

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

BETTY CHAN, et al.,
Plaintiffs-Appellants,
vs.

WAYNE WU, et al.,
Defendants-Respondents.

No. 82208
Electronically Filed
Jan 10 2021 12:17 p.m.
DOCKETING Elizabeth N. Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department 20
County Clark Judge Hon. Eric Johnson
District Ct. Case No. A-16-744109-C

2. Attorney filing this docketing statement:

Attorney R. Duane Frizell, Esq. Telephone 702-657-6000
Firm Frizell Law Firm
Address 400 N. Stephanie St., Suite 265
Henderson, NV 89014

Client(s) Betty Chan and Asian American Realty & Property Management

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 Michael A. Olsen, Esq. Telephone 702-855-5658
Firm Blackrock Legal, LLC
Address 10155 W. Twain Ave., Suite 100
Las Vegas, NV 89147

Client(s) Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(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 checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

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

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

Betty Chan, et al. v. Wayne Wu, et al., Case No. 78666 (dismissed for jurisdictional defect).

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:
None, other than District Court Case No. A-16-744109-C identified above.

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

Plaintiffs-Appellants filed this action stating claims arising from real estate commissions they were wrongly denied. Upon Plaintiffs' motion, the District Court compelled arbitration and stayed the case. Arbitration was held before the Greater Las Vegas Real Estate Association (GLVAR). The arbitration panel found in favor of both Plaintiffs and Defendants; they divided the commissions between them, with Plaintiff taking the lesser share (approximately 25%) and one of the Defendants taking the greater share (approximately 75%).

After arbitration, the stay was lifted, and the case proceeded in District Court. Plaintiffs moved to vacate the arbitration award. Defendants opposed and filed a counter motion to affirm the award and grant them attorney fees and court costs. The District Court denied Plaintiffs' motion and granted Defendants' counter motion. Plaintiffs took the prior appeal.

Subsequently, after the prior appeal was dismissed, the District Court considered dueling MSJs on Defendants' counterclaim for abuse of process. The Court ruled in favor of Plaintiffs but awarded Defendants additional attorney fees and court costs.

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

1. Whether Nevada law allowed for more than one buyer's agent to be the procuring cause of a property sale and thereby required a commission split with a subsequent buyer's agent.
2. Whether the arbitration award was arbitrary and capricious, unsupported by applicable agreements, and/or based on a manifest disregard for the law.
3. Whether the District Court erred by affirming the arbitration award on the basis of insufficient and/or flawed findings of fact and conclusions of law.
4. Whether the arbitration panel exceeded its authority in making its award.
5. Whether the District Court erred by awarding Defendants attorney fees on the basis of insufficient and/or flawed findings of fact and conclusions of law.

(Plaintiffs reserve the right to amend these issues in their opening brief.)

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

None known.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain: Issue No. 1: Whether Nevada law allowed for more than one buyer's agent to be the procuring cause of a property sale and thereby required a commission split with a subsequent buyer's agent.

This appears to be a matter of first impression, which would impact upon real estate agents throughout the state.

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:

Issue No. 1: Whether Nevada law allowed for more than one buyer's agent to be the procuring cause of a property sale and thereby required a commission split with a subsequent buyer's agent.

This appears to be a "[m]atter[] raising as a principal issue a question of first impression involving the . . . Nevada . . . common law," which is presumptively retained by the Supreme Court. NRAP 17(a)(11).

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

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?

None perceived at this time.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Nov 23, 2020

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

N/A

17. Date written notice of entry of judgment or order was served Nov 23, 2020

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 N/A

☐ 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 N/A

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Dec 8, 2020

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:

Plaintiffs-Appellants - Notice of Appeal filed 12/8/2020

Defendants-Respondents - Notice of Cross-Appeal filed 12/22/2020

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

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☒ Other (specify) NRCP 54(b); NRS 38.247(1)(f); NRS 38.247(2).

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

Here, with the District Court's 11/23/2020 order on the dueling MSJs, all claims between and among the parties to this appeal were finally resolved, and in that order, the Court expressly found that there was no just reason for delay. See NRS 38.247(1)(f) ("An appeal may be taken from: ... A final judgment entered pursuant to [the Nevada Uniform Arbitration Act of 2000]...."); NRS 38.247(2) ("An appeal under this section must be taken as from an order or a judgment in a civil action."); NRAP 3A(b)(1) ("An appeal may be taken from ... A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered."); NRCP 54(b) ("[W]hen multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, ... parties only if the court expressly determines that there is no just reason for delay.").

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

(a) Parties:

Plaintiffs-Appellants Betty Chan and American Realty & Property Management

Defendants-Respondents Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.,
Jerrin Chiu, and KB Home Sales-Nevada Inc.

(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:

KB Home Sales-Nevada Inc. is not a party to this appeal because, in its order on the dueling MSJs, the Court expressly found that there was no just reason for delay with respect to the parties to this appeal and entered that order as a final order between and among the parties to this appeal. NRCP 54(b).

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' claims (declaratory relief and/or unjust enrichment) against Wu, Sullivan, Chiu, and Nevada Real Estate Corp. [DISP. 9/18/2018 and 3/22/2019]

Defendants' counterclaims (abuse of process and declaratory relief) against Plaintiffs [DISP. 9/18/2018, 3/22/2019, and 11/23/2020]

Plaintiffs' claim (breach of contract) against KB Homes [NO DISP.]

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

☐ Yes

☒ No

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

(a) Specify the claims remaining pending below:

Plaintiffs' claim (breach of contract) against KB Homes

(b) Specify the parties remaining below:

KB Homes

(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)):

N/A

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.

Betty Chan and Asian Am. Realty & Pr
Name of appellant

R. Duane Frizell, Esq.
Name of counsel of record

Jan 9, 2021
Date

/s/ R. Duane Frizell
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 9th day of January, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

MICHAEL A. OLSEN, ESQ.

Nevada State Bar No. 6076

THOMAS R. GROVER, ESQ.

Nevada State Bar No. 12387

KEITH D. ROUTSONG, ESQ.

Nevada State Bar No. 14944

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Attorneys for Defendants/Counterclaimants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu

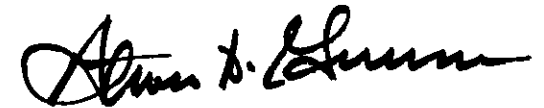
Dated this 9th day of January, 2021

/s/ R. Duane Frizell
Signature

Amended Complaint

Exempt from Arbitration: Requests Declaratory Relief

2016/11/15



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

BETTY CHAN and ASIAN AMERICAN
REALTY & PROPERTY MANAGEMENT,

Plaintiff,

vs.

WAYNE WU, JUDITH SULLIVAN, NEVADA
REAL ESTATE CORP., JERRIN CHIU, KB
HOME SALES – NEVADA INC., DOES I
through X, and ROES I through X,

Defendants.

Case No.: A-16-744109-C

Dept. No.: XII

AMENDED COMPLAINT
EXEMPT FROM ARBITRATION:
REQUESTS DECLARATORY RELIEF

COMPLAINT

Plaintiffs, Betty Chan and Asian American Realty and Property Management (“Plaintiffs”) by and through the law firm of Marquis Aurbach Coffing, hereby allege and complain against Defendants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin Chiu (“Defendants”) as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff Betty Chan is a resident of the State of Nevada is and was doing business as a licensed real estate broker for her company Asian American Realty & Property Management.

2. Defendant Wayne Wu is a resident of the State of Nevada, is and was doing business in the County of Clark as a real estate agent with Nevada Real Estate Corp.

3. Defendant Judith Sullivan is a resident of the state of Nevada and is the licensed real estate broker for Nevada Real Estate Corp.

7. The transactions which are the subject matter of the instant Complaint occurred in Clark County, Nevada, and therefore, jurisdiction and venue are appropriate with this Court.

15. On or about November 11, 2015, Defendant Chiu emailed Plaintiff Chan regarding his intention to purchase a house and listed out the criteria.

1 16. On or about November 28, 2015, Defendant Chiu emailed Plaintiff Chan
2 concerning the location of a particular house he wanted to see.

3 17. On or about November 29, 2015, Plaintiff Chan responded concerning the
4 viewing of the particular house.

5 18. On or about December 29, 2015, Plaintiff Chan prepared for the showing of
6 homes to the Chiu family by pulling listings around Boca Park area.

7 19. Five resale homes were targeted to fit Defendant Chiu's criteria and Plaintiff
8 Chan contacted the listing agents for the resales to set appointments.

9 20. Plaintiff Chan included the model homes in both a Toll Brothers development and
10 a KB Home development previously viewed by Plaintiff Chan.

11 21. Plaintiff Chan checked the status of the listings, printed the information and
12 arranged a route for the efficient showing of the properties.

13 22. On or about December 30, 2015, Plaintiff Chan picked up the Chiu family and
14 showed the resale homes, the Toll Brother models and the KB Homes models.

15 23. KB Homes offered to compensate brokers for bringing buyers to KB Home
16 Developments at Buyer's first visit.

17 24. At the front office of KB Homes, Plaintiff Chan spoke to Cheryl and picked up a
18 price sheet.

19 25. Plaintiff Chan then showed the model homes to the Chiu family and Defendant
20 Chiu liked the first and second model homes.

21 26. Back at the KB Homes model home office, Plaintiff Chan requested a floor plan
22 and explained the buying process for a new home including the standards, elevations, prices,
23 location of the site, etc. to the Chiu family.

24 27. Plaintiff Chan located a buyer registration card and Defendant Chiu filled in the
25 buyer portion and Plaintiff Chan filled in the realtor portion.

26 28. No KB Homes representative was to be found so Plaintiff Chan left the
27 registration card on the table in the KB Home front office to hurry to get the Chiu family to the
28 next appointment.

1 29. Plaintiff Chan emailed Dr. Kwang Chiu the four resale listings that were viewed.

2 30. On or about December 31, 2015, Dr. Kwang Chiu called Plaintiff Chan and asked
3 if she could “kick back 1% of the commission” like the other agent offered him.

4 31. On or about January 5, 2016, Plaintiff Chan followed up with Defendant Chiu
5 about the KB Home properties.

6 32. Defendant Chiu did not respond.

7 33. On or about January 15, 2016, Defendant Chiu admitted that he was using another
8 agent.

9 34. On or about January 22, 2016, Plaintiff Chan went to the KB Homes office and
10 learned that Defendant Chiu had indeed signed a contract on the property shown by Plaintiff
11 Chan with another agent on January 8, 2016.

12 35. On or about January 30, 2016, Plaintiff Chan went to the KB Homes office to
13 address the commission; both KB Homes representatives, Cheryl and Jana, stated that Defendant
14 Chiu told them Plaintiff Chan introduced him to KB Homes but that he determined to use
15 another agent.

16 36. On or about February 1, 2016, KB Homes Sales Manager, Lara McLaughlin,
17 contacted Plaintiff Chan on two occasions indicating she was looking into the commission
18 dispute.

19 37. Plaintiff Chan made efforts to resolve the dispute concerning her involvement in
20 the transaction and the entitlement to the commission to no avail.

21 38. On or about May 27, 2016, Defendant Chiu closed on the purchase of a home in
22 the KB Home community known as 477 Cabral Peak, Las Vegas, Nevada (“Property”).

23 39. Upon information and belief, before paying a commission to an agent for the sale
24 of a KB home, KB Homes requires that that agent sign a registration upon the first visit with the
25 buyer to the property.

26 40. Upon information and belief, Defendant Wayne Wu signed a registration card at
27 KB Homes knowing that Defendant Jerrin Chiu had first visited the Property with Plaintiff Chan.

28

54. Plaintiffs request a declaration from the court that Defendant KB Homes breached its obligation to pay the commission to Plaintiffs.

55. Plaintiffs request a declaration from the court that the commission be released from the title company to Plaintiffs and any shortfall be paid by Defendants.

56. As a result of Defendants' actions, Plaintiffs have been forced to retain the services of an attorney to prosecute the instant action and therefore is entitled to reasonable attorneys fees and costs.

SECOND CAUSE OF ACTION

(Breach of Contract)

57. Plaintiff Chan repeats, realleges, and incorporates each and every paragraph contained above as though fully set forth herein.

58. KB Homes offered to compensate brokers for selling KB Homes to their buyers upon their first visit.

59. Plaintiff Chan brought Defendant Chiu to the KB Homes community and showed the model homes to Defendant Chiu to decide which floor plan to purchase.

60. Plaintiff Chan and Defendant Chiu filled out a registration card providing their information to KB Homes.

61. Plaintiff Chan was the procuring cause of the sale of the Property to Defendant Chiu.

62. Defendant purchased the Property which is located in the same KB Homes community.

63. KB Homes failed to pay Plaintiffs the commission for the sale of the Property.

64. KB Homes breached its obligation to pay a commission to Plaintiffs.

65. As a result of KB Homes' action, Plaintiff Chan has been damaged in excess of \$10,000.

66. It has been necessary for Plaintiff Chan to retain the services of an attorney and to incur attorney's fees and costs to prosecute this action, and therefore, Plaintiff is entitled to reimbursement for those attorney's fees and costs incurred herein.

THIRD CAUSE OF ACTION**(Unjust Enrichment)**

67. Plaintiffs repeat, reallege, and incorporate each and every paragraph contained above as though fully set forth herein.

68. Plaintiff Chan was the procuring cause for the purchase of the Property by Defendant Chiu.

69. Defendant Wu interfered with the change of events set in motion by Plaintiff Chan by offering to kickback 1% of the commission to Defendant Chiu.

70. Defendant Chiu circumvented Plaintiff Chan's ability to complete the transaction when Defendant Chiu agreed to use Defendant Wu.

71. Upon information and belief, Defendant Wu and Defendant Chiu made misrepresentations to KB Homes concerning the initial showing of the Property.

72. Plaintiff Chan did not receive a commission despite being the procuring cause of the sale of the Property to Defendant Chiu.

73. Defendant Wu's receipt of any commission would be unjust.

74. Plaintiff Chan is entitled to the payment of the commission.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For damages in excess of \$10,000, plus interest.

2. For prejudgment and post judgment interest;

3. For a declaration that KB Homes breached the contract;

4. For a declaration that Plaintiffs are entitled to the commission on the sale of the

Property;

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1
2 5. For a declaration that Defendants Wu, Sullivan and Nevada Real Estate Corp. are
3 not entitled to the commission on the sale of the Property;

4 6. For attorney's fees and costs; and

5 7. For any and other such relief as the Court deems just and proper.

6 Dated this 15th day of November, 2016.

7
8 MARQUIS AURBACH COFFING

9
10 By 

Avece M. Higbee, Esq.
Nevada Bar No. 3739
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Plaintiff

Answer and Counterclaim

2016-12-06


CLERK OF THE COURT

1 **ANS**
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12 *Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.*
13 *and Jerrin Chiu*

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

BETTY CHAN and ASIAN AMERICAN)	Case No: A-16-744109-C
REALTY & PROPERTY MANAGEMENT,)	
)	Dept. No: XII
Plaintiff,)	
v.)	
)	
WAYNE WU, JUDITH SULLIVAN,)	ANSWER AND COUNTERCLAIM
NEVADA REAL ESTATE CORP., JERRIN)	
CHIU, KB HOME SALES – NEVADA INC.,)	
DOES I through X, and ROES I through X,)	
)	
Defendants.)	

16 COMES NOW, Defendants, WAYNE WU (hereinafter “Mr. Wu” or “Wu”), JUDITH
17 SULLIVAN (hereafter “Ms. Sullivan” or “Sullivan”), NEVADA REAL ESTATE CORP.
18 (hereafter “NREC”) and JERRIN CHIU (hereafter “Mr. Chiu” or “Chiu”), by and through their
19 attorney, Michael A. Olsen, Esq. of the law firm Goodsell & Olsen, LLP, and, in answer to
20 Plaintiff’s Complaint on file herein, state as follows:

21 **JURISDICTION**

22 1. Answering paragraph 1 of the Complaint, answering Defendants are without
23 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
24 the allegations contained in said paragraph in their entirety.

25 2. Answering paragraph 2 of the Complaint, answering Defendants admit the same.

1 3. Answering paragraph 3 of the Complaint, answering Defendants admit the same.

2 4. Answering paragraph 4 of the Complaint, answering Defendants admit the same.

3 5. Answering paragraph 5 of the Complaint, answering Defendants are without
4 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
5 the allegations contained in said paragraph in their entirety.

6 6. Answering paragraph 6 of the Complaint, answering Defendants are without
7 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
8 the allegations contained in said paragraph in their entirety.

9 7. Answering paragraph 7 of the Complaint, answering Defendants are without
10 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
11 the allegations contained in said paragraph in their entirety.

12 **GENERAL ALLEGATIONS**

13 8. Answering paragraph 8 of the Complaint, answering Defendant Chiu admits using
14 Betty Chan (hereafter "Ms. Chan" or "Chan") as his real estate agent in 2013, Defendants Wu,
15 Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged
16 therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

17 9. Answering paragraph 9 of the Complaint, answering Defendants deny the same.

18 10. Answering paragraph 10 of the Complaint, answering Defendant Chiu admits that
19 Defendant Chan showed him some homes but he did not buy one at that time. Answering
20 Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth of the
21 matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph
22 in their entirety.

23 11. Answering paragraph 11 of the Complaint, answering Defendant Chiu admits that
24 Dr. Kwang Chiu contacted Plaintiff Chan on or about March 2015 to make an appointment for
25 him and his son, Defendant Jerrin Chiu to see homes in 2015 but they did not purchase a home.

1 Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth
2 of the matters alleged therein, and upon said grounds, deny the allegations contained in said
3 paragraph in their entirety.

4 12. Answering paragraph 12 of the Complaint, answering Defendant Chiu admits that
5 Dr. Kwang Chiu contacted Plaintiff Chan to make an appointment for him and his son,
6 Defendant Jerrin Chiu to see homes in December 2015. Answering Defendants Wu, Sullivan
7 and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and
8 upon said grounds, deny the allegations contained in said paragraph in their entirety.

9 13. Answering paragraph 13 of the Complaint, answering Defendant Chiu admits that
10 Chan agreed to show some homes to Defendant Chiu in December of 2015 but that over a
11 several day period of time Chan failed and refused to answer or respond to multiple telephone
12 calls seeking further assistance in pursuing the purchase of a home. As a result of Plaintiff
13 Chan's refusal to respond, Defendant Chiu was forced to seek the services of another realtor.
14 Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth
15 of the matters alleged therein, and upon said grounds, deny the allegations contained in said
16 paragraph in their entirety.

17 14. Answering paragraph 14 of the Complaint, answering Defendant Chiu admits
18 that Plaintiff Chan requested updated financial information at some time in 2015 for loan pre-
19 approval; answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to
20 the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in
21 said paragraph in their entirety.

22 15. Answering paragraph 15 of the Complaint, answering Defendant Chiu admits to
23 telling Plaintiff Chan the criteria for a new home. Answering Defendants Wu, Sullivan and
24 NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon
25 said grounds, deny the allegations contained in said paragraph in their entirety.

1 16. Answering paragraph 16 of the Complaint, answering Defendant Chiu admits to
2 informing Plaintiff Chan about a home (or homes) he was interested in looking at in a particular
3 area. Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the
4 truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said
5 paragraph in their entirety.

6 17. Answering paragraph 17 of the Complaint, answering Defendant Chiu admits that
7 Plaintiff Chan initially responded to his request for information regarding homes he had located
8 and wanted to see. Answering Defendants Wu, Sullivan and NREC are without sufficient
9 knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the
10 allegations contained in said paragraph in their entirety.

11 18. Answering paragraph 18 of the Complaint, answering Defendants are without
12 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
13 the allegations contained in said paragraph in their entirety.

14 19. Answering paragraph 19 of the Complaint, answering Defendants are without
15 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
16 the allegations contained in said paragraph in their entirety.

17 20. Answering paragraph 20 of the Complaint, answering Defendants admit that
18 Defendant Chiu viewed model homes in both a Toll Brothers development and a KB Home
19 development; however, answering Defendants are without sufficient knowledge as to the truth of
20 the matters otherwise alleged in paragraph 20 of the Complaint, and upon said grounds, deny the
21 allegations contained in said paragraph in their entirety.

22 21. Answering paragraph 21 of the Complaint, answering Defendants are without
23 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
24 the allegations contained in said paragraph in their entirety.

25 / / /

22. Answering paragraph 22 of the Complaint, answering Defendant Chiu admits to seeing homes with Plaintiff Chan on or about December 30, 2015. Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

23. Answering paragraph 23 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

24. Answering paragraph 24 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

25. Answering paragraph 25 of the Complaint, answering Defendant Chiu admits to touring the model homes and expressing interest in a couple of the layouts. Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

26. Answering paragraph 26 of the Complaint, answering Defendant Chiu denies the same. Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

27. Answering paragraph 27 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

28. Answering paragraph 28 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

29. Answering paragraph 29 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

30. Answering paragraph 30 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

31. Answering paragraph 31 of the Complaint, answering Defendant Chiu admits that after several days of being non-responsive to his calls, resulting in having to replace Ms. Chan with another realtor, Ms. Chan finally reached out to him. Defendant Chiu is uncertain of the date of the contact. Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

32. Answering paragraph 32 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

33. Answering paragraph 33 of the Complaint, answering Defendant Chiu admits to informing Ms. Chan that due to her non-responsiveness he had to retain another realtor. Defendant Chiu cannot recall the exact date of the communication. Answering Defendants Wu, Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

34. Answering paragraph 34 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

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1 35. Answering paragraph 35 of the Complaint, answering Defendants are without
2 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
3 the allegations contained in said paragraph in their entirety.

4 36. Answering paragraph 36 of the Complaint, answering Defendants are without
5 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
6 the allegations contained in said paragraph in their entirety.

7 37. Answering paragraph 37 of the Complaint, answering Defendants are without
8 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
9 the allegations contained in said paragraph in their entirety.

10 38. Answering paragraph 38 of the Complaint, answering Defendants admit the same.

11 39. Answering paragraph 39 of the Complaint, answering Defendants are without
12 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
13 the allegations contained in said paragraph in their entirety.

14 40. Answering paragraph 40 of the Complaint, answering Defendants deny the same.

15 41. Answering paragraph 41 of the Complaint, answering Defendants admit the same.

16 42. Answering paragraph 42 of the Complaint, answering Defendants admit the same.

17 43. Answering paragraph 43 of the Complaint, answering Defendants are without
18 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
19 the allegations contained in said paragraph in their entirety.

20 **FIRST CAUSE OF ACTION**

21 **(Declaratory Relief)**

22 44. Answering paragraph 44 of the Complaint, answering Defendants repeat the
23 answers to each and every allegation previously set forth.

24 45. Answering paragraph 45 of the Complaint, answering Defendants state that it
25 calls for a legal conclusion and therefore deny the same.

1 46. Answering paragraph 46 of the Complaint, answering Defendants admit the same.

2 47. Answering paragraph 47 of the Complaint, answering Defendants deny the same.

3 48. Answering paragraph 48 of the Complaint, answering Defendants are without
4 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
5 the allegations contained in said paragraph in their entirety.

6 49. Answering paragraph 49 of the Complaint, answering Defendants deny the same.

7 50. Answering paragraph 50 of the Complaint, answering Defendants Chiu and Wu
8 admit that after Chan refused to respond to Chiu, Chiu hired Wu to act as his realtor in making
9 an offer and in securing the purchase of a KB Homes property. Answering Defendants Sullivan
10 and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and
11 upon said grounds, deny the allegations contained in said paragraph in their entirety.

12 51. Answering paragraph 51 of the Complaint, answering Defendants state that this
13 paragraph calls for a legal conclusion and deny the same.

14 52. Answering paragraph 52 of the Complaint, answering Defendants deny the same.

15 53. Answering paragraph 53 of the Complaint, answering Defendants deny the same.

16 54. Answering paragraph 54 of the Complaint, answering Defendants are without
17 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
18 the allegations contained in said paragraph in their entirety.

19 55. Answering paragraph 55 of the Complaint, answering Defendants deny the same.

20 56. Answering paragraph 56 of the Complaint, answering Defendants deny the same.

21 **SECOND CAUSE OF ACTION**

22 **(Breach of Contract)**

23 57. Answering paragraph 57 of the Complaint, answering Defendants repeat the
24 answers to each and every allegation previously set forth.

25 ///

1 58. Answering paragraph 58 of the Complaint, answering Defendants are without
2 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
3 the allegations contained in said paragraph in their entirety.

4 59. Answering paragraph 59 of the Complaint, answering Defendants deny the same.

5 60. Answering paragraph 60 of the Complaint, answering Defendants are without
6 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
7 the allegations contained in said paragraph in their entirety.

8 61. Answering paragraph 61 of the Complaint, answering Defendants state that this
9 paragraph calls for a legal conclusion and deny the same.

10 62. Answering paragraph 62 of the Complaint, answering Defendants admit that
11 Defendant Chiu purchased a KB Homes property.

12 63. Answering paragraph 63 of the Complaint, answering Defendants are without
13 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
14 the allegations contained in said paragraph in their entirety.

15 64. Answering paragraph 64 of the Complaint, answering Defendants are without
16 sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny
17 the allegations contained in said paragraph in their entirety.

18 65. Answering paragraph 65 of the Complaint, answering Defendants deny the same.

19 66. Answering paragraph 66 of the Complaint, answering Defendants deny the same.

20 **THIRD CAUSE OF ACTION**

21 **(Unjust Enrichment)**

22 67. Answering paragraph 67 of the Complaint, answering Defendants repeat the
23 answers to each and every allegation previously set forth.

24 68. Answering paragraph 68 of the Complaint, answering Defendants state that the
25 paragraph calls for a legal conclusion and deny the same.

69. Answering paragraph 69 of the Complaint, answering Defendant Wu denies the same. Answering Defendants Chiu, Sullivan and NREC are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

70. Answering paragraph 70 of the Complaint, answering Defendants deny the same.

71. Answering paragraph 71 of the Complaint, answering Defendants deny the same.

72. Answering paragraph 72 of the Complaint, answering Defendants are without sufficient knowledge as to the truth of the matters alleged therein, and upon said grounds, deny the allegations contained in said paragraph in their entirety.

73. Answering paragraph 73 of the Complaint, answering Defendants deny the same.

74. Answering paragraph 74 of the Complaint, answering Defendants deny the same.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs have failed to state a claim against Defendants upon which relief can be granted.

Second Affirmative Defense

Plaintiffs' claims against Defendants are barred in whole or in part by the doctrines of estoppel and waiver.

Third Affirmative Defense

Plaintiffs are guilty of unclean hands.

Fourth Affirmative Defense

Plaintiffs' claims are, in whole or in part, in violation of the statute of frauds or the doctrine of laches and are therefore, barred, void or otherwise unenforceable.

Fifth Affirmative Defense

Defendants allege that Plaintiffs have waived any right of recovery from Defendants.

Sixth Affirmative Defense

Defendants lacked the requisite specific intent necessary for Plaintiffs to sustain their claims against Defendants.

Seventh Affirmative Defense

Plaintiffs have failed to mitigate their damages, if any.

Eighth Affirmative Defense

Plaintiffs have failed to satisfy conditions precedent to bringing any action against these answering Defendants.

Ninth Affirmative Defense

Plaintiffs' claims for relief are barred by the Doctrines of Estoppel, Estoppel by Fraud, and equitable relief.

Tenth Affirmative Defense

Defendants acted in good faith in all of their dealings with Plaintiffs.

Eleventh Affirmative Defense

Plaintiffs' claims for relief are barred by the Doctrines of mutual mistake, impossibility and/or impracticability.

Twelfth Affirmative Defense

Plaintiffs lack privity of contract with Defendants.

Thirteenth Affirmative Defense

There is no contract between the parties.

Fourteenth Affirmative Defense

Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein.

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///

Fifteenth Affirmative Defense

Plaintiffs had neither a contract with Defendants nor were the procuring cause of the purchase of property by Defendant Chiu.

Sixteenth Affirmative Defense

Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein in so far as sufficient facts are not available after reasonable inquiry upon the filing of this Answer; Defendants, therefore, reserve the right to amend this Answer to allege additional Affirmative Defenses as subsequent investigation warrants.

COUNTER CLAIM

First Claim for Relief

(Abuse of Process)

Defendants-Counterclaimants Wu, Chiu, Sullivan and NREC (collectively hereinafter “Defendants or Counterclaimants”), by and through their attorney, Michael A. Olsen, Esq. of the law firm Goodsell & Olsen, LLP complains of Plaintiff Betty Chan, an individual as follows:

1. Counter-defendant Chan is well aware that she failed to follow standard practice and procedure when she neglected to require Counterclaimant Chiu to enter into a written agreement for Chan to act as Chiu’s real estate agent or broker.

2. Counter-defendant Chan is also aware that there was never any meeting of the minds between Chan and Defendant Chiu regarding the core terms of her representation (including commission) nor was there any written or verbal agreement setting forth the terms of any agreement between the parties.

3. Counter-defendant Chan has fraudulently represented to Chiu and to First American Title Company that she was in possession of a broker registration card identifying her

1 as Mr. Chiu's agent. Upon being challenged to produce said document, Chan has been unable to
2 do so.

3 4. Counter-defendant Chan is well aware that her own failure to respond to
4 Counterclaimant Chiu's calls and requests for information resulted in Counterclaimant Chiu
5 seeking the services of another realtor, Counterclaimant Wayne Wu.

6 5. Counter-defendant Chan is further aware that Counterclaimant Wu is the only
7 realtor listed on the closing documents and is listed as the realtor of record.

8 6. Finally, Counter-defendant Chan is aware that Counterclaimant Wu did all of the
9 work in procuring and closing the sale of the subject property.

10 7. Plaintiff Chan instituted this lawsuit not because she has a good faith claim to the
11 commission on the sale of the subject property but for the ulterior purpose of extorting
12 Counterclaimant Wu into sharing a portion, or all of his commission, with Plaintiffs solely to
13 avoid incurring the legal fees and costs of defending this frivolous lawsuit.

14 8. In fact, the very filing of Counter-Defendant's Complaint is in direct violation of
15 the ethical rules she voluntarily undertook to uphold when she became a member of the Greater
16 Las Vegas Association of Realtors (hereafter "GLVAR") requiring that any and all legitimate
17 disputes regarding commissions be handled by way of arbitration before the GLVAR. The
18 purpose of this filing is solely to harass, abuse process and unnecessarily drive up the costs of
19 this litigation.

20 9. None of the purposes in paragraphs 7 and 8 above are proper in the regular
21 conduct of instituting a lawsuit.

22 10. As a result of Counter-defendant's actions, Counterclaimants have been forced to
23 retain the services of an attorney to prosecute the instant action and therefore is entitled to
24 reasonable fees and costs.

25 ///

Second Claim for Relief**(Declaratory Relief)**

11. Counterclaimants repeat and reallege the foregoing paragraphs as though fully stated herein.

12. Counterclaimants and Counter-defendants claim adverse interest in the commission for the sale of the subject property.

13. As set forth above, Counterclaimant Wu is the only listed broker of record, is the listed broker in all closing documents and procured and closed the sale on the subject property.

14. Counterclaimants therefore request an Order of this Court declaring that Counterclaimants Wu, Sullivan and NREC are entitled to the full commission on the sale of the subject property, currently held by First American Title Company.

15. Counterclaimants further request an Order declaring that the commission be released from the title company to Counterclaimants and that Counter-defendants pay any shortfall in commissions along with all attorney's fees and costs associated with this action.

PRAYER FOR RELIEF

Wherefore, Counterclaimants pray for judgment against Counter-defendants as follows:

1. For damages in excess of \$10,000.00;
2. For Prejudgment and Postjudgment interest;
3. For Declaratory relief as set forth herein;
4. For an award of Counterclaimant's attorney's fees and costs;
5. For such other and further relief as the Court deems just and proper.

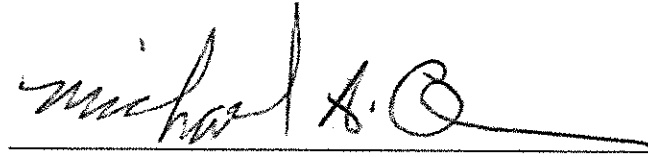
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DATED this 6th day of December, 2016.



MICHAEL A. OLSEN, ESQ.

Nevada Bar No. 6076

THOMAS R. GROVER, ESQ.

Nevada Bar No. 12387

GOODSELL & OLSEN, LLP

10155 W. Twain Ave., Suite 100

Las Vegas, Nevada 89147

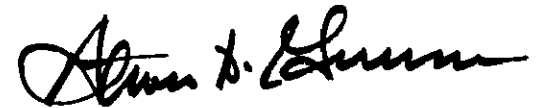
Attorneys for Defendants/Counterclaimants

Wayne Wu, Judith Sullivan, Nevada Real Estate

Corp. and Jerrin Chiu

Amended Reply to Counterclaim

2017-02-10



CLERK OF THE COURT

RPLY
Marquis Aurbach Coffing
Avece M. Higbee, Esq.
Nevada Bar No. 3739
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
ahigbee@maclaw.com
Attorneys for Plaintiff/
Counterdefendant, Betty Chan
and Asian American Realty &
Property Management

DISTRICT COURT

CLARK COUNTY, NEVADA

BETTY CHAN and ASIAN AMERICAN
REALTY & PROPERTY MANAGEMENT,

Plaintiff,

vs.

WAYNE WU, JUDITH SULLIVAN, NEVADA
REAL ESTATE CORP., JERRIN CHIU, KB
HOME SALES – NEVADA INC., DOES I
through X, and ROES I through X,

Defendants.

Case No.: A-16-744109-C
Dept. No.: XII

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

Counterclaimants,

vs.

BETTY CHAN and ASIAN AMERICAN
REALTY & PROPERTY MANAGEMENT,

Counterdefendant.

AMENDED REPLY TO COUNTERCLAIM

Plaintiff/Counterdefendant Betty Chan (“Chan” or “Counterdefendant”), by and through
the law firm of Marquis Aurbach Coffing, her attorneys of record, hereby submits her Amended
Reply to Counterclaimants’ Counterclaim as follows:

FIRST CLAIM FOR RELIEF**(Abuse of Process)**

1. In answering Paragraphs 1 and 2 of Counterclaimants' Counterclaim, Counterdefendant denies the allegations contained therein.

2. In answering Paragraph 3 of Counterclaimants' Counterclaim, Counterdefendant admits that the document has not been produced and denies the remaining allegations contained therein.

3. In answering Paragraph 4 of Counterclaimants' Counterclaim, Counterdefendant denies the allegations contained therein.

4. In answering Paragraph 5 of Counterclaimants' Counterclaim, Counterdefendant is without sufficient information to form an opinion as to the truth of the allegations contained therein, and therefore, denies the same.

5. In answering Paragraphs 6 and 7 of Counterclaimants' Counterclaim, Counterdefendant denies the allegations contained therein.

6. In answering Paragraphs 8 of Counterclaimants' Counterclaim, the allegation is a legal conclusion rather than a factual allegation; therefore Chan is without knowledge to form a belief and therefore denies the same.

7. In answering Paragraph 9 and 10 of Counterclaimants' Counterclaim, Counterdefendant denies the allegations contained therein

SECOND CLAIM FOR RELIEF**(Declaratory Relief)**

8. In answering paragraph 11, Counterdefendant repeats and incorporates by reference the responses to all previous paragraphs, as if fully set forth herein.

9. In answering Paragraph 12 of Counterclaimants' Counterclaim, Counterdefendant admits that she claims the entire interest in the commission but is without sufficient information to form an opinion as to the truth of the remaining allegations contained therein, and therefore, denies the same.

10. In answering Paragraphs 13, 14 and 15 of Counterclaimants' Counterclaim, Counterdefendant denies the allegations contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Counterclaimants have failed to state a claim against Counterdefendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Counterclaimants' claims against Counterdefendant are barred in whole or in part by the doctrines of estoppels and waiver.

THIRD AFFIRMATIVE DEFENSE

Counterclaimants are guilty of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Counterclaimants have waived any right to recovery from Counterdefendant.

FIFTH AFFIRMATIVE DEFENSE

Counterclaimants' have failed to mitigate their damages.

SIXTH AFFIRMATIVE DEFENSE

Counterclaimants' have failed to satisfy conditions precedent to bringing any action against these answer Counterdefendants.

SEVENTH AFFIRMATIVE DEFENSE

Counterclaimants' claims for relief are barred by the Doctrines of Estoppel, Estoppel by Fraud, and equitable relief.

EIGHTH AFFIRMATIVE DEFENSE

Counterdefendant acted in good faith in all of her dealings with Counterclaimants.

NINTH AFFIRMATIVE DEFENSE

Plaintiff/Counterdefendant had no ulterior purpose in bringing action against Counterclaimants.

TENTH AFFIRMATIVE DEFENSE

Counterdefendant's claims are proper in the regular course of proceedings.

ELEVENTH AFFIRMATIVE DEFENSE

Counterdefendant had a contract with Counterclaimant Chiu and Counterclaimant Wu could not represent Counterclaimant Chiu.

TWELVETH AFFIRMATIVE DEFENSE

Counterclaimants Wu, Sullivan and NRED were not the procuring cause of the purchase of property by Counterclaimant Chiu.

THIRTEENTH AFFIRMATIVE DEFENSE

Counterdefendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein.

FOURTEENTH AFFIRMATIVE DEFENSE

Pursuant to NRCPP 11, all possible affirmative defenses may not have been alleged herein in so far as sufficient facts are not available after reasonable inquiry upon the filing of this Reply; Counterdefendant, therefore, reserves the right to amend this Reply to allege additional Affirmative Defenses as subsequent investigation warrants.

PRAYER FOR RELIEF

WHEREFORE, Counterdefendant prays for the following relief against Counterclaimants:

1. That Counterclaimants take nothing by way of their Counterclaim and that the same be dismissed with prejudice;
2. For an award of reasonable attorney fees and costs of suit; and
3. For any further relief as the Court deems to be just and proper.

Dated this 10th day of February, 2017.

MARQUIS AURBACH COFFING

By

Avee M. Higbee, Esq.

Nevada Bar No. 3739

10001 Park Run Drive

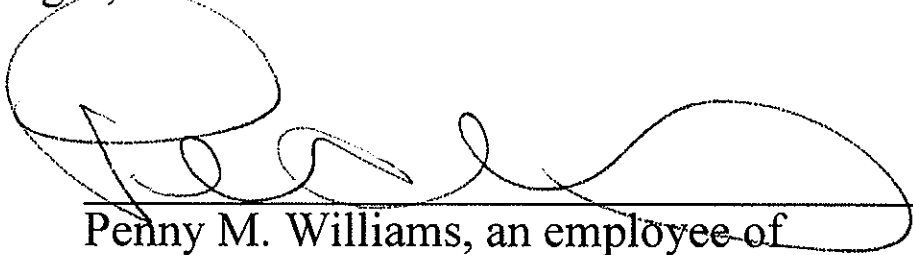
Las Vegas, Nevada 89145

Attorneys for Plaintiff/Counterdefendant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AMENDED REPLY TO COUNTERCLAIM** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 10 day of February, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Goodsell & Olson
Michael A. Olsen, Esq.
Thomas R. Grover, Esq.
10155 W. Twain Ave., Suite 100
Las Vegas, Nevada 89147

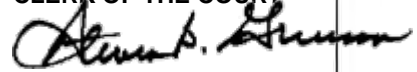


Penny M. Williams, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Notice of Entry of Order

2018-09-18



NEOJ
MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
ROMAN C. HARPER, ESQ.
Nevada Bar No. 14374
Goodsell & Olsen, LLP
10155 W. Twain Ave., Suite 100
Las Vegas, Nevada 89147
Tel: (702) 869-6261
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mike@goodsellolsen.com
roman@goodsellolsen.com
Attorneys for Defendants/Counterclaimants
Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.
and Jerrin Chiu

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN)	Case No: A-16-744109-C
REALTY & PROPERTY MANAGEMENT,)	
)	Dept. No: XX
Plaintiffs/Counterdefendants,)	
v.)	NOTICE OF ENTRY OF ORDER
)	
WAYNE WU, JUDITH SULLIVAN,)	
NEVADA REAL ESTATE CORP., JERRIN)	
CHIU, KB HOME SALES – NEVADA INC.,)	
)	
Defendants/Counterclaimants.)	

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the **ORDER DENYING MOTION TO VACATE OR
MODIFY ARBITRATION AWARD** was entered on the Court's record on the 18th day of
September, 2018. A copy of said Order is attached hereto as Exhibit "1".

DATED this 18th day of September, 2018.

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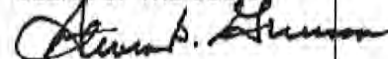
/s/Thomas R. Grover, Esq.
MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada Bar No. 12387
GOODSELL & OLSEN, LLP
10155 W. Twain Ave., Suite 100

EXHIBIT 1

Exhibit 1

Order Denying Motion to Vacate or Modify Arbitration Award

2018-09-18

**ORD**

MICHAEL A. OLSEN, ESQ.

Nevada Bar No. 6076

ROMAN C. HARPER, ESQ.

Nevada Bar No. 14374

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mike@goodsellolsen.comroman@goodsellolsen.com*Attorneys for Defendants/Counterclaimants**Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.**and Jerrin Chiu***DISTRICT COURT
CLARK COUNTY, NEVADA**BETTY CHAN and ASIAN AMERICAN
REALTY & PROPERTY MANAGEMENT,

Plaintiffs/Counterdefendants,

v.

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

Defendants/Counterclaimants.

Case No: A-16-744109-C

Dept. No: XX

**ORDER DENYING MOTION TO
VACATE OR MODIFY
ARBITRATION AWARD****APPEARANCES**

Michael A. Olsen, Esq. of Goodsell & Olsen, LLP, on behalf of Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu, Defendants/Counterclaimants.

Todd E. Kennedy, Esq. of Kennedy & Couvillier, PLLC on behalf of Betty Chan and Asian American Realty & Property Management, Plaintiffs/Counterdefendants.

This matter came on for hearing on August 22, 2018 before the Honorable Eric Johnson regarding Plaintiffs/Counterdefendants' *Motion to Vacate or Modify Arbitration Award* (hereafter "Motion to Vacate"), and Defendants/Counterclaimants' *Opposition to Motion to Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorney Fees* (hereafter "Countermotion"). The Court

1 having read and considered the papers and pleadings on file, having heard oral arguments made
2 at the time of hearing, and good cause appearing, therefore the Court makes the following
3 findings of fact and conclusions of law:

4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 1. Because Betty Chan, Wayne Wu, and Judith Sullivan are all Realtors, the parties
6 recognize that the underlying dispute in this matter involving commission funds totaling
7 \$13,795.32 was required to be submitted to the Greater Las Vegas Association of Realtors
8 (hereafter "GLVAR") for binding arbitration. Plaintiff/Counterdefendant Betty Chan submitted
9 her *Request and Agreement to Arbitrate (Member)* (hereafter "Agreement to Arbitrate") to the
10 GLVAR seeking arbitration of the dispute.

11 2. The Agreement to Arbitrate contained express consent to arbitrate the dispute
12 between the parties through the GLVAR in accordance with the *Code of Ethics and Arbitration*
13 *Manual* subscribed to by Realtors.

14 3. This matter proceeded to an arbitration before a GLVAR arbitration panel on
15 April 17, 2018.

16 4. Plaintiffs/Counterdefendants have brought their Motion to Vacate seeking to
17 overturn or modify the arbitration award (hereafter "Award") that was duly entered by the
18 GLVAR arbitration panel on April 27, 2018. The Award determined, that of the \$13,795.32 in
19 total commission, \$3,228.83 was to be paid to Betty Chan and that the remaining \$10,346.49 was
20 to be paid to Defendant/Counterclaimant Wayne Wu.

21 5. Specifically, Plaintiffs/Counterdefendants have attempted to assert the Award
22 should be modified based on statutory and common law grounds, including that the GLVAR
23 purportedly exceeded its authority to arbitrate, acted in an arbitrary and capricious manner,
24 demonstrated manifest disregard for the law, or that the Award was procured by fraud.
25

1 6. Notwithstanding, the Court finds that Nevada law does not prohibit splitting a
2 commission between two individuals both claiming to be the procuring cause and therefore
3 Plaintiffs/Counterdefendants have failed to meet their burden of demonstrating clear and
4 convincing evidence of a violation under any of the standards asserted in the Motion to Vacate
5 that would justify modifying or vacating the Award.

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

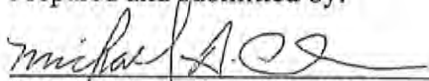
- 15 a. That the *Motion to Vacate or Modify Arbitration Award* is DENIED.
- 16 b. That pursuant to NRS 38.241(4) and NRS 38.242(2) the Arbitration Award of the
17 GLVAR arbitration panel is CONFIRMED.
- 18 c. That the Counter-Motion seeking summary judgment and an award of attorney
19 fees is taken under advisement, with supplemental briefing to be filed by the
20 Defendants/Counterclaimants by September 5, 2018;
- 21 d. That Plaintiffs/Counterclaimants shall have until September 19, 2018 to submit
22 any responsive briefing regarding the Counter-Motion as supplemented.
- 23 e. AND THAT a hearing on the Countermotion for Summary Judgment and for
24 Attorney's fees shall be held on October 10, 2018 at 8:30 a.m.
- 25

f. It is further ordered that the stay ordered by the Court pending resolution of the arbitration is lifted.

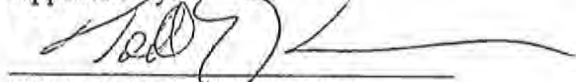
IT IS SO ORDERED this 14 ^{SEPT} of ~~AUGUST~~ 2018.


DISTRICT COURT JUDGE
ERIC JOHNSON *kal*

Prepared and submitted by:

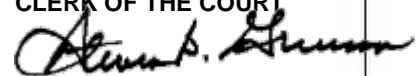

MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
ROMAN C. HARPER, ESQ.
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GOODSELL & OLSEN, LLP
*Attorneys for Wayne Wu, Judith Sullivan,
Nevada Real Estate Corp. and Jerrin Chiu*

Approved by:


TODD E. KENNEDY, ESQ.
Nevada Bar No. 6014
MAXIMILIANO COUVILLIER, ESQ.
Nevada Bar No. 7661
KENNEDY & COUVILLIER, PLLC
*Attorneys for Betty Chan and Asian
American Realty & Property Management*

Notice of Entry of Order

2019-03-22



1 **NEOJ**
2 MICHAEL A. OLSEN, ESQ.
3 Nevada Bar No. 6076
4 THOMAS R. GROVER, ESQ.
5 Nevada Bar No. 12387
6 **BLACKROCK LEGAL, LLC**
7 10155 W. Twain Ave. Ste. 100
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9 Tel: (702) 855-5658
10 Fax: (702) 869-8243

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

9 BETTY CHAN and ASIAN AMERICAN) Case No: A-16-744109-C
10 REALTY & PROPERTY MANAGEMENT,)
11 Plaintiffs/Counterdefendants,) Dept. No: XX
12 v.)
13 WAYNE WU, JUDITH SULLIVAN,)
14 NEVADA REAL ESTATE CORP., JERRIN)
15 CHIU, KB HOME SALES – NEVADA INC.,)
16 Defendants/Counterclaimants.)

17 **NOTICE OF ENTRY OF ORDER**

18 PLEASE TAKE NOTICE that the **ORDER GRANTING DEFENDANTS**
19 **COUNTERMOTION FOR SUMMARY JUDGMENT AND ATTORNEY FEES AND**
20 **COSTS** was entered on the Court's record on the 22nd day of March, 2019. A copy of said
21 Order is attached hereto as Exhibit "1".

22 DATED this 22nd day of March, 2019.



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EXHIBIT "1"

Exhibit 1

Order Granting Defendants Countermotion for Summary
Judgment and Attorney Fees and Costs

2019-03-22

Steven D. Grierson

ORDER

MICHAEL A. OLSEN, ESQ.

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Attorneys for Defendants/Counterclaimants

Wayne Wu, Judith Sullivan, Nevada

Real Estate Corp. and Jerrin Chiu

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN
REALTY & PROPERTY MANAGEMENT,

Plaintiffs/Counterdefendants,
v.

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

Defendants/Counterclaimants.

) Case No: A-16-744109-C

) Dept. No: XX

) **ORDER GRANTING**

) **DEFENDANTS**

) **COUNTERMOTION FOR**

) **SUMMARY JUDGMENT AND**

) **ATTORNEY FEES AND COSTS**

APPEARANCES

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

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

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

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

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

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

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

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

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

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

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

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

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

11
12 **B. COUNTERMOTION FOR ATTORNEY FEES AND COSTS GRANTED**

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

16
17 9. The Court finds that the Defendants fees are reasonable and were actually
18 incurred in the confirmation and enforcement of the award of the Arbitration Panel. The Court
19 finds that the contractual provision contained in the Arbitration Agreement signed by both
20 Plaintiff and Defendant provided that "In the event [a party does] not comply with the award and
21 it is necessary for any party to obtain judicial confirmation and enforcement of the award against
22 me, [the party] agree[s] to pay that party costs and reasonable attorney's fees incurred in
23 obtaining such confirmation and enforcement."

24
25 10. The Court further finds that provision was reasonable and enforceable. As costs
26 were never challenged, the Court hereby ORDERS costs in the amount of \$920.83 pursuant to
27 Defendants' Memorandum of Costs and Disbursements, which was unopposed.
28

1 11. The Court hereby ORDERS attorney's fees in the amount of \$21,435.00. The
2 Court finds this amount is reasonable and actually incurred by Defendants in enforcing the
3 arbitration award. The Court is awarding attorney fees after the entry of the arbitration award and
4 Plaintiffs' filing of its Motion to Vacate or Modify Arbitration Award, starting on July 25, 2018.
5 The Court declines to award fees requested on the invoices dated December 31, 2016, January
6 31, 2017, and February 28, 2017, as the redactions made to Plaintiffs' counsel's billing records
7 prevent the Court from determining if those fees were reasonable and necessary. The Court has
8 reviewed the remaining fees and finds they were reasonable and appropriate for litigating the
9 matter and in keeping with attorney fees for such work in Southern Nevada. The Court further
10 finds that the Brunzell factors have been met for the reasons stated in Defendant's Counter-motion
11 for Attorney Fees and Costs as set forth below.

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

20 13. **Brunzell Factor #1:** "the qualities of the advocate: his ability, his training,
21 education, experience, professional standing and skill". Counsel for Defendants, Michael A.
22 Olsen, Esq. is a founding partner of his firm and has been a member of the State Bar of Nevada
23 for over twenty years. He is a graduate of Utah State University and BYU's J. Reuben Clark Law
24 School. His abilities as an advocate have been recognized through numerous awards and honors,
25
26
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1 and Mr. Olsen's abilities have been honed through, among other experience, regular appearances
2 in the Eighth Judicial District Court on contested matters.

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

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

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

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

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

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

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

11
12
13 
14 DISTRICT COURT JUDGE SS

15 ERIC JOHNSON

16
17 Prepared and submitted by:

18 

19 MICHAEL A. OLSEN, ESQ.

20 Nevada Bar No. 6076

21 THOMAS R. GROVER, ESQ.

22 Nevada Bar No. 12387

23 **GOODSELL & OLSEN, LLP**

24 Attorneys for Wayne Wu, Judith Sullivan,

25 Nevada Real Estate Corp. and Jerrin Chiu
26
27
28

Notice of Entry of Order on Plaintiffs' Motion to Formally Resolve Motion for
Reconsideration and to Certify Judgment as Final

And

Countermotion for Summary Judgment on Abuse of Process Claim

2010-03-10

Case Number: A-16-744109-C

1 true and correct copy of same is attached hereto.
2

3 DATED this March 10, 2020.

4 **FRIZELL LAW FIRM**
5 400 N. Stephanie St., Suite 265
6 Henderson, Nevada 89014
7 Telephone: (702) 657-6000

8 By: /s/ R. Duane Frizell
9 R. DUANE FRIZELL, ESQ.
10 Nevada Bar No. 9807
11 *Attorneys for Plaintiffs/*
12 *Counter-Defendants*
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CERTIFICATE OF SERVICE

I hereby certify that I am a citizen of the United States and am employed in Clark County, Nevada, where this service occurs. I am over the age of eighteen years and not a party to the within entitled action; my business address is 400 N. Stephanie St., Suite 265, Henderson, Nevada 89014.

On March 10, 2020, I served the foregoing ***NOTICE OF ENTRY OF ORDER ON PLAINTIFFS' MOTION TO FORMALLY RESOLVE MOTION FOR RECONSIDERATION AND TO CERTIFY JUDGMENT AS FINAL —AND— COUNTERMOTION FOR SUMMARY JUDGMENT ON ABUSE OF PROCESS CLAIM*** on interested party(ies) in this action, as follows:

MICHAEL A. OLSEN, ESQ.
Nevada State Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada State Bar No. 12387
KEITH D. ROTSONG, ESQ.
Nevada State Bar No. 14944
BLACKROCK LEGAL, LLC
10155 W. Twain Ave., Suite 100
Las Vegas, Nevada 89147
Attorneys for Defendants/Counterclaimants
Wayne Wu, Judith Sullivan, Nevada Real
Estate Corp., and Jerrin Chiu

JANICE M. MICHAELS, ESQ.
Nevada State Bar No. 6062
WOOD SMITH HENNING & BERMAN, LLP
2881 Business Park Court, Suite 200
Las Vegas, Nevada 89128
Attorney for Defendant
KB Home Sales-Nevada Inc.

By causing a full, true and correct copy thereof to be sent, together with any and all exhibits and other attachments, by the following indicated method(s):

by mailing in a sealed, first-class postage-prepaid envelope, addressed to the above listed individuals, and deposited with the United State Postal Service;

X by electronic service through the Eighth Judicial District e-file/e-serve service;

by hand delivery;

by faxing to the attorney at his/her last known fax number;

by electronic mail to the last known e-mail address of the attorney/the party.

/s/ Aiqin Niu
Aiqin Niu, an employee of
Frizell Law Firm, PLLC

Order on Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to
Certify Judgment as Final

And

Counter-motion for Summary Judgment on Abuse of Process Claim

2010-03-10

Counter-Defendants

1 Countermotion. In this connection, the Court hereby enters the following Findings, Conclusions,
2 and Order:

3 **FINDINGS OF FACT**

4 The Court hereby makes the following FINDINGS OF FACT:

5 1. On March 22, 2019, the Court ruled upon a separate countermotion and entered
6 its Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and
7 Costs ("MSJ Order").

8 2. On April 1, 2019, Plaintiffs, who were representing themselves *pro se* at the time,
9 filed their Motion to Vacate Entry of Order or Motion for Extension of Time to File
10 Reconsideration to the Entry of Order Granting Defendants Counter Motion for Summary
11 Judgment and Attorney Fees and Costs ("Motion for Reconsideration").

12 3. In their Motion for Reconsideration, Plaintiffs sought only an extension of time to
13 find a new attorney who could review this Court's MSJ Order and then file an actual motion for
14 reconsideration on the merits. Plaintiffs requested two alternative means to achieve this end: (1)
15 vacate the Summary Judgment Order for one month or (2) extend the time to file a motion for
16 reconsideration on the merits. (Id.). Here are Plaintiffs' exact words:

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

24 4. The Court never ruled on the Motion for Reconsideration.

25 5. In the MSJ Order, this Court ruled "[t]hat the September 18, 2018 Order is
26 affirmed wherein Wu was determined the procuring cause and the Arbitration Award was
27 confirmed."

6. On April 22, 2019, Plaintiffs, who were still representing themselves *pro se*, filed their Notice of Appeal in this action.

7. When Plaintiffs filed their appeal, the counterclaim for abuse of process of Defendants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin Chiu (collectively “Defendants”) was still pending and had not yet been adjudicated.

8. On November 14, 2019, in the appeal, the Supreme Court issued an Order to Show Cause (“OSC”) as to why the appeal should not be dismissed because of the pending Motion for Reconsideration, which this Court had not “formally resolved.”

9. In the OSC, the Supreme Court stated that all that is required to cure the potential jurisdictional defect is “a written, file-stamped order resolving” the Motion for Reconsideration.

10. To the extent the foregoing Findings of Fact may be characterized as Conclusions of Law, they are hereby deemed to be such Conclusions.

CONCLUSIONS OF LAW

The Court hereby makes the following CONCLUSIONS OF LAW:

A. As explained in the Supreme Court's OSC, the appeal may have been prematurely taken because of the Motion for Reconsideration, which Plaintiffs filed when they were representing themselves *pro se*. This Court may resolve issues relating to any such prematurity.

A premature notice of appeal does not divest the district court of jurisdiction.... If ... a written order or judgment, or a written disposition of the last-remaining timely motion listed in Rule 4(a)(4), is entered before dismissal of the premature appeal, the notice of appeal shall be considered filed on the date of and after entry of the order, judgment or written disposition of the last-remaining timely motion.

NRAP 4(a)(6). Thus, this Court may resolve the issue of appealability.

B. The Court concludes that it has jurisdiction and may rule upon the Motion for Reconsideration, and to that extent, Plaintiffs' Motion to Resolve should be GRANTED.

C. The Court concludes that, in substance and form, Plaintiffs' Motion for Reconsideration lacks merit, presents no new facts or law, and is therefore DENIED.

1 D. Because an appeal has been taken, the Court concludes that it does not have
2 jurisdiction to adjudicate Defendants' counterclaim for abuse of process. *See Foster v. Dingwall*,
3 126 Nev. 49, 52, 228 P.3d 453, 454-455 (2010) ("This court has repeatedly held that the timely
4 filing of a notice of appeal "divests the district court of jurisdiction to act and vests jurisdiction
5 in this court.""). Accordingly, Defendants' Countermotion should be DENIED.

6 E. Because the Court may not adjudicate Defendants' counterclaim for abuse of
7 process, it also concludes that it may not certify the MSJ Order as being final as to all of
8 Plaintiffs' and Defendants' claims and counterclaims under NRCP 54(b). *See Foster*, 126 Nev.
9 at 52, 228 P.3d at 454-455. Therefore, to the extent that Plaintiffs' Motion seeks to have this
10 Court so certify the MSJ Order, such Motion should be DENIED.

11 F. To the extent the foregoing Conclusions of Law may be characterized as Findings
12 of Fact, they are hereby deemed to be such Findings.

13 ORDER

14 IT IS THEREFORE ORDERED as follows:

15 i. Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify
16 Judgment as Final (filed Jan. 7, 2020) ["Motion to Resolve"] is hereby GRANTED in part and
17 DENIED in part, as follows:

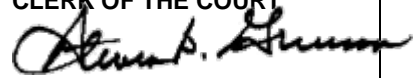
18 a. Plaintiffs' Motion to Resolve is GRANTED to the extent that it requests
19 this Court to rule upon Plaintiff's previous Motion to Vacate Entry of
20 Order or Motion for Extension of Time to File Reconsideration to the
21 Entry of Order Granting Defendants Counter Motion for Summary
22 Judgment and Attorney Fees and Costs (filed Apr. 1, 2019) ["Motion for
23 Reconsideration"]; and

24 b. in all other respects, Plaintiff's Motion to Resolve is DENIED.

25 ii. Plaintiffs' Motion for Reconsideration is in all respects hereby DENIED.

Notice of Entry of Order

2020-11-23



1 **NEOJ**
2 MICHAEL A. OLSEN, ESQ.
3 Nevada Bar No. 6076
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11
12
13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 BETTY CHAN and ASIAN AMERICAN) Case No: A-16-744109-C
16 REALTY & PROPERTY MANAGEMENT,)
17) Dept. No: XX
18 Plaintiffs/Counterdefendants,)
19 v.)
20)
21 WAYNE WU, JUDITH SULLIVAN,)
22 NEVADA REAL ESTATE CORP., JERRIN)
23 CHIU, KB HOME SALES – NEVADA INC.,)
24)
25 Defendants/Counterclaimants.)

26 **NOTICE OF ENTRY OF ORDER**

27 PLEASE TAKE NOTICE that the **ORDER GRANTING IN PART DEFENDANTS'**
28 **MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR**
CONTRACTUAL AWARD OF ATTORNEY'S FEES, FOR WRIT OF EXECUTION ON
PLAINTIFF'S COMMISSIONS AWARDED BY GLVAR ARBITRATION PANEL, AND
RELEASE OF BOND DEPOSITED ON APPEAL AND ORDER GRANTING
PLAINTIFFS' COUNTERMOTION FOR SUMMARY JUDGMENT was entered on the
Court's record on the 23rd day of November, 2020. A copy of said Order is attached hereto as
Exhibit "1".

DATED this 23rd day of November 2020.

/s/Michael A. Olsen, Esq.

MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada Bar No. 12387



BLACKROCK
LEGAL

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EXHIBIT “1”

Exhibit 1

Order Granting in Part Defendants' Motion for Summary Judgment, or in the
Alternative, for Contractual Award of Attorney's Fees, for Writ of Execution on
Plaintiff's Commissions Awarded by GLVAR Arbitration Panel, and Release of Bond
Deposited on Appeal

and

Order Granting Plaintiffs' Countermotion for Summary Judgment

2020-11-23

Heather S. Sullivan
CLERK OF THE COURT

ORDR

MICHAEL A. OLSEN, ESQ.

Nevada Bar No. 6076

THOMAS R. GROVER, ESQ.

Nevada Bar No. 12387

KEITH D. ROUTSONG, ESQ.

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*Attorneys for Wayne Wu, Judith Sullivan,
Nevada Real Estate Corp. and Jerrin Chiu*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN
REALTY & PROPERTY MANAGEMENT,

Plaintiffs/Counterdefendants,

v.

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

Defendants/Counterclaimants.

) Case No: A-16-744109-C

) Dept. No: XX

) **ORDER GRANTING IN PART**
) **DEFENDANTS' MOTION FOR**
) **SUMMARY JUDGMENT, OR IN**
) **THE ALTERNATIVE, FOR**
) **CONTRACTUAL AWARD OF**
) **ATTORNEY'S FEES, FOR WRIT**
) **OF EXECUTION ON PLAINTIFF'S**
) **COMMISSIONS AWARDED BY**
) **GLVAR ARBITRATION PANEL,**
) **AND RELEASE OF BOND**
) **DEPOSITED ON APPEAL**
) **AND ORDER GRANTING**
) **PLAINTIFFS' COUNTERMOTION**
) **FOR SUMMARY JUDGMENT**

APPEARANCES

- Michael A. Olsen, Esq. of Blackrock Legal, LLC, on behalf of Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., and Jerrin Chiu, Defendants/Counterclaimants (hereinafter "Defendants").



- R. Duane Frizell, Esq., of Frizell Law Firm, on behalf of Betty Chan and Asian American Realty & Property Management, (hereinafter “Plaintiffs”).

This matter came on for hearing on July 21, 2020 and again on September 30, 2020 before the Honorable Eric Johnson presiding on the Defendants’ *Motion for Summary Judgment, or in the Alternative, for Contractual Award of Attorney’s Fees, for Writ of Execution on Plaintiff’s Commissions Awarded by GLVAR Arbitration Panel, and Release of Bond Deposited on Appeal* (hereafter “Motion”) and *Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment, or in the alternative, for Contractual Award of Attorney’s Fees, for Writ of Execution on Plaintiff’s Commissions Awarded by GLVAR Arbitration Panel and Release of Bond Deposited on Appeal, and Countermotion for Summary Judgment on Defendants’ Abuse-of-Process Counterclaim* (hereafter “Opposition and Countermotion”). The Court having read and considered the papers and pleadings on file, having heard oral arguments made at the time of hearings, and good cause appearing, therefore the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACTS

1. Defendants have a good argument that Plaintiff ran this lawsuit far beyond what it should have been run, and the Court thinks Ms. Chan represents the worst of litigations, but she had a right to file a complaint, and her filing of the civil complaint does not rise to the level of abuse of judicial process.

2. Ms. Chan apparently had an ethical obligation with the realtor board to attend either arbitration or mediation, which Ms. Chan may have violated (but the Court is not making a ruling on this matter because it is not before the Court); however, the Court finds she had a right to file the civil Complaint.

4. Ms. Chan executed a contract for arbitration which includes a valid and enforceable attorney's fees provision. Since Ms. Chan has chosen to continue fighting the collection of the arbitration award she is contractually liable for the related and reasonable attorney's fees and costs incurred by the Defendants until such time as they are able to satisfy the arbitration award and the fees and costs awarded by this court. Given the foregoing, Defendants are entitled to an award of reasonable attorney's fees and costs incurred in seeking to enforce the arbitration award since the date of the submission of the last request for fees and costs by Defendants on October 31, 2018.

5. This Court already ruled upon the scope of the arbitration agreement in the March 22, 2019 Order, which encompassed any efforts to collect on the arbitration award.

6. Since the March 22, 2019 Order, Defendants have incurred additional fees seeking to collect the arbitration award and such fees fall within the scope of the arbitration agreement.

7. Counsel for Defendants shall file their invoices with the Court Clerk, which invoices were submitted to the Court for in camera inspection, and which invoices the Court actually reviewed.

CONCLUSIONS OF LAW

8. The Clerk of the Court has already issued a writ of execution, which is valid and enforceable, however, Defendants may submit a new writ for full amount of the commission currently held by GLVAR, which amount shall be applied to the amount of the fees and costs awarded against Plaintiffs in this action.

1 9. Ms. Chan is under an ongoing contractual obligation to pay reasonable attorney's
2 fees and costs Defendants incur in seeking to enforce the arbitration agreement and the fees and
3 costs awarded by this Court. Nothing in the Agreement to Arbitrate prevents collection of such
4 reasonable attorney's fees and costs incurred so long as Ms. Chan fights against collection of the
5 original award.
6

7 10. Ms. Chan may have violated an ethical obligation as a member of the GLVAR;
8 however such a violation should be resolved before that body and not before this Court.
9

10 11. The Supreme Court of Nevada has determined that it lacked jurisdiction over Ms.
11 Chan's most recent appeal and has dismissed that appeal. Therefore, jurisdiction over this case
12 remains in this court and the supersedeas bond is to be immediately released to Defendants.

13 12. Ms. Chan had a right to file her complaint and did not file her complaint with an
14 ulterior motive. Accordingly, she committed no abuse of process.

15 13. The Nevada Supreme Court's decision to dismiss the appeal did not preclude
16 collection of additional fees as the Nevada Supreme Court never took jurisdiction of the matter
17 or examined the scope of the arbitration agreement.
18

19 14. The Agreement to Arbitrate is between Ms. Chan and GLVAR for participation in
20 arbitration.
21

22 15. With regard to the agreement to arbitrate and the attorney fee provision contained
23 therein, there was a clear meeting of the minds between Ms. Chan and GLVAR, as well as the
24 others who participated in the arbitration process.

25 16. The fees incurred by Defendants related to their abuse of process claim are
26 denied.
27

28 17. The Court awards \$35,630.00 in fees and costs to Defendants and finds that such
an amount of fees satisfies the requirements of Brunzell.

1 18. Defendants shall be permitted to collect the entire amount of the funds held in
2 escrow by the GLVAR, provided that they do so pursuant to a new writ of execution.

3 19. Counsel for Defendants shall file a new writ of execution for the full amount of
4 the funds held in escrow by GLVAR.
5

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

7 a) Defendants may execute upon the entirety of the \$13,795.32 commission held in
8 the GLVAR escrow account pursuant to a new writ of execution.

9 b) Defendants shall file a new Writ of Execution to obtain the entirety of the funds
10 currently held in the GLVAR escrow account.
11

12 c) Defendants' request for summary judgment that Ms. Chan committed an abuse of
13 process is DENIED;

14 d) Plaintiffs' request for summary judgment that Ms. Chan did not commit an abuse
15 of process is GRANTED;

16 e) The supersedeas bond posted by Plaintiffs in the amount of \$33,533.75 shall
17 immediately be released to DEFENDANTS and the clerk of court is hereby instructed to issue a
18 check payable to the Blackrock Legal, LLC Trust account in that amount of said bond plus
19 interest, if any;
20

21 f) Defendants are hereby awarded fees and costs in the amount of \$35,630.00
22 incurred in seeking to enforce the arbitration award since the Court's last award of attorney's
23 fees.
24

25 g) Ms. Chan is hereby given leave to file a motion for stay of execution.

26 ~~h) The status check currently scheduled for November 18, 2020 at 8:30 a.m. is~~
27 ~~hereby VACATED.~~
28

1 i) Pursuant to NRCP 54(b), the Court finds no just reason for delay, and this order is
2 hereby entered as a final order as to any and all claims and counterclaims between and among
3 Plaintiffs and the identified Defendants.

4 IT IS SO ORDERED this _____ of November 2020.

5 Dated this 23rd day of November, 2020

6
7 
8 _____
DISTRICT COURT JUDGE

9 Prepared and submitted by:

7AB 1B9 E166 A32D
Eric Johnson
District Court Judge

10 /s/ Keith D. Routsong, Esq.
11 MICHAEL A. OLSEN, ESQ.
12 Nevada Bar No. 6076
13 THOMAS R. GROVER, ESQ.
14 Nevada Bar No. 12387
15 KEITH D. ROUTSONG, ESQ.
16 Nevada Bar No. 14944
17 **BLACKROCK LEGAL, LLC**
18 *Attorneys for Wayne Wu, Judith Sullivan,*
19 *Nevada Real Estate Corp. and Jerrin Chiu*

20 Approved as to form and content by:

21 /s/ R. Duane Frizell, Esq.
22 R. DUANE FRIZELL, ESQ.
23 Nevada Bar No. 97
24 **FRIZELL LAW FIRM**
25 *Attorney for Betty Chan and Asian American*
26 *Realty and Property Management*

Keith Routsong

From: Keith Routsong
Sent: Wednesday, November 18, 2020 7:59 AM
To: Duane Frizell; Mike Olsen
Subject: RE: Chan v. Wu: Proposed Order

Duane,

Those changes are fine with us. I added your electronic signature and will submit to the Court this morning. Thanks.

Keith

From: Duane Frizell <dfrizell@frizelllaw.com>
Sent: Tuesday, November 17, 2020 11:20 AM
To: Mike Olsen <mike@blackrocklawyers.com>; Keith Routsong <keith@blackrocklawyers.com>
Subject: Chan v. Wu: Proposed Order
Importance: High

Hi Mike and Keith:

I have gone through the proposed order and made some revisions. My redlined version and my clean version are attached in Word.

All of my revisions are relatively minor and are based on the court's rulings as expressly stated in the transcripts of the hearings. I have attached the transcripts for the two hearings for your reference as well.

On the attached clean version of the proposed order, I authorize you to affix my electronic signature and submit to the court.

Thanks!

--Duane



R. Duane Frizell

Attorney at Law

Licensed in Nevada, New Mexico, and Texas

FRIZELL LAW FIRM

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
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6 Betty Chan, Plaintiff(s)

CASE NO: A-16-744109-C

7 vs.

DEPT. NO. Department 20

8 Wayne Wu, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/23/2020

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