgment.

6 36. Plaintiffs are likely to prevail on their claims against the Lytles.

7 37. Plaintiffs are entitled to injunctive relief in the form of an Order from this Court
8 expunging the liens in the form of the recorded Abstracts of Judgment.

9 38. Plaintiffs have been required to retain the services of Foley & Oakes, PC to
10 prosecute this action, and are entitled to an award of attorney's fees and costs.

11
12 **THIRD CAUSE OF ACTION**
13 **(Quiet Title, All Plaintiffs)**

14 39. Plaintiffs repeat and re-allege each and every allegation set forth above.

15 40. The Lytles, by their claims and actions, have asserted certain rights to lien the
16 Boulden Property and the Lamothe Property.

17 41. The Lytles are without any legal basis whatsoever to lien the Boulden Property
18 and the Lamothe Property.

19 42. The Lytles are without any legal basis whatsoever to claim any interest in the
20 Boulden Property and the Lamothe Property, including any rights to lien or sell the same.

21 43. As a proximate result of the Lytles' actions, the titles to the Boulden Property and
22 the Lamothe Property have been improperly and illegally clouded.

23 44. Plaintiffs are entitled to an Order from this Court pursuant to NRS 40.010
24 quieting title in their names and expunging the Abstracts of Judgment.

25 45. Plaintiffs herein have been required to retain the services of Foley & Oakes, PC,
26 to prosecute this action, and are entitled to an award of attorney's fees and costs.
27
28

FOURTH CAUSE OF ACTION
(Declaratory Relief)

46. Plaintiffs repeat and re-allege each and every allegation set forth above.

47. A dispute and actual controversy exists between the parties relative to their interpretation of the rights and duties of the Plaintiffs regarding the Rosemere Judgment, the recorded Abstracts of Judgment, and the Boulden Property and the Lamothe Property.

48. The Plaintiffs are entitled to a declaration from the Court, to the effect that the Rosemere Judgment against the Rosemere Estates Home Owners Association is not a judgment against the Plaintiffs, separately or individually, and that the Rosemere Judgment and the Abstracts of Judgment were improperly and unlawfully recorded against the Boulden Property and the Lamothe Property.

49. Plaintiffs have been required to retain the services of Foley & Oakes, PC, to prosecute this action, and are entitled to an award of attorney's fees and costs.

FIFTH CAUSE OF ACTION
(Injunction, Rosemere II Judgment)

50. Plaintiffs repeat and re-allege each and every allegation set forth above.

51. Plaintiffs do not owe any money whatsoever to the Lytles.

52. The Lytles have threatened Plaintiffs with the Rosemere II Judgment demanding that Plaintiffs notify any and all prospective purchasers of their property of the Rosemere II Judgment, just as the Lytles did by recording the now cancelled two *Lis Pendens*.

53. If the Lytles were to record the Rosemere II Judgment like they did the Rosemere Judgment, the Plaintiffs will not have an adequate remedy at law because they could not sell their property.

54. Plaintiffs will suffer irreparable harm if they are not able to sell their property due to the recording of the Abstracts of Judgment.

55. Plaintiffs are likely to prevail on their claims against the Lytles.

1 56. Plaintiffs are entitled to injunctive relief in the form of an Order from this Court
2 enjoining the Lytles from taking any action with respect to the Rosemere II Judgment with
3 respect to the Plaintiffs or their property.

4 57. Plaintiffs have been required to retain the services of Foley & Oakes, PC to
5 prosecute this action, and are entitled to an award of attorney's fees and costs.

6
7 **SIXTH CAUSE OF ACTION**
8 **(Declaratory Relief)**

9 58. Plaintiffs repeat and re-allege each and every allegation set forth above.

10 59. A dispute and actual controversy exists between the parties relative to their
11 interpretation of the rights and duties of the Plaintiffs regarding the Rosemere II Judgment and
12 the Boulden Property and the Lamothe Property.

13 60. The Plaintiffs are entitled to a declaration from the Court, to the effect that the
14 Rosemere II Judgment against the Rosemere Estates Home Owners Association is not a
15 judgment against the Plaintiffs, separately or individually, and that the Rosemere II Judgment
16 cannot be recorded against the Boulden Property and the Lamothe Property.

17 61. Plaintiffs have been required to retain the services of Foley & Oakes, PC, to
18 prosecute this action, and are entitled to an award of attorney's fees and costs.

19 **WHEREFORE**, Plaintiffs pray for judgment against the Lytles as follows:

20 A. That a Preliminary Injunction should be issued, restraining the Lytles, and each of
21 them, their, agents, servants, employees, attorneys, successors and assign, during the pendency
22 of this action, from foreclosing upon or selling the Boulden Property and the Lamothe Property
23 and from doing, causing, or permitting to be done, directly or indirectly, any acts whereby the
24 rights of the Plaintiffs in said property is in any matter impaired, violated or interfered with; and
25 that after such hearing as may be required by law, said preliminary injunction be made
26 permanent. Further, the Preliminary Injunction should strike the Abstracts of Judgment;
27
28

1 B. For judgment against the Lytles for general, special and punitive damages in
2 amounts in excess of \$10,000.00, plus costs, disbursements and interest;

3 C. For an Order quieting title of the Boulden Property and the Lamothe Property in
4 favor of the Plaintiffs and against the Lytles;

5 D. For a declaration that the Lytles, and each of them, have no right, title or interest
6 in the Boulden Property and the Lamothe Property, and a judgment and order quieting the
7 Plaintiffs' title, canceling and expunging the Abstracts of Judgment;

8 E. That Plaintiffs be awarded their reasonable attorneys' fees and costs of such suit
9 herein; and
10

11 F. For such other and further relief as this Court may deem proper in the premises.

12 DATED this 25th day of July 2017.

13 Respectfully Submitted,

14 FOLEY & OAKES, PC

15 /s/Daniel T. Foley

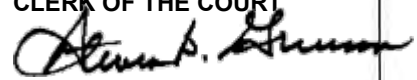
16 Daniel T. Foley, Esq.

17 626 S. 8th St.

18 Las Vegas, Nevada 89101

19 *Attorneys for Plaintiffs*
20
21
22
23
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25
26
27
28

EXHIBIT E TO
DOCKETING
STATEMENT



1 **ANAC**
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2 Nevada State Bar # 11592
Timothy P. Elson, Esq.
3 Nevada State Bar # 11559
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6 Attorneys for Defendants
7 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 MARJORIE B. BOULDEN, TRUSTEE OF THE
MARJORIE B. BOULDEN TRUST, LINDA
12 LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
13 LAMOTHE LIVING TRUST

14 Plaintiff,
15 v.

16 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST, DOES I through X,
17 inclusive, and ROE CORPORATIONS I through
X,

18 Defendants.

19
20
21 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST,

22 Counter-Claimants,
23 v.

24 LINDA LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST, ROBERT Z.
25 DISMAN, YVONNE A. DISMAN, and ROES 1
through 10, inclusive,

26 Counter-Defendants.
27
28

Case No.: A-16-747800-C
Dept.: XVI

**DEFENDANTS TRUDI LEE LYTLE AND
JOHN ALLEN LYTLE, TRUSTEES OF
THE LYTLE TRUST'S ANSWER TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT AND COUNTERCLAIM**

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

COMES NOW Defendants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, Trustees of THE LYTLE TRUST (“Defendants” and/or the “Lyttles”), by and through their counsel of record, Richard E. Haskin, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP, and hereby answers Plaintiffs MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDENR TRUST, LINDA LAMOTHE AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST’s (collectively “Plaintiffs”) Second Amended Complaint as follows:

1. As to Paragraphs 1 through 3 of the Second Amended Complaint, Defendants admit the allegations set forth in said Paragraphs.

2. As to Paragraphs 4 through 5 of the Second Amended Complaint, Defendants are without knowledge or information sufficient to admit or deny the allegations contained therein. Said Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the same on that basis.

3. As to Paragraph 6 of the Second Amended Complaint, Defendants admit the allegations set forth in said Paragraph.

4. As to Paragraph 7 of the Second Amended Complaint, Defendants admit that Rosemere Estates Property Owners Association, a Nevada non-profit corporation (“Rosemere”), is a Limited Purpose Association governed by Chapter 116 of the Nevada Revised Statutes. As to the remaining allegations, said Paragraph also contains legal conclusions rather than facts that need admitted or denied. Defendants deny the same on that basis, as well as the content of such allegation should such a denial be necessary.

5. Defendants deny the allegations in Paragraph 8 of the Second Amended Complaint.

6. As to Paragraphs 9 of the Second Amended Complaint, Defendants admit that paragraph 24 of the CC&Rs speaks for itself.

7. As to Paragraphs 10 through 14 of the Second Amended Complaint, Defendants admit the allegations set forth in said Paragraphs.

///

///

9. Defendants deny the allegations in Paragraphs 16 through 18 of the Second Amended Complaint. Furthermore, said Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the same on that basis.

10. As to Paragraphs 19 and 20 of the Second Amended Complaint, Defendants are without knowledge or information sufficient to admit or deny the allegations contained therein.

11. As to Paragraphs 21 and 22 of the Second Amended Complaint, Defendants admit the allegations contained therein.

12. As to Paragraph 23. Defendants admit that Plaintiffs were not parties in the Rosemere II litigation; however, Defendants deny that Plaintiffs did not have notice of the same. Plaintiffs regularly attended Board meetings for the Association during which all litigation by and against Defendants were discussed, and Plaintiffs routinely contributed assessments to fund such litigation.

13. As to Paragraph 24 of the Second Amended Complaint, Defendants admit the allegations contained therein.

(Slander of Title, Mrs. Boulden)

14. Defendants repeat herein by this reference Paragraphs 1 through 13, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

15. As to Paragraph 25 of the Second Amended Complaint, Defendants deny the allegations contained therein. Furthermore, said Paragraph also contains legal conclusions rather than facts that need to be admitted or denied. Defendants deny the same on that basis.

///

1 16. As to Paragraphs 26 through 31 of the Second Amended Complaint, Defendants are
2 without knowledge or information sufficient to admit or deny the allegations contained therein. Said
3 Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied.
4 Defendants deny the same on that basis.

5 **SECOND CAUSE OF ACTION**

6 **(Injunction, All Plaintiffs)**

7 17. Defendants repeat herein by this reference Paragraphs 1 through 16, inclusive, with
8 the same force and effect as if said Paragraphs were set forth herein in full.

9 18. Defendants deny the allegations in Paragraph 33 of the Second Amended Complaint.

10 19. As to Paragraphs 34 through 38 of the Second Amended Complaint, Defendants are
11 without knowledge or information sufficient to admit or deny the allegations contained therein. Said
12 Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied.
13 Defendants deny the same on that basis.

14 **THIRD CAUSE OF ACTION**

15 **(Quiet Title, All Plaintiffs)**

16 20. Defendants repeat herein by this reference Paragraphs 1 through 19, inclusive, with
17 the same force and effect as if said Paragraphs were set forth herein in full.

18 21. As to Paragraph 40 of the Complaint, Defendants admit the allegations contained
19 therein.

20 22. As to Paragraphs 41 through 45 of the Second Amended Complaint, Defendants deny
21 the allegations contained therein. Furthermore, said Paragraphs also contain legal conclusions rather
22 than facts that need admitted or denied. Defendants deny the same on that basis.

23 **FOURTH CAUSE OF ACTION**

24 **(Declaratory Relief, All Plaintiffs)**

25 23. Defendants repeat herein by this reference Paragraphs 1 through 22, inclusive, with
26 the same force and effect as if said Paragraphs were set forth herein in full.

27 24. As to Paragraph 47 of the Second Amended Complaint, Defendants admit the
28 allegations contained therein.

25. As to Paragraphs 48 through 49 of the Second Amended Complaint, Defendants deny that the allegations contained therein.

FIFTH CAUSE OF ACTION

(Injunction, Rosemere II Judgment)

26. Defendants repeat herein by this reference Paragraphs 1 through 25, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

27. As to Paragraphs 51 through 57 of the Second Amended Complaint, Defendants deny that the allegations contained therein.

SIXTH CAUSE OF ACTION

(Declaratory Relief)

28. Defendants repeat herein by this reference Paragraphs 1 through 27, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

29. Defendants admit the allegations contained in Paragraph 59 of the Second Amended Complaint.

30. 27. As to Paragraphs 60 through 61 of the Second Amended Complaint, Defendants deny that the allegations contained therein.

AFFIRMATIVE DEFENSES

For their further and separate affirmative defenses to the Second Amended Complaint filed by Plaintiffs and the claims asserted therein, and without assuming the burden of proof on any matters for which that burden rests with Plaintiffs, Defendants allege as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

If Plaintiffs suffered or sustained any loss, injury, damage or other detriment, the same was directly and proximately caused and contributed to by the breach of contract, conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of Plaintiffs or persons or entities under Plaintiffs' control, and thereby completely or partially bars Plaintiffs' recovery herein.

1 **THIRD AFFIRMATIVE DEFENSE**

2 Defendants are not legally responsible for the acts and/or omissions claimed herein.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 Plaintiffs failed, refused and neglected to take reasonable steps to mitigate its alleged
5 damages, if any, thus barring or diminishing Plaintiffs' recovery herein.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 The injuries and damages of which Plaintiffs complain were proximately caused by, or
8 contributed to, by the acts of other persons and/or other entities, whether now named or otherwise,
9 and that said acts were an intervening and superseding cause of the injuries and damages, if any, of
10 which Plaintiffs complain, thus barring Plaintiffs from any recovery against these Defendants or
11 entitled Defendants to contribution from such parties.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 Plaintiffs' claims are reduced, modified, and/or barred by the doctrine of unclean hands.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 Plaintiffs have knowledge of and assumed the risks of their acts or failure to act. The
16 damages alleged by Plaintiffs were caused by, and arose out of, risks which Plaintiffs directly
17 assumed.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 Defendants are informed and believe, and thereon allege, that Plaintiffs waived their claims
20 against these Defendants at issue herein.

21 **NINTH AFFIRMATIVE DEFENSE**

22 Plaintiffs would be unjustly enriched if they recovered from Defendants any of the damages
23 alleged in the Complaint.

24 **TENTH AFFIRMATIVE DEFENSE**

25 In the event Defendants are found liable in any manner to Plaintiffs, Defendants would be
26 entitled to offsets and credits against any purported damages, if any, allegedly sustained by
27 Plaintiffs.

28 ///

ELEVENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs failed to properly confer jurisdiction on this Court on some or all causes of action in its Complaint because Plaintiffs failed to comply with the provisions of Chapter 38 of the Nevada Revised Statutes. Defendants reserve their right to raise this issue at any time, including appeal, as jurisdiction cannot be consented upon this Court by the parties and is never waived.

TWELFTH AFFIRMATIVE DEFENSE

Defendants incorporate by reference those affirmative defenses enumerated in NRCP 8 as fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of the court to amend its answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

THIRTEENTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been stated or alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer to the Second Amended Complaint, and therefore, Defendants specifically reserve the right to amend its Answer to allege additional affirmative defenses if subsequent investigation so warrants, up to and including through the time of trial in this matter.

WHEREFORE, Defendants pray for relief as follows:

1. That the Second Amended Complaint be dismissed and that Plaintiffs take nothing by way of its Second Amended Complaint;
2. For costs and disbursements in connection with this action;
3. For reasonable attorney's fees, and
4. For such other and further relief that this Court deems just and proper.

COUNTERCLAIM

COMES NOW Defendants and Counter-Claimants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, Trustees of THE LYTLE TRUST (the "Lyttles"), by and through their counsel of record, Richard E. Haskin, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP, and hereby alleges as follows:

I. THE PARTIES AND JURISDICTION

1. The Lytle Trust (the "Lytle Trust"), is the current owner of real property located 1930 Rosemere Court, in Clark County, Nevada, APN 163-03-313-009, and described as:

Lot Nine (9) of Rosemere Court, as shown by map thereof on file in Book 59, of Plats, Page 58, in the Office of the County Recorder of Clark County, Nevada ("Lytle Property").

The Lytle Property was previously owned by Defendants, Counter-Claimants J. Allen Lytle and Trudi L. Lytle, the current Trustees of the Lytle Trust, having been purchased by deed recorded November 15, 1996.

2. The Lyttles are informed and believe, and thereon allege, that Counter-Defendants Linda Lamothe and Jacques Lamothe, Trustees of the Jacques & Linda Lamothe Living Trust, are the owners of the residential property in Clark County, Nevada known as parcel number 163-03-313-002, and commonly known as 1830 Rosemere Court, Las Vegas, Nevada 89117 ("1830 Rosemere Court").

3. The Lyttles are informed and believe, and thereon allege, that Plaintiff Marjorie B. Boulden ("Boulden") was formerly the owner of the residential property in Clark County, Nevada known as parcel number 163-03-313-008, and commonly known as 1860 Rosemere Court, Las Vegas, Nevada 89117 ("1960 Rosemere Court"). However, the Lyttles are informed and believe, and thereon allege, that on or about August 4, 2017, Boulden sold 1960 Rosemere Court to Counter-Defendants Robert Z. Disman and Yvonne A. Disman, who are now owners of 1960 Rosemere Court. Under NRS 116.4109, Counter-Defendants Robert and Yvonne Disman knew or should have known that the Association had judgments against it and recorded against it that could encumber

1 their property prior to their purchase of the property.

2 4. The true names and capacities of Counter-Defendants sued herein as ROES 1 through
3 10, inclusive, and each of them, are presently unknown to the Lytles, and, therefore, they are sued
4 herein under fictitious names, and when the true names are discovered, the Lytles will seek leave to
5 amend this Counterclaim and proceedings herein to substitute the true names of said Counter-
6 Defendants. The Lytles are informed and believe and based thereon allege that each of the foregoing
7 Counter designated herein as a ROE is negligent or responsible in some manner for the events herein
8 referred to.

9 **II. ROSEMERE ESTATES COMMUNITY AND GOVERNING DOCUMENTS**

10 5. The Original CC&Rs, in the first paragraph, defines Rosemere Estates as “Lots 1
11 through 9 of Rosemere Court, a subdivision...” The document adds that “it is the desire and
12 intention of the Subdivider to sell the land described above and to impose on it mutual, beneficial,
13 covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit
14 of all of the land described above and the future owners of the lots comprising said land.” Thus, the
15 Association includes each and every lot within Rosemere Estates.

16 6. Rosemere Property Owners’ Association (the “Association”), at all times herein
17 mentioned is comprised of nine (9) owners of single family lots all as more particularly described in
18 the recorded Declaration of Covenants, Conditions and Restrictions, dated January 4, 1994 (the
19 “Original CC&Rs”) for the Association, as recorded in the official records of the Clark County
20 Nevada Recorder’s office. A true and correct copy of the Original CC&Rs is attached hereto, and
21 incorporated herein, as Exhibit “1.” The Lytles are informed and believe, and based thereon allege,
22 that the Original CC&Rs were recorded on January 4, 1994, before title to any lot within the
23 Association was conveyed by deed, and are referenced in the deeds to all Nine (9) properties located
24 within the Association.

25 7. On February 25, 1997, Plaintiff and Counter-Defendant Linda Lamothe and Plaintiff
26 Marge Boulden, acting on behalf of all owners, filed Non-Profit Articles of Incorporation (the
27 “Articles”) pursuant to Nevada Revised Statutes (“NRS”) 82, which formalized the property owners’
28 committee and created an association, naming it “Rosemere Estates Property Owners Association.”

1 8. At the July 2, 2007, the Association's Board, the Board presented the homeowners
2 with a binder that contained the following: (1) new Articles of Incorporation, dated July 6, 2007,
3 which articles were never filed although represented to be as set forth herein; (2) a letter from Kearn
4 to the Association members; (3) a Corporate Charter referencing the February 25, 1997 and July 6,
5 2007 Articles of Incorporation; (4) a section entitled "Governing Documents" referencing the July 6,
6 2007 Articles of Incorporation; (5) the "First Statutorily Mandated Amendment to the Bylaws of the
7 Rosemere Estates Homeowners Association," and (5) the proposed Amended and Restated
8 Covenants, Conditions and Restrictions ("Amended CC&Rs").

9 9. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs
10 and changed the very nature of property ownership within Rosemere Estates. The Amended CC&Rs
11 contained numerous use restrictions including a section entitled "Restrictions on Use, Alienation,
12 and Occupancy," pet restrictions, lease restrictions, the establishment of a Design Review
13 Committee with unfettered discretion, and a new and expansive definition of "nuisance." Further,
14 the Amended CC&Rs made the Association a full blown unit owners' association, subject to the
15 entirety of Chapter 116.

16 10. The proposed amended CC&Rs were not agreed to by all owners at the July 2, 2007
17 meeting, in fact less than 67% thereof, with at least 3 owners specifically objecting to the proposed
18 changes and refusing to sign the approval.

19 11. Despite the failure to obtain the required unanimous approval for changing the
20 CC&Rs, the Association proceeded, on July 3, 2007, to record in the office of the Recorder for Clark
21 County, Nevada, the Amended CC&Rs.

22 12. The Lytles immediately contested and continued to contest the Amended CC&Rs and
23 its unlawful adoption.

24 **III. THE UNDERLYING LITIGATION**

25 13. After proceeding through two separate mandatory arbitrations via NRS 38.383 in
26 2009 and 2010, one which contested the validity of the Amended CC&Rs and a second which
27 contested the validity of liens placed against the Lytle Property by the Association due to the Lytles
28 refusing to pay assessments levied against their property to fund litigation against them, the Lytles

1 filed two lawsuits in Nevada District Court. Pursuant to the Amended CC&Rs, which was the
2 governing document at the time and at all times during the underlying litigation, the Lytles were
3 required to file their claims against the Association, not against the any of the individual owners.

4 **A. NRED I LITIGATION**

5 14. The first lawsuit commenced by the Lytles, case number A-09-593497-C which was
6 assigned to Judge Michelle Leavitt in Department XII, contested the validity of the Amended
7 CC&Rs and sought to overturn the Amended CC&Rs ("NRED I Litigation"). The Lytles ultimately
8 prevailed, entirely, in the litigation, and the Court granted the Lytles summary judgment on July 29,
9 2013. The matter was appealed, and the Nevada Supreme Court affirmed the District Court's Order
10 granting the Lytles summary judgment. The Supreme Court remanded the case to the District Court
11 for redetermination of costs, attorneys' fees and damages on October 19, 2015.

12 15. On May 25, 2016, the Court awarded the Lytles \$297,072.66 in attorneys' fees
13 pursuant to the Original CC&Rs and the Amended CC&Rs, which the Court declared as the
14 governing documents during the entirety of the litigation.

15 16. On June 17, 2016, the Court awarded the Lytles damages in the NRED I Litigation,
16 after a prove-up hearing, in the amount of \$63,566.93.

17 17. Finally, on July 22, 2016, the Court in the NRED I Litigation awarded the Lytles
18 costs in the amount of \$599.00.

19 18. On September 2, 2016, the Lytles recorded Abstracts of Judgment from the NRED I
20 Litigation against each property within the Association pursuant to the law set forth herein.

21 **B. NRED II LITIGATION**

22 19. On December 13, 2010, the Lytles filed a second lawsuit against the Association
23 seeking to release and expunge three (3) unlawfully recorded liens, which were recorded by the
24 Association against the Lytle Property in 2009 and 2010. This second lawsuit bore case number A-
25 10-631355-C and was assigned to Department 32, Judge Robert Bare (the "NRED II Litigation").

26 20. Distinct from the NRED I Litigation, in the NRED II Litigation, both the Lytles and
27 the Association stipulated to the underlying fact that the Amended CC&Rs were the controlling
28 governing documents for the Association in the NRED II Litigation.

21. On November 14, 2011, the Court granted the Association's Motion for Summary Judgment against the Lytles in the NRED II Litigation. The Court then granted attorneys' fees to the Association pursuant to the Amended CC&Rs and NRS 116.4117. The Lytles appeals the Court's rulings in the NRED II Litigation.

22. On December 21, 2015, the Nevada Supreme Court vacated the Order Granting Summary Judgment in the NRED II Litigation and remanded the NRED II Litigation back to Department 32 for determination. The Supreme Court also vacated the order awarding attorneys' fees, costs, and damages to the Association.

23. On November 10, 2016, the Court in the NRED II Litigation granted the Lytles' Motion for Summary Judgment and entered an Order thereon, finding in favor of the Lytles as to all causes of action.

24. On April 14, 2017, the Court in the NRED II Litigation awarded the Lytles' attorneys' fees in the amount of \$274,608.28 pursuant to the Original CC&Rs, the Amended CC&Rs and NRS 116.4117, finding that the Amended CC&Rs controlled the remedies provided in the action. The Court also awarded costs in the amount of \$4,725.00.

25. Finally, on May 11, 2017, after a prove-up hearing, the Court in the NRED II Litigation awarded the Lytles punitive damages in the amount of \$823,824.84, pursuant to NRS 42.005.

26. On July 20, 2017, the Court in the NRED II Litigation issued an Abstract of Judgment in the amount of \$1,103,158.12, which has been recorded against the Association but none of the individual lots or properties within the Association.

FIRST CAUSE OF ACTION

(For Declaratory Relief Against Counter-Defendants Jacques and Linda Lamouthe, Third-Party Defendants Robert Disman and Yvonne Disman, and ROES 1 through 10, Inclusive)

27. The Lytles incorporate the allegations contained in Paragraphs 1 through 26 herein as though set forth in full.

///

///

1 28. There exists a controversy between the Lytles and Counter-Defendants and Third
2 Party Defendants regarding the interpretation, application and enforcement of NRS, Chapter 116 as
3 well as the application of the Original CC&Rs and Amended CC&Rs to the controversy at hand,
4 requiring a determination by this Court and entry of declaratory relief.

5 29. Specifically, the Lytles contend as follows:

- 6 a. Pursuant to the Original CC&Rs, a lien or judgment against the Association
7 established under the Original CC&Rs attaches to each lot within the Association.
- 8 b. Pursuant to the Amended CC&Rs, which were in force at all times from 2007
9 through July 29, 2013, a lien or judgment against the Association established
10 under the Amended CC&Rs attaches to each lot within the Association.
- 11 c. Pursuant to NRS, Chapter 116, the Uniform Common Interest Development Act,
12 a lien or judgment against the Association attaches to each lot within the
13 Association, even if the Association is a *limited purpose association*, because
14 under NRS 116.021, each common interest community consists of all “real estate
15 described in a declaration with respect to which a person, by virtue of the person’s
16 ownership of a unit, is obligated to pay for a share of real estate taxes, insurance
17 premiums, maintenance or improvement of, or services or other expenses related
18 to, common elements, other units or other real estate described in that
19 declaration.” Further under NRS 116.093, each “unit” is defined as the “physical
20 portion of the common-interest community designated for separate ownership or
21 occupancy...” Thus, the association, or common interest community, includes
22 each and every unit in the community, including those owned by third parties.
- 23 d. Pursuant to NRS 116.3117, which governed the Association and all owners
24 during the underlying litigation, a judgment against the Association is a lien in
25 favor of the Lytles against all of the real property within the Association and all of
26 the units therein, including Counter-Defendants’ properties. The Association and
27 its membership are not entitled to use Chapter 116 and all of its provisions as a
28 sword during the litigation against the Lytles, *e.g.* to record multiple liens totaling

1 \$209,883.19 against the Lytles and attempt foreclosure against the Lytle Property
2 forcing the Lytles to procure a \$123,000.00 cash bond to prevent such
3 foreclosure, and then a shield to defend against the Lytles after they prevailed in
4 that litigation and the Association was declared a *limited purpose association*.

5 30. The Lytles desire a judicial determination of the parties' rights and duties and a
6 declaration the a lien against the Association, specifically the Abstract of Judgment issued in the
7 NRED II Litigation, can be recorded against 1830 Rosemere Court and 1960 Rosemere Court.

8 31. A judicial declaration is necessary and appropriate at this time so that the parties may
9 ascertain their rights and duties because the Lytles wish to record the Abstract of Judgment in the
10 NRED II Litigation against 1830 Rosemere Court and 1960 Rosemere Court to enforce their rights
11 as creditors against the Association.

12
13 WHEREFORE, Defendants and Counter-Claimants pray for relief as follows:

14 1. That the Second Amended Complaint be dismissed and that Plaintiffs take nothing by
15 way of its Second Amended Complaint;

16 2. That the Court enter a Declaratory Judgment in favor of the Lytles and against the
17 Counter-Defendants and Third Party Defendants, finding and declaring that the Lytles are entitled to
18 record a lien and/or Abstract of Judgment obtained in the NRED II Litigation against 1830
19 Rosemere Court and 1960 Rosemere Court in order to enforce the Lytles' rights as creditors against
20 the Association.

21 3. For an injunction preventing any Counter-Defendant or Third Party Defendant from
22 selling either 1830 Rosemere Court and 1960 Rosemere Court until this Court has entered a
23 Declaratory Judgment;

24 4. For costs and disbursements in connection with this action;

25 5. For reasonable attorney's fees, and

26 ///

27 ///

28 ///

6. For such other and further relief that this Court deems just and proper.

DATED: August 11, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: 

Richard E. Haskin, Esq.

Nevada State Bar # 11592

Timothy P. Elson, Esq.

Nevada State Bar # 11559

1140 N. Town Center Drive, Suite 300

Las Vegas, Nevada 89144

Attorneys for Defendants

TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE
LYTLE TRUST

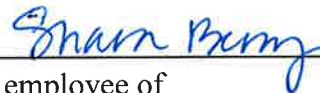
CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on August 11, 2017, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, TRUSTEES OF THE LYTLE TRUST'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT AND COUNTERCLAIM**; by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

Daniel T. Foley, ESQ.
FOLEY & OAKS, PC
626 S. 8th Street
Las Vegas, Nevada 89101

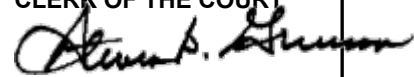
Attorney for Plaintiffs

Tel: (702) 384-2070
Fax: (702) 384-2128
Email: dan@folevoakes.com



An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP

EXHIBIT F TO
DOCKETING
STATEMENT



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Attorneys for Counter-Defendants/Cross-Claimants
6 *Robert Z. Disman and Yvonne A. Disman*

7
8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 MARJORIE B. BOULDEN, TRUSTEE OF THE)
MARJORIE B. BOULDEN TRUST, LINDA)
12 LAMOTHE AND JACQUES LAMOTHE,)
TRUSTEES OF THE JACQUES & LINDA)
13 LAMOTHE LIVING TRUST,)

14 Plaintiffs,)

15 vs.)

16 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,)
THE LYTLE TRUST, DOES I through X, and)
17 ROE CORPORATIONS I through X,)

18 Defendants.)

19
20 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,)
THE LYTLE TRUST,)

21 Counter-Claimants,)

22 vs.)

23 LINDA LAMOTHE AND JACQUES)
24 LAMOTHE, TRUSTEES OF THE JACQUES &)
LINDA LAMOTHE LIVING TRUST, ROBERT)
25 Z. DISMAN, YVONNE A. DISMAN, and)
ROES 1 through 10, inclusive,)

26 Counter-Defendants.)
27
28

Case No.: A-16-747800-C

Dept. No.: XVI

**COUNTER-DEFENDANTS AND
CROSS-CLAIMANTS ROBERT Z.
DISMAN AND YVONNE A. DISMAN'S
ANSWER AND CROSSCLAIM**

1 ROBERT Z. DISMAN, an individual; and)
2 YVONNE A. DISMAN, an individual,)
3 Cross-Claimants,)
4 vs.)
5 MARJORIE B. BOULDEN, TRUSTEE OF THE)
6 MARJORIE B. BOULDEN TRUST,)
7 AMENDED AND RESTATED DATED JULY)
8 17, 1996; DOES I through X; and ROE)
9 BUSINESS ENTITIES XI through XX,)
10 Cross-Defendants.)

11 Counter-Defendants ROBERT Z. DISMAN and YVONNE A. DISMAN (hereinafter
12 collectively referred to as, the "Dismans") by and through their attorneys of record, the Fidelity
13 National Law Group, hereby file this Answer to Counter-Claimants TRUDI LEE LYTLE and
14 JOHN ALLEN LYTLE, Trustees of THE LYTLE TRUST (hereinafter collectively referred to
15 as, the "Lyttles")' Counterclaim as follows:

16 **I. THE PARTIES AND JURISDICTION**

17 1. Answering paragraph numbers 1 and 2, the Dismans are without sufficient
18 knowledge or information to form a belief as to the truth of the allegations of said paragraphs
19 and on that basis deny each and every allegation set forth therein.

20 2. Answering paragraph number 3, the Dismans admit that in or about August 2017,
21 they purchased the real property commonly known as 1960 Rosemere Court, Las Vegas, Nevada
22 89117, Parcel No. 163-03-313-008 ("1960 Rosemere Court" or "Property") from Marjorie B.
23 Boulden, Trustee of The Marjorie B. Boulden Trust, amended and restated dated July 17, 1996.
24 The Dismans further admit that they are now owners of 1960 Rosemere Court. The Dismans
25 generally and specifically deny all other allegations set forth in paragraph number 3.

26 3. Answering paragraph number 4, the Dismans are without sufficient knowledge or
27 information to form a belief as to the truth of the allegations of said paragraph and on that basis
28 deny each and every allegation set forth therein.

II. ROSEMERE ESTATES COMMUNITY AND GOVERNING DOCUMENTS

4. Answering paragraph number 5, the allegations set forth therein attempt to

1 characterize the terms of the document referenced, which speaks for itself. Therefore, the
2 Dismans generally and specifically deny any characterization or legal conclusion inconsistent
3 with the document referenced and no further response is required.

4 5. Answering paragraph numbers 6, 7, 8, 9, 10, 11 and 12, the Dismans are without
5 sufficient knowledge or information to form a belief as to the truth of the allegations of said
6 paragraphs and on that basis deny each and every allegation set forth therein.

7 **III. THE UNDERLYING LITIGATION**

8 6. Answering paragraph number 13, the Dismans are without sufficient knowledge
9 or information to form a belief as to the truth of the allegations of said paragraph and on that
10 basis deny each and every allegation set forth therein.

11 **A. NRED I LITIGATION**

12 7. Answering paragraph numbers 14, 15, 16, 17 and 18, the Dismans are without
13 sufficient knowledge or information to form a belief as to the truth of the allegations of said
14 paragraphs and on that basis deny each and every allegation set forth therein.

15 **B. NRED II LITIGATION**

16 8. Answering paragraph numbers 19, 20, 21, 22, 23, 24, 25 and 26, the Dismans are
17 without sufficient knowledge or information to form a belief as to the truth of the allegations of
18 said paragraphs and on that basis deny each and every allegation set forth therein.

19 **FIRST CAUSE OF ACTION**

20 **(For Declaratory Relief Against Counter-Defendants Jacques and Linda Lamothe, Third-**
21 **Party Defendants Robert Disman and Yvonne Disman, and ROES 1 through 10, Inclusive)**

22 9. Answering paragraph number 27, the Dismans repeat and reallege their answers
23 to paragraphs 1 through 26 above, and incorporates the same by reference as though fully set
24 forth herein.

25 10. Answering paragraph number 28, the Dismans generally and specifically deny
26 the allegations set forth therein.

27 11. Answering paragraph numbers 29(a) and (b), the allegations set forth therein
28 attempt to characterize the terms of the documents referenced, which speak for themselves.

1 Therefore, the Dismans generally and specifically deny any characterization or legal conclusion
2 inconsistent with the documents referenced and no further response is required.

3 12. Answering paragraph numbers 29(c) and (d), and 30, the allegations set forth
4 therein call for legal conclusions to which no response is required. To the extent paragraph
5 numbers 29(c) and (d) are determined to contain factual allegations, the Dismans are without
6 sufficient knowledge or information to form a belief as to the truth of the allegations of said
7 paragraphs and on that basis deny each and every allegation set forth therein.

8 13. Answering paragraph number 31, the Dismans generally and specifically deny
9 the allegations set forth therein

10 **AFFIRMATIVE DEFENSES**

11 The Dismans assert the following affirmative defenses to the claims and allegations
12 contained in the Counterclaim.

13 1. The Counterclaim fails to state a claim or cause of action against the Dismans
14 upon which relief can be granted.

15 2. The Counterclaim is not ripe for determination.

16 3. The Counterclaim is barred in whole or in part by the doctrines of laches, waiver,
17 estoppel, and/or unclean hands.

18 4. The Counterclaim is barred in whole or in part by the doctrines of ratification,
19 confirmation, release, discharge, and/or set-off.

20 5. The Counterclaim is barred in whole or in part by the doctrines of mistake,
21 excuse, and/or non-performance.

22 6. The Dismans acted at all times in accordance with their contractual and legal
23 rights.

24 7. The Dismans acted at all times in good faith and in conformity with applicable
25 law and regulations.

26 8. Any damage, injury or loss sustained by the Lytles was caused by the actions of
27 others or by intervening or superseding events for which the Dismans have no responsibility.
28

1 **PARTIES**

2 1. The Dismans are, and at all times relevant herein were, residents of Clark
3 County, Nevada.

4 2. The Dismans are informed and believe and on that basis allege that MARJORIE
5 B. BOULDEN, Trustee of THE MARJORIE B. BOULDEN TRUST, AMENDED AND
6 RESTATED DATED JULY 17, 1996 ("Boulden"), is, and at all relevant times herein was, a
7 resident of Clark County, Nevada.

8 3. The Dismans are unaware of the true names and legal capacities, whether
9 individual, corporate, associate, or otherwise, of the Cross-Defendants sued herein as DOES I
10 through X and ROE BUSINESS ENTITIES XI through XX, inclusive, and therefore sue said
11 Cross-Defendants by their fictitious names. The Dismans pray leave to insert said Cross-
12 Defendants' true names and legal capacities when ascertained. The Dismans are informed and
13 believe and on that basis allege that each of the Cross-Defendants designated herein as a DOE or
14 a ROE is in some way legally responsible and liable for the events referred to herein and
15 proximately caused the damages alleged herein.

16 **JURISDICTION AND VENUE**

17 4. This Court's jurisdiction over the parties is proper under NRS 14.065 as it is
18 consistent with the constitution of this state and the Constitution of the United States.

19 5. Venue is proper in the Eighth Judicial District Court of Nevada under NRS
20 13.010 as the subject property is located in Clark County, Nevada.

21 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

22 6. This action concerns the real property commonly known as 1960 Rosemere
23 Court, Las Vegas, Nevada 89117, Parcel No. 163-03-313-008 ("1960 Rosemere Court" or
24 "Property").

25 7. In or about August 2017, the Dismans purchased 1960 Rosemere Court from
26 Boulden for \$550,000.00.

27 8. The Grant, Bargain, Sale Deed conveying title of the Property from Boulden to
28 the Dismans was recorded on August 4, 2017, as Instrument No. 20170804-0002656 of the

1 Official Records of Clark County, Nevada.

2 9. Trudi Lee Lytle and John Allen Lytle, Trustees of The Lytle Trust (hereinafter
3 collectively referred to as, the "Lyttles") allege that 1960 Rosemere Court is encumbered by a
4 judgment lien that they recorded against the Rosemere Property Owners' Association and that
5 attached to the Property (the "Judgment Lien").

6 **FIRST CLAIM FOR RELIEF**

7 **(Breach of Warranty)**

8 10. The Dismans repeat, reallege and incorporate by reference each and every
9 allegation contained in Paragraphs 1 through 9 as though fully set forth herein.

10 11. Pursuant to Nevada law and, specifically, NRS 111.170, the Grant, Bargain, Sale
11 Deed whereby Boulden conveyed 1960 Rosemere Court to the Dismans is a warranty deed that
12 contains certain covenants, including, but not limited to, the covenant that the Property is free
13 from any encumbrance and defect in title.

14 12. Such covenants may be sued upon in the same manner as if they had been
15 expressly inserted in the conveyance.

16 13. By virtue of the Lyttles' Counterclaim against the Dismans, 1960 Rosemere Court
17 may be subject to the Judgment Lien.

18 14. Boulden, therefore, breached the covenants contained in the Grant, Bargain, Sale
19 Deed whereby she conveyed the Property to the Dismans.

20 15. As a direct and proximate result of Boulden's breach, the Dismans have suffered
21 damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), all in a sum to be
22 determined according to proof at the time of trial.

23 16. As a direct and proximate result of Boulden's breach, the Dismans have been
24 required to retain legal counsel and incur legal fees and costs in connection with this action and
25 is, therefore, entitled to recover reasonable attorneys' fees and costs from Boulden as special
26 damages.

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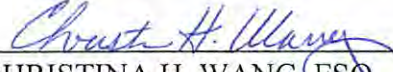
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1 WHEREFORE, the Dismans pray for judgment against Boulden, DOES I through X and
2 ROE BUSINESS ENTITIES XI through XX, and each of them, as follows:

- 3 1. For damages in excess of \$15,000.00, plus all applicable interest thereon;
4 2. For an award of attorney's fees and costs of litigation; and
5 3. For any and all such other relief as the Court deems just and proper.

6 DATED this 26th day of September, 2017.

7 FIDELITY NATIONAL LAW GROUP

8
9 
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14 *Attorneys for Counter-Defendants/Cross-*
15 *Claimants Robert Z. Disman and*
16 *Yvonne A. Disman*

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Allen Lytle, Trustees of The Lytle Trust*

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Las Vegas, Nevada 89101
*Attorneys for Plaintiffs Marjorie B.
Boulden, Trustee of The Marjorie B.
Boulden Trust, amended and restated
dated July 17, 1996; and Linda Lamothe
and Jacques Lamothe, Trustees of the
Jacques and Linda Lamothe Living Trust*

DATED: 9/26/17


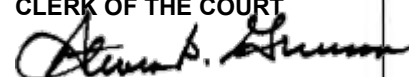

An employee of Fidelity National Law Group

EXHIBIT G TO
DOCKETING
STATEMENT



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Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST

DISTRICT COURT
CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF THE
MARJORIE B. BOULDEN TRUST, LINDA
LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST

Plaintiff,

v.

TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X,

Defendants.

Case No.: A-16-747800-C
Dept.: XVI

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO ALTER OR
AMEND FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

NOTICE IS HEREBY GIVEN that on the 25th day of July, 2017, an ORDER GRANTING
MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW was
entered in the above-entitled matter, a copy of which is attached hereto.

DATED: July 25, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: /s/ Richard E. Haskin

Richard E. Haskin, Esq.
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Las Vegas, Nevada 89144
Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE
LYTLE TRUST

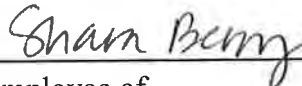
CERTIFICATE OF MAILING

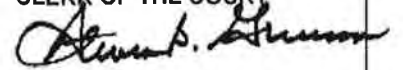
The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on July 25, 2017, she served a copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

DANIEL T. FOLEY, ESQ.
FOLEY & OAKS
626 S. 8th Street
Las Vegas, Nevada 89101

Attorneys for Plaintiffs **MARJORIE BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST, ETAL.**

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An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP



ORDR

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Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF THE
MARJORIE B. BOULDEN TRUST, LINDA
LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST

Plaintiff,

v.

TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X,

Defendants.

Case No.: A-16-747800-C
Dept.: XVI

**ORDER GRANTING MOTION TO
ALTER OR AMEND FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Hearing: June 29, 2017

Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for
Summary Judgment having come on for hearing before this Court on of April 13, 2017. Plaintiffs
Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley, Esq. and
Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, appeared with their
counsel, Richard Haskin, Esq. After hearing, the Court entered Findings of Fact, Conclusions of
Law and entered an Order Granting Plaintiffs' Motion for Partial Summary Judgment on April 25,
2017.

///

1 On June 29, 2017, Defendants' Motion for Reconsideration or, in the Alternative, Motion to
 2 Alter or Amend Judgment, came on for hearing. Plaintiffs Marjorie Boulden and Linda Lamothe
 3 appeared with their counsel, Daniel T. Foley, Esq. and Defendants John Allen Lytle and Trudi Lee
 4 Lytle, as Trustees of the Lytle Trust, appeared with their counsel, Richard Haskin, Esq.

5 The Court having reviewed the Defendants' Motion, Plaintiff's Opposition and the
 6 Defendants' Reply, all documents attached thereto or otherwise filed in this case, and good cause
 7 appearing therefore, grants Defendants' Motion to Alter and Amend Judgment pursuant to EDCR
 8 2.24(b), and the Court makes the following Amendment Findings of Fact and Conclusions of Law,
 9 granting Plaintiffs' Motion for Partial Summary Judgment.

10 FINDINGS OF FACT

11 1. Mrs. Boulden is trustee of the Marjorie B. Boulden Trust (hereinafter "Mrs.
 12 Boulden") which owns that residential property known as parcel number 163-03-313-008 also
 13 known as 1960 Rosemere Ct., Las Vegas, NV 89117 ("the Boulden Property").

14 2. Mr. and Mrs. Lamothe are the trustees of the Linda Lamothe and Jacques Lamothe
 15 Living Trust (hereinafter "Mr. and Mrs. Lamothe") which owns that certain residential property
 16 known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas, NV 89117
 17 (the "Lamothe Property").

18 3. The Boulden Property and the Lamothe Property are located in the Rosemere Court
 19 subdivision and are subject to the CC&Rs recorded January 4, 1994 (the "Original CC&Rs").

20 4. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust (collectively
 21 the "Defendants") which owns that certain residential property known as parcel number 163-03-313-
 22 009 (the "Lytle Property").

23 5. In 2009, the Defendants sued the Rosemere Estates Property Owners Association (the
 24 Association") in the Eighth Judicial District Court, case # A-09-593497-C (the "Rosemere LPA
 25 Litigation").

26 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.

27 7. None of the Plaintiffs were a "losing party" in the Rosemere LPA Litigation as that
 28 term is found in Section 25 of the Original CC&Rs.

1 8. The Defendants obtained a Summary Judgment for Declaratory Relief from the
2 District Court in the Rosemere LPA Litigation, which found and ruled as follows:

- 3 a. The Association is a limited purpose association under NRS 116.1201, is not
4 a Chapter 116 "unit-owners' association," and is relegated to only those
5 specific duties and powers set forth in Paragraph 21 of the Original CC&Rs
6 and NRS 116.1201.
- 7 b. The Association did not have any powers beyond those of the "property
8 owners committee" designation in the Original CC&Rs – simply to care for
9 the landscaping and other common elements of Rosemere Estates as set forth
10 in Paragraph 21 of the Original CC&Rs.
- 11 c. Consistent with the absence of a governing body, the Developer provided
12 each homeowner the right to independently enforce the Original CC&Rs
13 against one another.
- 14 d. The Amended and Restated CC&Rs recorded with the Clark County
15 Recorder's Office as Instrument #20070703-0001934 (the "Amended
16 CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

17 9. Pursuant to NRS 116.1201(2) much of NRS Chapter 116 does not apply to the
18 Association because it is a limited purpose association that is not a rural agricultural residential
19 community.

20 10. After obtaining Summary Judgment in the Rosemere LPA Litigation, the Defendants
21 filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a prove-up
22 hearing on damages. After hearing all matters, a Final Judgment was entered in the Defendants'
23 favor against the Association for \$361,238.59, which includes damages, attorneys' fees and costs
24 (the "Final Judgment").

25 11. After obtaining the Attorneys' Fees Judgment, the Defendants, on August 16, 2016,
26 recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final
27 Judgment against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract
28 of Judgment").

 12. In the First Abstract of Judgment, the Defendants listed the parcel numbers of the
Boulden Property and the Lamothe Property as properties to which the First Abstract of Judgment
and Final Judgment was to attach.

///

13. On September 2, 2016, the Defendants recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as Instrument #20160902-0002684 (the "Second Abstract of Judgment"). The Second Abstract of Judgment listed the parcel number of the Lamothe Property only as the property to which the Judgment was to attach.

14. On September 2, 2016, the Defendants recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as Instrument #20160902-0002690 (the "Third Abstract of Judgment"). The Third Abstract of Judgment listed the parcel number of the Boulden Property only as the property to which the Judgment was to attach.

CONCLUSIONS OF LAW

1. The Association is a "limited purpose association" as referenced in NRS 116.1201(2).
 2. As a limited purpose association, NRS 116.3117 is not applicable to the Association.
 3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and have no force and effect and were declared void ab initio.

4. The Plaintiffs were not parties to the Rosemere LPA Litigation.

5. The Plaintiffs were not "losing parties" in the Rosemere LPA Litigation as per Section 25 of the Original CC&Rs.

6. The Final Judgment in favor of the Defendants is not against, and is not an obligation of, the Plaintiffs.

7. The Final Judgment against the Association is not an obligation or debt owed by the Plaintiffs.

8. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe Property.

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1 9. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was
2 improperly recorded against the Boulden Property and constitutes a cloud against the Boulden
3 Property.

4 10. The Second Abstract of Judgment recorded as Instrument #20160902-0002684
5 improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe
6 Property.

7 11. The Third Abstract of Judgment recorded as Instrument #20160902-0002690 was
8 improperly recorded against the Boulden Property and constitutes a cloud against the Boulden
9 Property.

10 12. The Court does not make any findings that the Defendants slandered title to
11 Plaintiffs' properties, and this issue is left to trier of fact.

12 **ORDER**

13 Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing
14 therefore,

15 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion for
16 Partial Summary Judgment is GRANTED as to Plaintiffs' claims and causes of action for quiet title
17 and declaratory relief, the Second and Third Causes of Action in Plaintiffs' First Amended
18 Complaint.

19 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that Defendants'
20 Motion for Summary Judgment is DENIED.

21 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
22 Defendants improperly clouded the title to the Boulden Property.

23 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
24 Defendants improperly clouded the title to the Lamothe Property.

25 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the First
26 Abstract of Judgment recorded as Instrument #20160818-0001198 in the Clark County Recorder's
27 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

28 ///

1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Second
2 Abstract of Judgment recorded as Instrument #20160902-0002684 in the Clark County Recorder's
3 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

4 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Third
5 Abstract of Judgment recorded as Instrument #20160902-0002690 in the Clark County Recorder's
6 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

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1 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the
2 Defendants are permanently enjoined from recording and enforcing the Final Judgment from the
3 Rosemere LPA Litigation or any abstracts related thereto against the Boulden Property or the
4 Lamothe Property.

5 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the
6 Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or
7 their properties based upon the Rosemere LPA Litigation.

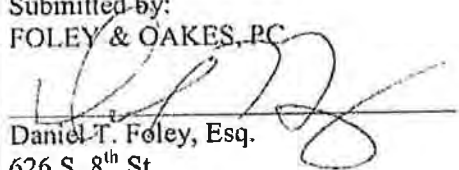
8 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the
9 Defendants are hereby ordered to release the First Abstract of Judgment, the Second Abstract of
10 Judgment, and the Third Abstract of Judgment recorded with the Clark County Recorder within
11 ten (10) days after the date of Notice of Entry of this Order.

12
13 DATED this 19th day of July 2017

14
15
16 
DISTRICT COURT JUDGE
17 

18 Submitted by:

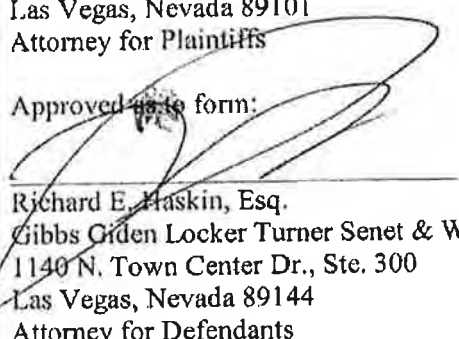
19 FOLEY & OAKES, PC

20 
Daniel T. Foley, Esq.

21 626 S. 8th St.

22 Las Vegas, Nevada 89101

23 Attorney for Plaintiffs

24 Approved by: 
form:

25 Richard E. Haskin, Esq.

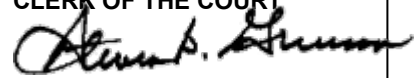
26 Gibbs Giden Locker Turner Senet & Wittbrodt LLP

27 1140 N. Town Center Dr., Ste. 300

28 Las Vegas, Nevada 89144

Attorney for Defendants

EXHIBIT H TO
DOCKETING
STATEMENT



NOE
DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
FOLEY & OAKES, PC
1210 S. Valley View Blvd. #208
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Tel.: (702) 384-2070
Fax: (702) 384-2128
Email: dan@foleyoakes.com
*Attorneys for the Boulden and
Lamothe Plaintiffs.*

DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE JACQUES
& LINDA LAMOTHE LIVING TRUST

Plaintiffs,

vs.

TRUDI LEE LYTLER AND JOHN ALLEN
LYTLER, AS TRUSTEES OF THE LYTLER
TRUST, DOES I through X; and ROE
CORPORATIONS I through X

Defendants.

Case No. A-16-747800-C
Dept. No. IX

**NOTICE OF ENTRY OF
STIPULATION AND ORDER TO
DISMISS ALL REMAINING
CLAIMS WITHOUT
PREJUDICE**

AND ALL RELATED COUNTERCLAIMS
AND CROSS-CLAIMS

1 SEPTEMBER TRUST, DATED MARCH 23,)
1972; GERRY R. ZOBRIST AND JOLIN G.)
2 ZOBRIST, AS TRUSTEES OF THE GERRY)
R. ZOBRIST AND JOLIN G. ZOBRIST)
3 FAMILY TRUST; RAYNALDO G.)
SANDOVAL AND JULIE MARIE)
4 SANDOVAL GEGEN, AS TRUSTEES OF)
THE RAYNALDO G. AND EVELYN A.)
SANDOVAL JOINT LIVING AND)
5 DEVOLUTION TRUST DATED MAY 27,)
1992; and DENNIS A. GEGEN AND JULIE)
6 GEGEN, HUSBAND AND WIFE AS JOINT)
TENANTS,)
7)
8)
9 Plaintiffs)
v.)
10)
11 TRUDI LEE LYTLE AND JOHN LYTLE, AS)
TRUSTEES OF THE LYTLE TRUST; JOHN)
12 DOES I through V; and ROW ENTITIES I)
through I inclusive.)
13)
14 Defendants.)

Case No.: A-17-765372-C
Dept. No.: XVIII

15
16 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS ALL REMAINING**
17 **CLAIMS WITHOUT PREJUDICE**

18 TO: All Parties and their counsel:

19 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that a Stipulation and
20 Order was entered with the above-entitled Court on January 14, 2019. A copy of said Stipulation
21 and Order is attached hereto.

22 Dated: January 14, 2019.

23 FOLEY & OAKES, PC

24 **/s/ Daniel T. Foley**
25 Daniel T. Foley, Esq.
26 1210 S. Valley View Blvd. #208
Las Vegas, NV 89102
27 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, N.R.C.P. 5(b) and EDCR 7.26, I hereby certify that I am an
3 employee of Foley & Oakes, PC, and that on the 14th day of January, 2019 I served the following
4 document(s):

5 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS ALL**
6 **REMAINING CLAIMS WITHOUT PREJUDICE**

7 I served the above-named document(s) by the following means to the person s as listed
8 below: [x] By Electronic Transmission through the Wiznet System:

9 Richard E. Haskin, Esq.
10 GIBBS, GIDEN, LOCHER, TURNER,
11 SENET & WHITTBRODT, LLP
12 1140 N. Town Center Drive, Suite 300
Las Vegas, NV 89144
Attorneys for the Lytles

13 Christina H. Wang, ESQ.
14 FIDELITY NATIONAL LAW GROUP
15 8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
Attorneys for Counter-Defendants/Cross-Claimants
16 *Robert Z. Disman and Yvonne A. Disman*

17 **CHRISTENSEN JAMES & MARTIN**
18 KEVIN B. CHRISTENSEN, ESQ. (175)
19 WESLEY J. SMITH, ESQ. (11871)
LAURA J. WOLFF, ESQ. (6869)
20 7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for September Trust, Zobrist Trust, Sandoval Trust,
21 *and Dennis & Julie Gegen*

22 I declare under the penalty of perjury that the foregoing is true and correct.

23 /s/ Liz Gould
24 An employee of FOLEY & OAKES

EXHIBIT “A”

EXHIBIT “A”

Steven D. Grierson

1 **SAO**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 1210 S. Valley View Blvd. #208
6 Las Vegas, NV 89102
7 Tel.: (702) 384-2070
8 Fax: (702) 384-2128
9 Email: dan@foleyoakes.com
10 *Attorneys for the Boulden and*
11 *Lamothe Plaintiffs.*

12 **DISTRICT COURT**
13 ***
14 **CLARK COUNTY, NEVADA**

15 MARJORIE B. BOULDEN, TRUSTEE OF)
16 THE MARJORIE B. BOULDEN TRUST,)
17 LINDA LAMOTHE AND JACQUES)
18 LAMOTHE, TRUSTEES OF THE JACQUES)
19 & LINDA LAMOTHE LIVING TRUST)

20 Plaintiffs,

21 vs.

22 TRUDI LEE LYTLE AND JOHN ALLEN)
23 LYTLE, AS TRUSTEES OF THE LYTLE)
24 TRUST, DOES I through X; and ROE)
25 CORPORATIONS I through X)

26 *Defendants.*

27 AND ALL RELATED COUNTERCLAIMS)
28 AND CROSS-CLAIMS)

Case No. A-16-747800-C
Dept. No. IX

**STIPULATION AND ORDER TO
DISMISS ALL REMAINING
CLAIMS WITHOUT
PREJUDICE**

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input checked="" type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

**FOLEY
&
OAKES**

JAN 09 2019

1 SEPTEMBER TRUST, DATED MARCH 23,)
2 1972; GERRY R. ZOBRIST AND JOLIN G.)
3 ZOBRIST, AS TRUSTEES OF THE GERRY)
4 R. ZOBRIST AND JOLIN G. ZOBRIST)
5 FAMILY TRUST; RAYNALDO G.)
6 SANDOVAL AND JULIE MARIE)
7 SANDOVAL GEGEN, AS TRUSTEES OF)
8 THE RAYNALDO G. AND EVELYN A.)
9 SANDOVAL JOINT LIVING AND)
10 DEVOLUTION TRUST DATED MAY 27,)
11 1992; and DENNIS A. GEGEN AND JULIE)
12 GEGEN, HUSBAND AND WIFE AS JOINT)
13 TENANTS,)

9 Plaintiffs)

10 v.)

11 TRUDI LEE LYTLE AND JOHN LYTLE, AS)
12 TRUSTEES OF THE LYTLE TRUST; JOHN)
13 DOES I through V; and ROW ENTITIES I)
14 through I inclusive.)

15 Defendants.)

Case No.: A-17-765372-C

Dept. No.: XVIII

16 **STIPULATION AND ORDER TO DISMISS ALL REMAINING CLAIMS WITHOUT**
17 **PREJUDICE**

18 IT IS HEREBY STIPULATED AND AGREED by and between counsel for all parties
19 herein, that all of the remaining causes of action in the above captioned case be dismissed without
20 prejudice. Specifically, the parties agree that the Plaintiffs, MARJORIE B. BOULDEN,
21 TRUSTEE OF THE MARJORIE B. BOULDEN TRUST ("Boulden Trust"), and LINDA
22 LAMOTHE AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES & LINDA
23 LAMOTHE LIVING TRUST ("Lamothe Trust")' First, Fifth, and Sixth Causes of Action in
24 their Second Amended Complaint filed July 25, 2017 be dismissed without prejudice.

25 IT IS FURTHER STIPULATED AND AGREED, specifically that TRUDI LEE LYTLE
26 AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST'S Counterclaim
27

1 against the Lamothe Trust and Robert Z. Disman and Yvonne A. Disman, filed August 11, 2017
2 be dismissed without prejudice.

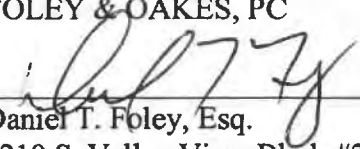
3 IT IS FURTHER STIPULATED AND AGREED that Robert Z. Disman's and Yvonne A.
4 Disman's Crossclaim against the Boulden Trust filed September 26, 2017, be dismissed without
5 prejudice and that each of these parties shall bear their own attorney's fees and costs associated
6 with the Crossclaim
7

8 IT IS FURTHER STIPULATED AND AGREED that, other than as provided above, the
9 parties are not dismissing or waiving any rights they may have to seek to recover attorneys' fees
10 and costs, to the extent that any such rights may exist.

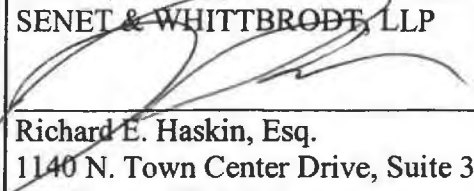
11 It is further stipulated that the parties are not dismissing any currently pending appeals from
12 decisions of the above captioned court or stipulating as to anything related to the right to file any
13 future appeals from future decisions of the above captioned court related to this matter.

14 Dated: January 8, 2019

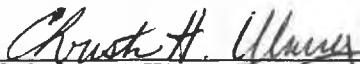
15 FOLEY & OAKES, PC

16 
17 Daniel T. Foley, Esq.
18 1210 S. Valley View Blvd. #208
19 Las Vegas, NV 89102
Attorneys for Plaintiffs

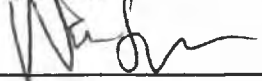
20 GIBBS, GIDEN, LOCHER, TURNER,
21 SENET & WHITTBRODT, LLP

22 
23 Richard E. Haskin, Esq.
24 1140 N. Town Center Drive, Suite 300
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Attorneys for Defendants

1 FIDELITY NATIONAL LAW GROUP

2 
3 Christina H. Wang, Esq.
4 8363 W. Sunset Road, Suite 120
5 Las Vegas, Nevada 89113
6 *Attorneys for Counter-Defendants/Cross-Claimants*
7 *Robert Z. Disman and Yvonne A. Disman*

8 **CHRISTENSEN JAMES & MARTIN**

9 
10 Wesley J. Smith, ESQ.
11 7440 W. Sahara Avenue
12 Las Vegas, Nevada 89117
13 *Attorneys for September Trust, Zobrist Trust, Sandoval Trust,*
14 *and Dennis & Julie Gegen*

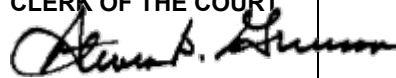
15 **ORDER**

16 It is so ORDERED.

17 DATED this 10th day of January 2019.

18 
19 _____
20 DAVID B. BARKER
21 SENIOR DISTRICT COURT JUDGE 

EXHIBIT I TO
DOCKETING
STATEMENT



COM
CHRISTENSEN JAMES & MARTIN
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WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
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Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
Attorneys for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SEPTEMBER TRUST, DATED MARCH
23, 1972; GERRY R. ZOBRIST AND
JOLIN G. ZOBRIST, AS TRUSTEES OF
THE GERRY R. ZOBRIST AND JOLIN G.
ZOBRIST FAMILY TRUST; RAYNALDO
G. SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND
DEVOLUTION TRUST DATED MAY 27,
1992; and DENNIS A. GEGEN AND
JULIE S. GEGEN, HUSBAND AND
WIFE, AS JOINT TENANTS,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST; JOHN DOES I through V; and
ROE ENTITIES I through V, inclusive,

Defendants.

A-17-765372-C

Case No.:

Dept. No.: Department 28

COMPLAINT

Plaintiffs, September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992 ("Sandoval Trust"), Dennis A. Gegen and Julie S. Gegen, Husband and Wife as Joint Tenants

CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 & FAX: (702) 255-0871

1 (hereafter “Gegen”) (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may
2 be collectively referred to as “Plaintiffs”), by and through their attorneys, Christensen James &
3 Martin, hereby complain against Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle
4 Trust (collectively the “Lyttles” or “Defendants”), JOHN DOES I through V; and ROE
5 ENTITIES I through V, as follows:

6 PARTIES, JURISDICTION & VENUE

7 1. The September Trust is the owner of the residential property in Clark County,
8 Nevada known as 1861 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
9 03-313-004 (“September Property”).

10 2. The Zobrist Trust is the owner of the residential property in Clark County,
11 Nevada known as 1901 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
12 03-313-005 (“Zobrist Property”).

13 3. The Sandoval Trust is the owner of the residential property in Clark County,
14 Nevada known as 1860 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
15 03-313-001 (“Sandoval Property”).

16 4. Gegen is the owner of the residential property in Clark County, Nevada known as
17 1831 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-03-313-003
18 (“Gegen Property”) (hereafter September Property, Zobrist Property, Sandoval Property and
19 Gegen Property may be collectively referred to as Plaintiffs’ Properties).

20 5. Upon information and belief, Trudi Lee Lytle and John Allen Lytle are residents
21 of Clark County, and are co-trustees of the Lytle Trust.

22 6. Venue for this proceeding is proper before the above-entitled Court as the events
23 relating to this matter occurred in Clark County, Nevada and the property that is the subject of
24 this litigation is in Clark County, Nevada.

25 7. The true names and capacities, whether partnership, individual, corporate,
26 company, associate or otherwise, of Defendants John Does I through V and Roe Entities I
27 through V, inclusive, are presently unknown to Plaintiffs, who therefore sue said Defendants by
28

1 such fictitious names. Such Defendants may be responsible for or liable to Plaintiffs by virtue of
2 the actions hereinafter described. Plaintiffs reserve the right to amend the Complaint to insert any
3 additional charging allegations, together with the true identities and capacities, when the same
4 have been ascertained.

5 8. Wherever appearing in this Complaint, each and every reference to Defendants or
6 to any of them is intended to be and shall be a reference to all Defendants hereto, and to each of
7 them, named and unnamed, including all fictitiously named Defendants, unless said reference is
8 otherwise specifically qualified.

9 9. At all times material herein, Defendants, and each of them, were an owner, a co-
10 owner, an agent, officer, manager, employee, representative, partner and/or alter ego of its co-
11 defendants, or otherwise acting on behalf of each and every remaining Defendant and, in doing
12 the things herein alleged, were acting within the course and scope of their authorities as an
13 owner, a co-owner, an agent, officer, manager, employee, representative, partner and/or alter ego
14 of its co-defendants, with the full knowledge, permission and consent of each and every
15 remaining defendant, each co-defendant having ratified the acts of the other co-defendants.

16 10. At all times material herein and to the best of Plaintiffs' knowledge, the Lytles,
17 and John Does and Roe Entities have been operating as alter egos and conduits of each other and
18 to serve the purpose of each other, and not as individual entities or persons, so as to permit the
19 individual Defendants to escape liability, whose business operations have been operated under
20 common labor, ownership, control and an interrelationship of operations, such that they
21 constitute a single business in fact. The Court should disregard the corporate or business shell to
22 the extent necessary to afford complete relief.

23 11. Plaintiffs have been required to retain the services of Christensen James & Martin
24 to prosecute this action and are entitled to receive their reasonable attorney's fees and costs.

25 12. Jurisdiction and venue may also be based upon facts alleged elsewhere in this
26 Complaint.

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GENERAL ALLEGATIONS

13. Plaintiffs herein restate and re-allege Paragraphs 1 through 12 of this Complaint as if fully set forth herein and incorporate the same by reference.

14. The Plaintiffs' Properties are located in the Rosemere Estates subdivision ("Subdivision") wherein there are nine (9) lots and/or properties.

15. The Subdivision properties are subject to the CC&R's recorded January 4, 1994 (the "CC&Rs").

16. The CC&Rs provide in paragraph 21 that a property owners committee shall be established by all owners of lots within the subdivision to determine the landscaping on the four exterior wall planters and the entrance way planters, to determine the method and cost of watering the planters, to maintain the exterior perimeter wall, to maintain the Entrance Gate and to maintain and repair the interior street.

17. The CC&Rs provide in paragraph 24 that in order to enforce the CC&Rs any appropriate judicial proceeding in law or in equity could be used by any lot owner suing directly any other lot owner or owners for any violation of the CC&Rs.

18. A non-profit corporation, the Rosemere Estates Property Owners Association ("Rosemere Association"), was formed in 1997 in order to open a bank account to handle the property owners committee's funds for the landscaping described in paragraph sixteen (16). The corporate charter of the Rosemere Association was revoked by the Nevada Secretary of State's office in 2015.

Rosemere Litigation I

19. In 2009, the Lytles filed suit against the Rosemere Association directly in Case No. A-09-593497-C ("Rosemere Litigation I"). The Lytles did not name the Plaintiffs or any other lot owners as Defendants in Rosemere Litigation I.

20. On or about July 29, 2016, the Lytles obtained a Judgment against the Rosemere Association in the amount of \$361,238.59 ("Rosemere Judgment I").

1
2 21. Thereafter, in August and September of 2016, the Lytles recorded with the Clark
3 County Recorder's office two different abstracts of the Rosemere Judgment I. The first Abstract
4 (filed in August) specifically listed the parcel numbers of the Plaintiffs' Properties as properties
5 to which the Rosemere Judgment I was to attach but pursuant to the records of the Clark County
6 Recorder's Office only attached to one (1) of the Plaintiffs' Properties-the Sandoval Property.
7 However, the first recorded Abstract appears on a Title Report for the Zobrist Property. The
8 second Abstract (filed in September) only listed one parcel number but attached to three (3) of
9 the Plaintiffs' Properties (hereafter the 2 Abstracts are "Abstracts of Judgment"). Therefore,
10 both the Abstracts of Judgment affect and are an unlawful encumbrance on all of Plaintiffs'
11 Properties.
12

13 22. When the Lytles recorded the Abstracts of Judgment, the Lytles specifically
14 included the parcel numbers of the Plaintiffs' Properties even though Plaintiffs were not parties
15 to the Rosemere Litigation from which the Rosemere Judgment I arose.
16

17 23. The Plaintiffs have no legal duty to pay the Rosemere Judgment I and have
18 advised the Lytles of this fact and have requested that the Lytles remove the Abstracts of
19 Judgment from their Properties.

20 24. The Lytles knew or should have known that the Plaintiffs did not have a legal
21 duty to pay the Rosemere Judgment I.

22 25. The Abstracts of Judgment were wrongfully recorded against the Plaintiffs'
23 Properties and the Lytles knew or should have known the Abstracts of Judgment were
24 wrongfully recorded.

25 26. Other property owners in the Rosemere Subdivision, the Bouldens (Parcel No.
26 163-03-313-008) and the Lamothes (Parcel No. 163-03-313-002) have already filed a lawsuit
27 (Case No. A-16-747900-C) regarding this same issue ("BL Lawsuit"), because the Rosemere
28

1 Judgment I was recorded against all the properties in the Subdivision except for the Lytle's
2 property.

3 27. On July 25, 2017, the Court issued its Order in the BL Lawsuit Granting Motion
4 to Alter or Amend Findings of Fact and Conclusions of Law ("Order").

5 28. In its Order, the Court found that, among other things, the Association is not
6 subject to NRS 116.3117, the Bouldens and Lamothes were not parties to the Rosemere
7 Litigation, the Rosemere Judgment I is not an obligation or debt of the Bouldens or the Lamothes
8 and that the Abstracts of Judgment were improperly recorded against such properties and must
9 be expunged and stricken from the record.

10 29. After the Court issued its Order, the Lytles released their liens against the
11 Boulden and Lamothes properties but have not released their liens against the Plaintiffs'
12 Properties.

13 30. Although the Plaintiffs and Lytles have participated in settlement discussions and
14 the Plaintiffs have requested the same relief granted to the Bouldens and Lamothes, as of the date
15 of filing this Complaint, the Lytles have not agreed to release the Abstracts of Judgment
16 wrongfully recorded against the Plaintiffs' Properties.

17 **Rosemere Litigation II**

18 31. In 2010, the Lytles filed another suit against the Rosemere Association directly in
19 Case No. A-10-631355-C ("Rosemere Litigation II"). The Lytles did not name the Plaintiffs or
20 any other lot owners as Defendants in the Rosemere Litigation II.

21 32. On or about November 14, 2016, the Lytles were granted Summary Judgment
22 against the Rosemere Association.

23 33. On or about July 20, 2017, the District Court signed an Abstract of Judgment in
24 the amount of \$1,103,158.12. ("Rosemere Judgment II").

25 34. The Plaintiffs were not named parties in the Rosemere II Litigation and did not
26 have notice of the same.

1 35. As of the date of filing this Complaint, the Rosemere Judgment II has not been
2 recorded against the Plaintiffs' Properties.

3 **Rosemere Litigation III**

4 36. On or about April 2, 2015, the Lytles filed a third case (Case No. A-15-716420-
5 C) against the Association and named as Defendants Sherman L. Kearl ("Kearl") and Gerry G.
6 Zobrist ("Zobrist") ("Rosemere Litigation III"). On April 8, 2015, the Lytles filed an Errata to
7 the Complaint amending it so that all references to Kearl and Zobrist were taken out of the
8 Complaint.

9 37. On or about September 13, 2017, the Court entered its Order granting Summary
10 Judgment for Declaratory Relief as against the Association ("Rosemere Judgment III). On
11 November 8, 2017, the Court granted a Motion for Attorney's Fees and Costs in this case.

12 38. As of the date of filing this Complaint, the Rosemere Judgment III has not been
13 recorded against the Plaintiffs' Properties.

14 39. It has been necessary for Plaintiffs to obtain legal counsel to pursue their rights
15 and protect their interests as they relate to the allegations asserted in this Complaint.

16 **FIRST CAUSE OF ACTION**

17 [Quiet Title]

18 40. Plaintiffs herein restate and re-allege Paragraphs 1 through 39 of this Complaint
19 as if fully set forth herein and incorporate the same by reference.

20 41. The Lytles, by their claims and actions, have asserted certain rights to lien the
21 Plaintiffs' Properties.

22 42. The Lytles are without any legal basis whatsoever to lien the Plaintiffs'
23 Properties.

24 43. The Lytles are without any legal basis whatsoever to claim any interest in the
25 Plaintiffs' Properties, including any rights to lien or sell the same.

26 44. As a proximate result of the Lytles' actions, the titles to the Plaintiffs' Properties
27 have been improperly and illegally clouded.

1 45. Plaintiffs are entitled to an Order from this Court pursuant to NRS 40.010
2 quieting title in their names and expunging the Abstracts of Judgment.

3 46. Plaintiffs herein have been required to retain the services of Christensen James &
4 Martin to prosecute this action, and are entitled to an award of attorney's fees and costs.

5 SECOND CAUSE OF ACTION

6 [Declaratory Relief]

7 47. Plaintiffs herein restate and re-allege Paragraphs 1 through 46 of this Complaint
8 as if fully set forth herein and incorporate the same by reference.

9 48. A dispute and actual controversy exists between the parties relative to their
10 interpretation of the rights and duties of the Plaintiffs regarding the Rosemere Judgments, the
11 recorded Abstracts of Judgment, and the Plaintiffs' Properties.

12 49. The Plaintiffs are entitled to a declaration from the Court, to the effect that the
13 Rosemere Judgments against the Rosemere Estates Home Owners Association are not judgments
14 against the Plaintiffs, separately or individually, and that the Rosemere Judgments and the
15 Abstracts of Judgment were improperly and unlawfully recorded against the Plaintiffs'
16 Properties.

17 50. Plaintiffs do not owe any money whatsoever to the Lytles.

18 51. Plaintiffs do not have an adequate remedy at law because they cannot sell their
19 Properties with the Abstracts of Judgment recorded against their Properties.

20 52. Plaintiffs will suffer irreparable harm if they are not able to sell their Properties
21 due to the recording of the Abstracts of Judgment.

22 53. Further, if the Lytles were to record the Rosemere Judgment II or the Rosemere
23 Judgment III like they have the Rosemere Judgment I, the Plaintiffs will not have an adequate
24 remedy at law because they could not sell their Properties.

25 54. The Lytles have threatened to record the Rosemere Judgment II against other
26 homeowners in the Rosemere Subdivision

27 55. Plaintiffs are likely to prevail on their claims against the Lytles.

28

1 56. The Plaintiffs are entitled to a declaration from the Court, to the effect that the
2 Rosemere Judgment II and Rosemere Judgment III against the Rosemere Estates Home Owners
3 Association is not a judgment against the Plaintiffs, separately or individually, and that the
4 Rosemere Judgment II and Rosemere Judgment III cannot be recorded against the Plaintiffs'
5 Properties.

6 57. Plaintiffs are entitled to an Order from this Court expunging the liens in the form
7 of the recorded Abstracts of Judgment and declaring that the Rosemere Judgment II and the
8 Rosemere Judgment III may not be recorded against the Plaintiffs' Properties.

9 58. Plaintiffs have been required to retain the services of Christensen James & Martin
10 to prosecute this action, and are entitled to an award of attorney's fees and costs.

11 PRAYER FOR RELIEF

12 WHEREFORE, the Plaintiffs pray for Judgment against Defendants as follows:

13 1. For an order restraining the Lytles, and each of them, their, agents, servants,
14 employees, attorneys, successors and assign, from foreclosing upon or selling the Plaintiffs'
15 Properties and from doing, causing, or permitting to be done, directly or indirectly, any acts
16 whereby the rights of the Plaintiffs in said property is in any matter impaired, violated or
17 interfered with and that the Abstracts of Judgment should be stricken from the records of the
18 Clark County Recorder's Office;

19 2. For an Order quieting title of the Properties in favor of the Plaintiffs and against
20 the Lytles;

21 3. For a declaration that the Lytles, and each of them, have no right, title or interest
22 in the Plaintiffs' Properties, and a judgment and order quieting the Plaintiffs' title, canceling and
23 expunging the Abstracts of Judgment;

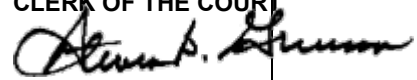
24 4. For Plaintiffs' attorney's fees and costs incurred in this action, and

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EXHIBIT J TO
DOCKETING
STATEMENT



NEOJ
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVIII

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS
AND DENYING COUNTERMOTION
FOR SUMMARY JUDGMENT**

Date: May 2, 2018
Time: 9:00 a.m.

AND ALL RELATED COUNTERCLAIMS
AND CROSS-CLAIMS

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST AND JOLIN G.
ZOBRIST, AS TRUSTEES OF THE GERRY
R. ZOBRIST AND JOLIN G. ZOBRIST
FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND

Case No.: A-17-765372-C
Dept. No.: XXVIII

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5
6 Plaintiffs,

7 vs.

8 TRUDI LEE LYTLE AND JOHN ALLEN
9 LYTLE, AS TRUSTEES OF THE LYTLE
10 TRUST; JOHN DOES I through V; and ROE
11 ENTITIES I through V, inclusive,

12 Defendants.

13
14 PLEASE TAKE NOTICE that an **ORDER GRANTING MOTION FOR**
15 **SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR**
16 **JUDGMENT ON THE PLEADINGS AND DENYING COUNTERMOTION FOR**
17 **SUMMARY JUDGMENT** was filed with the Court on May 24, 2018, a true and correct
18 copy of which is attached hereto.

19 Dated this 25th day of May, 2018.

20 **CHRISTENSEN JAMES & MARTIN**

21 By: /s/ Wesley J Smith, Esq.

22 Wesley J. Smith, Esq.

23 Nevada Bar No. 11871

24 Laura J. Wolff, Esq.

25 Nevada Bar No. 6869

26 7440 W. Sahara Ave.

27 Las Vegas, NV 89117

28 Attorneys for Plaintiffs September Trust,

Zobrist Trust, Sandoval Trust, and

Dennis & Julie Gegen

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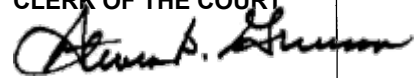
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ORDR
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVIII

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS
AND DENYING COUNTERMOTION
FOR SUMMARY JUDGMENT**

Date: May 2, 2018
Time: 9:00 a.m.

AND ALL RELATED COUNTERCLAIMS
AND CROSS-CLAIMS

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST AND JOLIN G.
ZOBRIST, AS TRUSTEES OF THE GERRY
R. ZOBRIST AND JOLIN G. ZOBRIST
FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND

Case No.: A-17-765372-C
Dept. No.: XXVIII

CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 & FAX: (702) 255-0871

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Summary Judgment or, in the
13 Alternative, Motion for Judgment on the Pleadings filed by the September Trust, dated March
14 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R.
15 Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
16 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
17 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S.
18 Gegen, Husband and Wife, as Joint Tenants ("Dennis & Julie Gegen") (collectively the
19 "Plaintiffs") in Case No. A-17-765372-C, and Defendants' Countermotion for Summary
20 Judgment filed by Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust ("Lytle
21 Trust") in Case No. A-17-765372-C, which came on for hearing on March 21, 2018 at 9:00 a.m.
22 and May 2, 2018 at 9:00 a.m. in Department XVIII of the Eighth Judicial District Court, Clark
23 County, Nevada.

24 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of the Plaintiffs
25 September Trust, Zobrist Trust, Sandoval Trust, and Dennis & Julie Gegen. Richard Haskin,
26 Esq. of Gibbs Giden Locher Turner Senet & Wittbrodt LLP appeared on behalf of the Lytle
27 Trust. Daniel T. Foley, Esq. of Foley & Oakes, PC appeared on behalf of Marjorie B. Boulden,
28 Trustee of the Marjorie B. Boulden Trust, amended and restated dated July 17, 1996 ("Boulden

1 Trust”) and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda Lamothe
2 Living Trust (“Lamothe Trust”). Christina H. Wang, Esq. of Fidelity Law Group appeared on
3 behalf of Robert Z. Disman and Yvonne A. Disman (“Robert & Yvonne Disman”).

4 The Court having considered the Motions and exhibits, having heard the arguments of
5 counsel, for all the reasons contained in the Plaintiffs’ Motion for Summary Judgment or, in the
6 Alternative, Motion for Judgment on the Pleadings, and with good cause appearing therefore, the
7 Court hereby enters the following Order:

8
9 **FINDINGS OF FACT**

10 1. The September Trust is the owner of the residential property in Clark County,
11 Nevada known as 1861 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
12 03-313-004 (“September Property”).

13 2. The Zobrist Trust is the owner of the residential property in Clark County,
14 Nevada known as 1901 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
15 03-313-005 (“Zobrist Property”).

16 3. The Sandoval Trust is the owner of the residential property in Clark County,
17 Nevada known as 1860 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
18 03-313-001 (“Sandoval Property”).

19 4. Dennis & Julie Gegen are the owner of the residential property in Clark County,
20 Nevada known as 1831 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
21 03-313-003 (“Gegen Property”) (hereafter September Property, Zobrist Property, Sandoval
22 Property and Gegen Property may be collectively referred to as “Plaintiffs’ Properties”).
23

24 5. The Plaintiffs’ Properties are located in the Rosemere Estates subdivision
25 (“Rosemere Subdivision” or “Subdivision”) and are subject to the CC&R’s recorded January 4,
26 1994 (the “CC&Rs”).
27
28

1 6. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust
2 (collectively "Lytle Trust") which owns that certain residential property known as parcel number
3 163-03-313-009 (the "Lytle Property"), also located in the Rosemere Subdivision.

4 7. In 2009, the Lytles filed suit against the Rosemere Association directly in the
5 Eighth Judicial District Court, Case No. A-09-593497-C ("Rosemere Litigation I").

6 8. None of the Plaintiffs were ever parties in the Rosemere Litigation I.

7 9. None of the Plaintiffs were a "losing party" in the Rosemere Litigation I as that
8 term is found in Section 25 of the Original CC&Rs.
9

10 10. The Lytles obtained a Summary Judgment for Declaratory Relief from the District
11 Court in the Rosemere Litigation I, which found and ruled as follows:

12 a. The Association is a limited purpose association under NRS 116.1201, is not a
13 Chapter 116 "unit-owners' association," and is relegated to only those specific
14 duties and powers set forth in Paragraph 21 of the Original CC&Rs and NRS
116.1201.

15 b. The Association did not have any powers beyond those of the "property owners
16 committee" designation in the Original CC&Rs - simply to care for the
17 landscaping and other common elements of Rosemere Estates as set forth in
Paragraph 21 of the Original CC&Rs.

18 c. Consistent with the absence of a governing body, the Developer provided each
19 homeowner the right to independently enforce the Original CC&Rs against one
another.

20 d. The Amended and Restated CC&Rs recorded with the Clark County Recorder's
21 Office as Instrument No. 20070703-0001934 (the "Amended CC&Rs") are
22 invalid, and the Amended CC&Rs have no force and effect.

23 11. Pursuant to NRS 116.1201(2) much of NRS Chapter 116 does not apply to the
24 Association because it is a limited purpose association that is not a rural agricultural residential
25 community.

26 12. After obtaining Summary Judgment in the Rosemere Litigation I, the Lytle Trust
27 filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a prove-up
28

1 hearing on damages. After hearing all matters, a Final Judgment was entered in the Lytle Trust's
2 favor against the Association for \$361,238.59, which includes damages, attorneys' fees and costs
3 (the "Final Judgment").

4 13. After obtaining the Attorneys' Fees Judgment, the Lytle Trust, on August 16,
5 2016, recorded with the Clark County Recorder's office an Abstract of Judgment referencing the
6 Final Judgment against the Association, recorded as Instrument No. 20160818-0001198 (the
7 "First Abstract of Judgment").
8

9 14. In the First Abstract of Judgment, the Lytle Trust listed the parcel numbers for all
10 of the Plaintiffs' Properties as properties to which the First Abstract of Judgment and Final
11 Judgment was to attach.

12 15. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
13 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
14 as Instrument No. 20160902-0002685 (the "Second Abstract of Judgment"). The Second
15 Abstract of Judgment listed the parcel number of the Gegen Property only as the property to
16 which the Judgment was to attach.
17

18 16. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
19 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
20 as Instrument No. 20160902-0002686 (the "Third Abstract of Judgment"). The Third Abstract of
21 Judgment listed the parcel number of the September Trust Property only as the property to which
22 the Judgment was to attach.
23

24 17. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
25 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
26 as Instrument No. 20160902-0002687 (the "Fourth Abstract of Judgment"). The Fourth Abstract
27
28

1 of Judgment listed the parcel number of the Zobrist Trust Property only as the property to which
2 the Judgment was to attach.

3 18. In 2010, the Lytle Trust filed another suit against the Rosemere Association
4 directly in Case No. A-10-631355-C ("Rosemere Litigation II"). The Lytle Trust did not name
5 the Plaintiffs as Defendants in the Rosemere Litigation II.

6 19. On or about November 14, 2016, the Lytle Trust was granted Summary Judgment
7 against the Rosemere Association.

8 20. On or about July 20, 2017, the District Court signed an Abstract of Judgment in
9 the amount of \$1,103,158.12. ("Rosemere Judgment II").
10

11 21. The Plaintiffs were not named parties in the Rosemere II Litigation.

12 22. On or about April 2, 2015, the Lytle Trust filed a third case (Case No. A-15-
13 716420-C) against the Association and named as Defendants Sherman L. Kearl ("Kearl") and
14 Gerry G. Zobrist ("Zobrist") ("Rosemere Litigation III"). On April 8, 2015, the Lytles filed an
15 Errata to the Complaint amending it so that all references to Kearl and Zobrist were taken out of
16 the Complaint.
17

18 23. On or about September 13, 2017, the Court in the entered its Order granting
19 Summary Judgment for Declaratory Relief as against the Association ("Rosemere Judgment III").
20 On November 8, 2017, the Rosemere Litigation III Court granted a Motion for Attorney's Fees
21 and Costs.

22 24. On February 24, 2017, the Boulden Trust, owner of Parcel No. 163-03-313-008 in
23 the Rosemere Subdivision, and the Lamothe Trust, owner of Parcel No. 163-03-313-002 in the
24 Rosemere Subdivision, filed a Motion for Partial Summary Judgment in this Court in this Case,
25 Case No. A-16-747900-C.
26
27
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1 25. This Court granted the Boulden Trust's and Lamothe Trust's Motion for Partial
2 Summary Judgment, and on July 25, 2017, entered its Order Granting Motion to Alter or Amend
3 Findings of Fact and Conclusions of Law ("Order").

4 26. In its Order, the Court found that, among other things, the Association is not
5 subject to NRS 116.3117, the Boulden Trust and Lamothe Trust were not parties to the
6 Rosemere Litigation, the Rosemere Judgment I (referred to as the "Rosemere LP Litigation" in
7 the Order) is not an obligation or debt of the Boulden Trust or the Lamothe Trust and that the
8 Abstracts of Judgment were improperly recorded against their properties and must be expunged
9 and stricken from the record.
10

11 27. After the Court issued its Order, the Lytles released their liens against the
12 Boulden Trust and Lamothe Trust properties.

13 28. On February 21, 2018, Case No. A-17-765372-C was consolidated with Case No.
14 A-16-747900-C.
15

16 CONCLUSIONS OF LAW

17 1. The Court's prior Order with respect to Boulden Trust's and Lamothe Trust's
18 Motion for Partial Summary Judgment, Case No. A-16-747900-C, is the law of the case, to the
19 extent applicable to Plaintiffs' claims.

20 2. The Association is a "limited purpose association" as referenced in NRS
21 116.1201(2).

22 3. As a limited purpose association, NRS 116.3117 is not applicable to the
23 Association.
24

25 4. As a result of the Rosemere Litigation I, the Amended CC&Rs were judicially
26 declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and
27 have no force and effect and were declared *void ab initio*.
28

1 5. The Plaintiffs were not parties to the Rosemere Litigation I, Rosemere Litigation
2 II or Rosemere Litigation III.

3 6. The Plaintiffs were not “losing parties” in the Rosemere Litigation I, Rosemere
4 Litigation II or Rosemere Litigation III as per Section 25 of the Original CC&Rs.

5 7. Rosemere Judgments I, II and III in favor of the Lytle Trust, are not against, and
6 are not an obligation of the Plaintiffs to the Lytle Trust.

7 8. Rosemere Judgments I, II and III are against the Association and are not an
8 obligation or debt owed by the Plaintiffs to the Lytle Trust.

9 9. The First Abstract of Judgment recorded as Instrument No. 20160818-0001198
10 was improperly recorded against the Plaintiffs’ Properties and constitutes a cloud against each of
11 the Plaintiffs’ Properties.

12 10. The Second Abstract of Judgment recorded as Instrument No. 20160902-0002685
13 was improperly recorded against the Gegen Property and constitutes a cloud against the Gegen
14 Property.
15

16 11. The Third Abstract of Judgment recorded as Instrument No. 20160902-0002686
17 was improperly recorded against the September Trust Property and constitutes a cloud against
18 the September Trust Property.
19

20 12. The Fourth Abstract of Judgment recorded as Instrument No. 20160902-0002687
21 was improperly recorded against the Zobrist Trust Property and constitutes a cloud against the
22 Zobrist Trust Property.
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ORDER

Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing therefore,

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Plaintiffs' Motion for Summary Judgment is GRANTED.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust's Countermotion for Summary Judgment is DENIED.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the September Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Zobrist Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Sandoval Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Gegen Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the First Abstract of Judgment recorded as Instrument No. 20160818-0001198 in the Clark County Recorder's Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Second Abstract of Judgment recorded as Instrument No. 20160902-0002685 in the Clark County Recorder's Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
2 Third Abstract of Judgment recorded as Instrument No. 20160902-0002686 in the Clark County
3 Recorder's Office is hereby expunged and stricken from the records of the Clark County
4 Recorder's Office.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
6 Fourth Abstract of Judgment recorded as Instrument No. 20160902-0002687 in the Clark County
7 Recorder's Office is hereby expunged and stricken from the records of the Clark County
8 Recorder's Office.

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
10 Lytle Trust is permanently enjoined from recording and enforcing the Judgments obtained from
11 the Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other
12 judgments obtained against the Association, against the September Property, Zobrist Property,
13 Sandoval Property or Gegen Property.

14 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
15 Lytle Trust is permanently enjoined from taking any action in the future directly against the
16 Plaintiffs or their properties based upon the Rosemere Litigation I, Rosemere Litigation II or
17 Rosemere Litigation III.

18 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
19 Lytle Trust is hereby ordered to release the First Abstract of Judgment, the Second Abstract of
20 Judgment, the Third Abstract of Judgment and the Fourth Abstract of Judgment recorded with
21 the Clark County Recorder within ten (10) days after the date of Notice of Entry of this Order.

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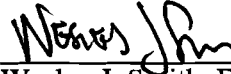
IT IS SO ORDERED.

Dated this ____ day of May, 2018.

DISTRICT COURT JUDGE

Submitted by:

CHRISTENSEN JAMES & MARTIN



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IT IS SO ORDERED.

Dated this ____ day of May, 2018.

DISTRICT COURT JUDGE

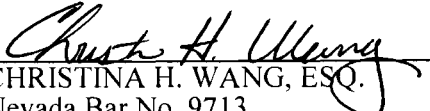
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and Lamothe Trust

1 **IT IS SO ORDERED.**

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3 Dated this 22 day of May, 2018.

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6 _____
DISTRICT COURT JUDGE

7 Submitted by:

L. R.

8 **CHRISTENSEN JAMES & MARTIN**

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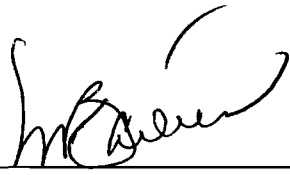
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and Lamothe Trust

1 **IT IS SO ORDERED.**

2
3 Dated this 28 day of May, 2018.

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7 _____
8 DISTRICT COURT JUDGE

9 Submitted by:

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39 Defendants/Cross-Defendants Boulden Trust
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