IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 03 2022 12:20 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MICHAEL EDWARD HATCH, an individual; and ALISHA SUZANNE HATCH, an individual,

Appellants,

v.

KARI ANNE JOHNSON,

Respondent.

Supreme Court No.: 83692
(District Court Case No. CV21-00246)

JOINT APPENDIX VOL. 4

MARK G. SIMONS, ESQ.
Nevada Bar No. 5132
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Attorneys for Appellants

Docket 83692 Document 2022-06804

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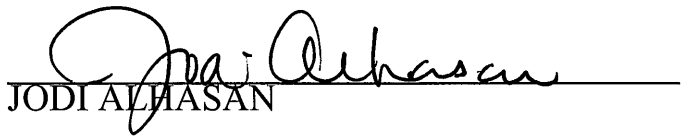
CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL JOHNSTON PC, and that on this date I caused to be served a true copy of the **JOINT APPENDIX VOL. 4** on all parties to this action by the method(s) indicated below:

_X_ by using the Supreme Court Electronic Filing System:

Kent R. Robison
Clayton P. Brust
Stefanie T. Sharp
Hannah E. Winston
Robison, Sharp, Sullivan & Brust
71 Washington St.
Reno, NV 89503
Attorneys for Respondents

DATED: This _3_ day of March, 2022.



JODI ALHASAN

1 the case Allen v. Wens I think is very instructive in this
2 case. And the defendants have taken the position that it was
3 an unrecorded deed that should have put the Allens on notice
4 of their claim, but it wasn't the unrecorded deed that was at
5 issue in that case. Yes, the Allens' deed didn't get
6 recorded. When they realized it wasn't recorded, they went
7 and recorded it. But ten days prior to that, that the third
8 party purchaser of the ranch had recorded their own deed.
9 Now, going forward when the Allens decided to sue,
10 yet defendant argued that third party purchaser's deed was
11 the deed that should have put the Allens on notice. And I
12 just wanted to clarify that for the Court, because, you know,
13 this idea that the constructive notice bars the claims is
14 completely rejected by the Nevada Supreme Court. So I just
15 wanted to clarify that one issue. And on that we'll submit,
16 your Honor.
17 THE COURT: Thank you, Ms. Winston. Mr. Simons,
18 your reply.
19 MR. SIMONS: Yes, your Honor. The Nevada Supreme
20 Court doesn't completely reject the recording statute and the
21 caselaw Bemis and the recognition of the case across the
22 United States including United States Supreme Court that does
23 say recordation of public deeds provides constructive notice,
24 because they're public, they're recorded in a county

1 recorder's office, they're contained on an index. And even
2 if you lose a deed or you give it to a landscaper or it burns
3 or disappears, it's always, always, always a public record.
4 That's why that rule applies.
5 Now, there is no exception to the rule for fraud.
6 I'll say this again, there is not an exception to the
7 constructive notice rule of recorded deeds for contemplation
8 or theories of fraud under Nevada law. It is an absolute.
9 That's why I called it a bright line rule.
10 And, in fact, it's been recognized that it is
11 well-recognized and the other cases didn't have the
12 implication, the bright line rule did not apply. So when you
13 hear these arguments that there's not a bright line rule,
14 there's no recognition by Ms. Winston under Nevada's
15 recording statute, 111.320, that specifically says this
16 provides notice to the world.
17 They haven't addressed that at all in any of their
18 briefing. You know why? Because it's fatal. So they think,
19 we'll just ignore it. You know, it -- they're desperately
20 trying to salvage what they've got and they have nothing.
21 When I say they have nothing, Ms. Johnson does not have a
22 claim that will be upheld in this case.
23 I'm going to walk you through some of what was
24 said, because there was some really flamboyant comments such

1 as somebody doesn't give $650,000 as a gift. Well, you don't
2 know the underlying facts, but that's actually what happened.
3 The structure that is -- we're dealing with now in this
4 litigation was because Ms. Johnson was trying to perpetrate a
5 fraud on the IRS. So we'll get to that at the appropriate
6 time, but this isn't the appropriate time.
7 So what we look at is actually what is before you
8 and what was before you is a complaint. That's it. That's
9 all we look at in terms of a lis pendens, because a lis
10 pendens is a very drastic, draconian element of relief where
11 you jump ahead of everybody in line, you slap a prejudgment
12 writ of attachment on somebody's property. And the Waddell
13 cases and all the cases say that is abusive and attorneys
14 abuse this all the time.
15 And you just don't get to shoehorn yourself in
16 saying, I'm going to assert an equitable lien and that
17 magically transmutes my case into a case asserting a legally
18 cognizable right to the ownership of the property. We don't
19 have a right here. We have breach of contract claims and a
20 fraud claim. They're all barred.
21 Now, the breach of the note, which is the, we'll
22 pay you back some money, that's an installment contract.
23 That doesn't even achieve the standard of the subject matter
24 of jurisdiction of the Court.

1 So let's go to the first claim for relief, which
2 Ms. Winston says, well, it's a breach of the purchase
3 agreement and my client had an obligation to put the name on
4 the title. There is no -- did you see any allegation in the
5 complaint, in the verified complaint or in the affidavit,
6 what provision of the contract provides that? There is isn't
7 one.
8 The seller had the duty to transfer title. If the
9 seller did not transfer title appropriately, then the proper
10 party is sue the seller. If the escrow company didn't
11 document the transaction appropriately and perpetrated a
12 fraud, sue the escrow company.
13 Ms. Johnson signed a document endorsing saying,
14 I'm not going to hold title to this property. That is
15 binding. And they even attach it. They try to explain it,
16 but as you see facially, you have to accept that as true,
17 because they say that's there. That's attached to the deed.
18 They haven't asked for a reformation of the deed. They
19 haven't put any of these claims in, because they don't exist.
20 So as of today's date, the claim for -- there's
21 only four claims. Well, at least they put a new one in. I
22 lost track of some their claims when they were jumping
23 around. Just one second, I'll get my list. I gave you a
24 list of the claims in my brief, your Honor. They added a

1 declaratory relief claim at the end. So fraud, unjust
2 enrichment, a breach of a confidential relationship, that's
3 three years. Breach of the note, installment note, that's
4 not even pertaining to the subject matter. Breach of the
5 contract, the PSA, there's no obligation in there that binds
6 my client.
7 And guess what else? They put it in the record --
8 do you have access to that agreement, your Honor?
9 THE COURT: Yes.
10 MR. SIMONS: Going to have you turn to page 3 of 8
11 and you go down to paragraph nine and C; A, B, C and D; C and
12 D are on the next page.
13 THE COURT: Yes.
14 MR. SIMONS: Assuming there's such a claim that
15 would exist, it is subject to binding arbitration under the
16 federal arbitration act. They can't even bring it here.
17 They're going to be subject to a motion to compel arbitration
18 and dismiss this action if that claim even survives.
19 So why are we here? Why are we here is solely for
20 the motion on a lis pendens to expunge. Did they satisfy
21 their legal obligations? No. They want you to exercise an
22 equitable remedy during the pendency of a lawsuit over money,
23 which the Nevada Supreme Court said is absolutely wrong. And
24 while they skirt around the issue, they never come out and

1 address that and say, look, we recognize we're only asking
2 for remedies and there's a distinction under the law between
3 remedies and claims and that's what the law says across the
4 country.
5 I feel, as you can tell, extremely confident on
6 this one. So is there any questions you have of me, because
7 I'm more than happy to address what is concerning you rather
8 than what I would like to talk about.
9 THE COURT: I appreciate that. No, I don't have
10 any questions, Mr. Simons. I'm prepared to rule on the
11 motion to expunge the lis pendens. A lis pendens is a
12 creature of statute in Nevada. The applicable statute is NRS
13 14.015, not notably NRS 14.010, not a mortgage instrument,
14 it's a simple note.
15 The reason to my eye the Nevada Supreme Court has
16 confirmed that lis pendens is not appropriate when equitable
17 remedies are implicated is not so much the distinction
18 between a remedy and a cause of action as it is this: For
19 example, the plaintiff seeks a constructive trust, claiming,
20 I was defrauded, and so I should color this -- be able to
21 color this title so that my security is perfected.
22 That is the problem. A grant of this lis pendens
23 or the, said differently, allowing this lis pendens to remain
24 would be to give the plaintiffs the remedy of constructive

1 trust without a trial.

2 What plaintiffs want is security. Plaintiff

3 claims she loaned money to the defendants. She loaned money

4 to the defendants, and Ms. Winston eloquently argues, who

5 loans $600,000 to people without security? Well, I don't

6 know.

7 In fact, in the plaintiff's own documents are

8 this: Exhibit 5 to the complaint and the amended first

9 verified complaint is a document entitled endorsement to

10 agreement of sale, which is purportedly signed by the

11 plaintiff on July 29th, 2015, which removes her from the

12 agreement at closing so that she will be removed and not

13 referenced in any conveyance document provided by any of them

14 for any reason, apparently. After that, the deed was

15 recorded on August 6th.

16 The plaintiff's own affidavit indicates she asked

17 for a copy of the deed, never got it for reasons that she

18 will no doubt have an explanation for.

19 On those facts, I cannot say the plaintiff is

20 likely to prevail or has a fair chance of success given my

21 understanding of the additional legal clouds related to

22 statute of limitations, jurisdiction, et cetera.

23 To be clear, my ruling is narrowly on NRS 14.015,

24 subsection three. I do not find the plaintiff is likely to

1 prevail or even has a fair chance of success coupled with the
2 hardship that she didn't know of or understand.
3 Mr. Simons, I'm going to ask you to craft the
4 order expunging the lien. Do you have any questions for
5 purposes of drafting that order?
6 MR. SIMONS: No. You were very clear. Thank you.
7 THE COURT: Ms. Winston, is there anything you
8 would like to place into the record?
9 MS. WINSTON: I would just like the order to
10 reflect that Mr. Simons did not present any counter
11 affidavits or actual evidence for this Court's consideration.
12 THE COURT: I'm not going to place that in the
13 order. If that is the status of the record, it is. In the
14 end, of course, you bear the burden of proof and using your
15 own evidence is appropriate in the ruling. So thank you for
16 that.
17 It appears to me, counsel, that you're all
18 healthy. I'm fond of all of you. I hope it is true. I hope
19 your extended families are likewise healthy. These are
20 remarkable times. Please take good care. I look forward to
21 being of assistance to this case as the case proceeds in
22 whatever manner it does.
23 --oOo--
24

STATE OF NEVADA)
) ss.
County of Washoe)

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 7 of the above-entitled Court on March 22, 2021, at the hour of 1:30 p.m. and took verbatim stenotype notes of the proceedings had upon the hearing in the matter of KARI A. JOHNSON, Plaintiff, vs. MICHAEL EDWARD HATCH and ALISHA SUZANNE HATCH, Defendants, Case No. CV21-00246, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 27, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

DATED: At Reno, Nevada, this 24th day of March 2021.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

FILED
Electronically
CV21-00246
2021-03-30 03:54:33 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 8368951 : sacordag

EXHIBIT 2

EXHIBIT 2

6154533

PURCHASE CONTRACT AND RECEIPT

THIS PURCHASE CONTRACT AND RECEIPT (the "Agreement") dated this 13 day of December, 2014is by and between Toll South Reno LLC ("Seller") and Michael and Alisha Hatch and Karl Johnson ("Buyer") under the following terms and conditions:

1. PURCHASE: Seller hereby agrees to sell and Buyer agrees to buy Lot 0055 (the "Lot") of Estates at Saddle Ridge subdivision, Lot in the records of Washoe County, Nevada, having a street address of 9845 Firefoot Lane, Reno, NV 89521 , together with a residence (the "Residence") to be constructed thereon in accordance with Seller's Plan Willshire Sonoran (the Lot and Residence being hereinafter referred to as the "Property"). The purchase price to be paid by Buyer for the Property and method of payment shall be as follows subject to any adjustments set forth on Exhibits "B" or "C":

Purchase Price	$489,995
Earnest money applied from non-binding lot reservation agreement, which is to be released to Seller from escrow upon execution of this Agreement	$5,000
Additional Earnest Money paid to Seller	$19,500
Mortgage Amount Note for balance of 10% down is $24,500.	$0
Cash due at Closing (exclusive of closing costs)	$465,495
TOTAL	$489,995

Buyer agrees that all of the above payments (except for the Mortgage Amount and cash due at Closing) shall be paid direct to Seller outside of Escrow and may be used by Seller prior to the Closing; however, at the Closing, Buyer will be credited with all such payments. Buyer assumes the risk of losing such amounts paid to Seller if Buyer is unable or unwilling to perform under the terms of this Agreement.

Buyer's Initials: AOH MEH KJ

2. APPROVAL OF SELLER. This Agreement will not be binding upon Seller unless executed by an officer of Seller within 30 days of Buyer's execution of this Agreement; Seller's salesperson has no authority to bind Seller hereunder. This Agreement shall constitute an irrevocable offer by Buyer for this 30 day period. Notwithstanding the foregoing, Seller may deposit into any one or more of its banking accounts any such sums paid on account of the purchase price and extras during said 30 day period. Any such deposit of funds shall not constitute Seller's approval of this Agreement.

3. MORTGAGE APPLICATION. Buyer has the right to select a mortgage lender of Buyer's choosing. Buyer shall in good faith make a truthful and complete application to TBI Mortgage and any other lender of Buyer's choosing. Buyer represents to Seller that the information contained in the loan qualification questionnaire already provided to Seller is truthful and accurate as of the date of Buyer's execution hereof. Buyer understands that Seller is relying on Buyer's information and on Buyer demonstrating that Buyer has or shall have sufficient funds to complete Closing in order for Seller to proceed with building the home.

Within 14 days of Buyer's execution of this Agreement ("Mortgage Application Period"), Buyer agrees to submit, at no cost to Buyer, a loan application to TBI Mortgage, under conditions herein stated for a mortgage amount not to exceed $0, at market rates applicable to the Buyer. Buyer may also submit, at Buyer's own expense, an application to any mortgage lender of Buyer's choosing within the Mortgage Application Period. If Buyer chooses to apply to a lender other than TBI Mortgage Company, Buyer shall, within the Mortgage Application Period, return to Seller the completed Request for Lender Information form. Buyer shall cause each prospective mortgage lender to disclose to Seller all requested information regarding Buyer's loan application and credit report.

Buyer shall take all necessary action to secure financing. Buyer agrees to inform Seller on an ongoing basis of the status of each loan application. Buyer shall furnish all information required by any prospective lender, within 5 days of any such request. Buyer agrees to immediately send Seller copies of any notice from Buyer's lender(s) rejecting Buyer's loan application(s). If Buyer is not approved for a mortgage within 45 days of the date of Buyer's execution of this Agreement, Seller shall extend the mortgage application approval process until such time as (1) Seller submits another application on substantially the same terms described above to a lender chosen by Seller, with no additional application fee to Buyer, or (2) Seller declares this Agreement null and void, in which event, if Buyer has timely applied for a mortgage, pursued a mortgage diligently, and otherwise satisfied all obligations under this paragraph, the deposit shall be returned to Buyer, together with all sums paid on account of the purchase price and extras without interest, and neither party shall have any further rights or liabilities hereunder.

Within five (5) days receipt of a loan commitment from the lender that Buyer intends to use for Closing, Buyer agrees to (i) accept the commitment and (ii) mail an executed copy of the commitment to Seller. Buyer agrees to execute all documents and pay all fees required to consummate the mortgage transaction. Buyer agrees to take no

AOH MEH KJ

action which shall have a materially detrimental impact on Buyer's financial condition. By accepting the loan commitment, Buyer agrees to be responsible for and bear the risk of meeting all terms and conditions of the commitment, if any, including, but not limited to, the sale of other real estate presently owned by Buyer, and for any changes in the interest rate until the Buyer locks the interest rate. Buyer's failure to fulfill any of such conditions or the termination or expiration of the mortgage commitment after it is received, for any reason, shall not release Buyer from Buyer's obligations under the Agreement.

4. CONSTRUCTION AND COMPLETION.

(a) Seller shall cause the Residence to be constructed in substantial conformance with Seller's standard plans for the model selected by Buyer (the "Plans") and the specifications attached hereto as Exhibit "D", if any, (the "Specifications") subject to (i) substitution of materials, fixtures and appliances of equal or better value, (ii) such changes in the Plans and Specifications as may be required by any State, Federal, County or local government authority or in order to accommodate Buyer's requested changes to the plans and specifications, and (iii) any changes which may be required by any applicable homeowner association architectural committee. Buyer shall fully cooperate with Seller to expedite processing and obtain the approval of the applicable municipality and architectural committee for the Plans and changes thereto.

(b) Seller agrees to complete the construction of the Residence within a period of 2 years from the date this Agreement is signed by Buyer. If an Event of Delay occurs, this 2-year period shall be extended for a period of time equal to the length of the Event of Delay. An Event of Delay is defined as strikes or other labor disputes, shortages of labor or materials, weather conditions, Acts of God, acts of the federal, state or municipal governments or any governmental agency, including, but not limited to, building or other code inspections and approvals, governmental regulations, fire or other casualties and any other delays allowed by law. It is the express intent of the parties hereto that the parties' rights and obligations under this Agreement be construed in the manner necessary to exempt this Agreement and the sale of the Property from registration under the Interstate Land Sales Full Disclosure Act, and both Buyer and Seller hereby expressly waive any right or provision of this Agreement that would otherwise preclude any exemption, and such right or provision shall be severed from this Agreement and given no effect.

(c) Within fourteen (14) days from the date Seller accepts this Agreement, Buyer shall complete Seller's Initial Selection Sheet relative to initial variable color and structural components to be incorporated into the Residence. Within the earlier of sixty (60) days from the date Seller accepts this Agreement or fourteen (14) days from the commencement of construction, Buyer shall select all other variable decorative components or materials which are to be constructed, installed or applied by Seller, including but not limited to, landscaping selections. If such selections are not made within the required time periods, Seller shall have the right to make such selections and Buyer shall be charged Seller's standard price for such selections and the Purchase Price shall be increased accordingly. All selections shall be final and binding on Buyer, whether selected by Buyer or by Seller pursuant to the terms of this paragraph.

(d) All such changes to the Plans or Specifications requested by Buyer must be submitted in writing to Seller for review and pricing. No such changes shall be effective unless accepted in writing by Seller.

(e) Certain items of outside work (e.g. grading, seeding and driveway) may not be completed prior to Closing. Seller agrees to complete such items after closing as soon as practical and weather permitting and Buyer agrees that there will be no holdback or escrow of any part of the Purchase Price.

(f) Some of the items set forth in Exhibits "B" and "D" may be allowance items. Depending upon the selection made by Buyer, the price of the allowance item may differ from the estimate shown on Exhibit "B" or "D". Once Buyer makes its final selections on each allowance item, Seller shall provide current pricing on the allowance item and the amount of the Purchase Price shall be adjusted accordingly.

(g) Within a reasonable period of time following the Closing, Seller shall remedy punch list items and make adjustments agreed to by Buyer and Seller in a walk-through inspection which will be scheduled by Seller and Buyer either prior to or immediately after the Closing. The existence of any such punch list items or other nonstructural construction defects shall not entitle Buyer to cancel this Contract or delay the Closing.

5. POSSESSION, ESCROW AND CLOSING.

(a) Possession of the Property shall remain exclusively with Seller until the Recorded Closing and Buyer shall not have the right to take possession or occupancy perform or cause to be performed any custom or other work on the Property prior to the Closing.

(b) Seller and Buyer hereby employ the escrow agent designated on Exhibit "A" (the "Escrow Agent") to act as escrow agent to facilitate the Closing of this transaction. Upon Closing, Escrow Agent shall cause the recording in the appropriate county offices of all necessary documents, disburse all funds, arrange for issuance to Buyer of the title insurance policy referred to below and arrange for issuance to any lender any required title insurance policy insuring lender's interest in the Property and the amount required by such Lender. The parties hereto grant to Escrow Agent the right to execute on their behalf an Affidavit of Value to enable recording of the deed, using the total purchase price set forth above, unless instructed mutually by the parties to the contrary.

(c) Closing shall occur within seven (7) days after written notice to close is given by Seller, provided that by the date scheduled for Closing the municipality in which the Property is located has approved the Residence for occupancy. The approval by the municipality shall include an electrical clearance or equivalent.

Should Buyer not fully perform all of its payment and performance obligations on or before the date set for the Closing, in addition to all other amounts payable hereunder, Buyer shall pay to Seller to compensate Seller for the delay, interest at twelve percent (12%) per annum on the entire unpaid portion of the purchase price and options/upgrades from the date originally scheduled for the Closing to the date that this transaction is actually completed, unless Seller elects to cancel this transaction by reason of the failure of Buyer to timely complete this transaction on the Closing, or unless such non-performance by Buyer is caused by Seller's non-performance of any terms or conditions hereof. Seller shall not be liable to Buyer for any costs, expenses, losses or damages incurred by Buyer as a result of any delay in the Closing, including but not limited to, any loss or damage as a result of any increase in commitment fees, points or interest rates assessed or charged by any lender. Buyer has the sole responsibility to arrange for utilities to be turned on at the Property and any delays incurred in connection therewith shall not entitle Buyer to delay the Closing and Seller shall have no responsibility in connection therewith.

6. CONVEYANCE AND TITLE INSURANCE. At the Closing, Seller shall pay for a Standard Owner's Policy of Title Insurance insuring title in the amount of the total purchase price for the Property. Title to the Property shall be conveyed by Grant deed at the Closing free and clear of all liens and encumbrances except (i) patent reservations, (ii) taxes and assessments not due and payable at Closing, (iii) any liabilities, charges and obligations imposed upon the Property by reason of inclusion or membership in any electrical, agricultural, hospital, community facilities or other improvement district or any water users association or drainage district, (iv) any Declaration of Covenants, Conditions or Restrictions for the subdivision and/or master planned community in which the Property is located and any amendments thereto, (v) matters shown on the plat of the subdivision, or which an accurate survey would show, (vi) easements and rights of way for roads, canals, ditches, drainage and public utilities, (vii) water rights, (viii) Buyer's purchase money encumbrance, if any, (ix) any other matters of record not adversely affecting marketability of title to the Property; and (x) any matters agreed in writing by Buyer.

7. CLOSING COSTS AND PRORATIONS. In addition to the Purchase Price of the Property, Buyer shall deposit in escrow at or prior to the Closing, an amount (determined by Escrow Agent or any lender) equal to the cost of all financing costs (including but not limited to credit reports, appraisal fees, inspection fees, recording fees, document preparation charges, insurance premiums, loan origination fees and points), tax service fees, one-half (1/2) of the escrow fee and all other changes normally assessed against a buyer (as determined by Escrow Agent), such impounds for taxes, interest, insurance and homeowner's association assessments as may be required by lender, and the cost of any title insurance premiums in excess of the cost of a standard owner's policy of title insurance. Buyer acknowledges that Buyer is responsible to pay all applicable Real Property Transfer Taxes at close of escrow. Taxes, general and special assessments, community facilities district/improvement district assessments and homeowner association assessments ("Prorate Items") shall be prorated as of the Closing based on the most recent information available to Escrow Agent without adjustment following the Closing; however, if Buyer causes any delay in the Closing, Buyer shall be responsible for all Prorate Items from the date initially established for the Closing regardless of the actual date of the Closing.

8. DEFAULT AND REMEDIES.

(a) If Buyer defaults in performing any of its obligations under this Agreement, and such default continues for 7 days after written notice, Seller shall have the right, as its sole remedy, to terminate this Agreement and retain all sums paid to Seller or its parents, subsidiaries or affiliates and to enforce any promissory notes given by Buyer to Seller or its parents, subsidiaries or affiliates, as liquidated damages. Buyer and Seller agree that such damages are not a penalty, but represent the parties' best estimate of the actual damages which Seller will sustain upon a default by Buyer, which damages are substantial but are not capable of precise determination. No delay or forbearance by Seller in exercising any right or remedy hereunder shall be deemed to be a waiver thereof;

(b) If Seller defaults under this Agreement and such default continues for 7 days after written notice, Seller's sole liability shall be the return of all sums paid on account of the purchase price and extras to Buyer and this Agreement shall be terminated in all other respects;

(c) Notwithstanding anything contained in this Agreement to the contrary, in the event of Seller's default under Section 4(b) of this Agreement, Buyer shall have all remedies available at law and in equity without limitation or restriction.

Buyer's Initials: NZH AOH KG

9. ARBITRATION: Buyer, on behalf of Buyer and all residents of the Property, including minor children, hereby agree that any and all disputes with Seller, Seller's parent company or their partners, subsidiaries, or affiliates arising out of the Property, this Agreement, the Home Warranty, any other agreements, communications or dealings involving Buyer, or the construction or condition of the Property including, but not limited to, disputes concerning breach of contract, express and implied warranties, personal injuries and/or illness, mold-related claims, representations and/or omissions by Seller, on-site and off-site conditions and all other torts and statutory causes of action ("Claims"), shall be resolved by binding arbitration.

(a) All disputes arising out of the Home Warranty or any other express warranties shall be resolved by binding arbitration in accordance with the rules and procedures set forth in the Home Warranty.

(b) All other Claims, regardless of the amount in dispute, shall be resolved by binding arbitration by the American Arbitration Association ("AAA") and in accordance with its Expedited Procedures of the Commercial Arbitration Rules, which Rules can be viewed at www.adr.org. If AAA is unable to arbitrate a particular claim, then that claim shall be resolved by binding arbitration by AAA's successor or an equivalent organization mutually agreed upon by the Parties.

NZH AOH KG

(c) The provisions of this paragraph shall be governed by the provisions of the Federal Arbitration Act, 9 U.S.C. § §1, et seq. and shall survive settlement.

(d) In addition, Buyer agrees that Buyer may not initiate any arbitration proceeding for any Claim unless and until Buyer first provides a copy of the Demand for Arbitration stating specific written notice of each claim (sent to 250 Gibraltar Road, Horsham, PA 19044, Attn: Dispute Resolution – Legal Department) and gives Seller a reasonable opportunity after receipt to cure any default.

Buyer's Initials: MEH ASH KE

BUYER HEREBY WAIVES THE RIGHT TO A PROCEEDING IN A COURT OF LAW (INCLUDING WITHOUT LIMITATION A TRIAL BY JURY) FOR ANY CLAIMS OR COUNTERCLAIMS BROUGHT PURSUANT TO THIS AGREEMENT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE CLOSING.

Buyer's Initials: MEH ASH KE

10. NO ORAL CHANGES OR REPRESENTATIONS.

(a) Seller wishes to avoid any misunderstandings concerning the purchase of the Property and it is the policy of Seller not to enter into any oral agreements or to ask any buyer to rely on any oral representations concerning the Property or the subdivision in which the property is located. The entire Agreement between Buyer and Seller must be expressed in writing. Therefore, Buyer shall write in below any representations or promises which are not set out in this Agreement, but which have been made by Seller or its purported agents or employees, and upon which Buyer is relying in making this purchase, and if there are none, Buyer shall so indicate.

NONE

Buyer's Initials: MEH ASH KE

(b) **BUYER ACKNOWLEDGES THAT THERE ARE NO UNDERSTANDINGS, REPRESENTATIONS OR PROMISES OF ANY KIND THAT HAVE BEEN MADE TO INDUCE THE EXECUTION OF THIS AGREEMENT AND THAT AGREEMENT SETS FORTH IN FULL THE ENTIRE AGREEMENT BETWEEN THE PARTIES. BUYER FURTHER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY ORAL AGREEMENT, STATEMENT, REPRESENTATION OR OTHER PROMISE THAT IS NOT EXPRESSED IN WRITING IN THIS CONTRACT.** No salesperson or broker has any authority to modify the terms hereof nor any authority to make any representation or agreement not contained in this Agreement and no other person on behalf of Seller is authorized to make any future oral agreement upon which Buyer may rely to cancel, change or modify any portion of this Agreement. This Agreement supersedes any and all prior understandings and agreements. This Agreement may be amended or modified only by an agreement in writing signed by Buyer and Seller or Seller's authorized agent.

(c) Buyer hereby agrees that an electronic transmission of documents is acceptable in Adobe PDF format or an equivalent form. Any document delivered by electronic means shall be considered to be signed and delivered in writing for the purpose of any provision of the Agreement. Upon receipt of the electronic transmission of documents, Buyer agrees to respond immediately to the sender by electronic transmission, confirming receipt.

Print email address in box below or write "Decline" if you elect to receive all documents in hard copy.

Leshhatch@gmail.com

11. LIMITED WARRANTY.

(a) SELLER SHALL CAUSE TO BE PROVIDED TO BUYER A 10 YEAR LIMITED WARRANTY (THE "HOME WARRANTY"). BUYER ACKNOWLEDGES RECEIPT OF THE HOME WARRANTY, THE HOME CARE AND SERVICE GUIDE AND STANDARDS OF PERFORMANCE. EXCEPT AS EXPRESSLY SET FORTH IN THE HOME WARRANTY, SELLER SHALL HAVE NO LIABILITY OR OBLIGATION WHATSOEVER AFTER CLOSINGWITH RESPECT TO THE PROPERTY OR THIS AGREEMENT. SELLER HEREBY SPECIFICALLY EXCLUDES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, WORKMANSHIP AND FITNESS FOR A PARTICULAR PURPOSE. SELLER'S LIABILITY UNDER THE HOME WARRANTY OR THIS AGREEMENT OR ARISING IN ANY WAY OUT OF THE CONSTRUCTION, DELIVERY, SALE OR CONDITION OF THE PROPERTY SHALL BE LIMITED TO THE REPAIR OF THE PROPERTY IN ACCORDANCE WITH THE HOME WARRANTY STANDARDS. IN NO EVENT SHALL SELLER BE LIABLE FOR RESCISSION, SPECIFIC PERFORMANCE, ANY SPECIAL EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE CLOSING.

MEH ASH KE

Buyer's Initials: MZ/ ASH

(b) The manufacturers of some products used in the Property may have a manufacturer's warranty. Seller has no obligation or responsibility for the manufacturer's performance. If a manufacturer's warranty has been issued to Seller, Seller hereby assigns to Buyer (without recourse) all rights under such manufacturer's warranty, such assignment to be effective as of the Closing.

Buyer's Initials: MZ/ ASH

(c) Seller shall contract with a licensed pest control company to apply a termite treatment to the foundation during construction of the Property. Buyer and Seller understand that current government regulations limit the types and concentration of chemicals and the methods of application that can be used in attempting to prevent or eradicate termites and consequently, termites may appear following completion of the Property. Seller shall obtain a certificate from the pest control company (the "Termite Certificate") which will provide, in substance, that the pest control company has applied the termite treatment in accordance with the applicable state and federal agencies and should termites be discovered at the Property within five (5) year period from the date of original treatment, the pest control company shall re-treat the Property on as many occasions as are necessary to control such termites. Seller shall assign the Termite Certificate to Buyer at the Closing, when required by a government agency. Seller recommends that Buyer annually consult with a pest control company as to the need for termite retreatments. BY RECEIPT OF THE TERMITE CERTIFICATE TO BE ASSIGNED BY SELLER TO BUYER AS DESCRIBED IN THIS PARAGRAPH, BUYER AND THEIR SUCCESSORS AND ASSIGNS AGREE TO LOOK SOLELY TO THE PEST CONTROL COMPANY FOR COSTS AND EXPENSES ASSOCIATED WITH INVESTIGATING AND REMEDYING ANY TERMITE PROBLEMS AND WAIVE ALL CLAIM OF LIABILITY AGAINST SELLER FOR LOSSES, COSTS AND EXPENSES IN CONNECTION WITH THE EXISTENCE OF TERMITES AT THE PROPERTY.

Buyer's Initials: MZ/ ASH

12. **VISITATION TO PROPERTY:** Any visitation by Buyer or Buyer's invitees (limited to Buyer's immediate family) to the Property prior to Closing is subject to the following:

Buyer hereby acknowledges that the Property and adjacent houses are under construction and that active construction sites inherently possess potential safety hazards. If Buyer enters the Property, Buyer expressly assumes the risks of any injury or damage to person or property that may arise as a result of entry onto the Property by Buyer or an invitee of Buyer. No children under the age of 16 years are allowed in construction areas at any time. Buyer hereby releases and agrees to indemnify, defend and hold Seller harmless from all claims and liabilities incurred by Seller resulting from the presence of Buyer or Buyer's invitees on the Property or Seller's other property.

Buyer and members of Buyer's immediate family (provided that Buyer is present) may only enter the Property for the purpose of monitoring the progress of construction and only during Seller's normal working hours. Before entering any construction areas, Buyer must receive approval at the sales office or the construction office and be issued a hard hat. Hard hats shall be worn at all times in all construction areas. Buyer agrees that, due to construction conditions, access at certain times may not be feasible. Buyer acknowledges and understands that keys to the Property may not always be available. Seller reserves the right at any time to deny access to construction areas and to impose additional rules or conditions upon entry into the community or the Property as determined in Seller's sole and absolute discretion.

When at the Property, Buyer may only view the Property and any exposed components thereof. In no event may Buyer modify, alter, test, reinforce or otherwise interfere with the Property or any component thereof. Buyer may not access any other homes or any other area outside of the Property. In addition, Buyer agrees not to critique or instruct Seller's construction personnel or any of Seller's other workers or employees and will address any questions, instructions, or suggestions in writing to Seller.

13. ENVIRONMENTAL NOTICE. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, ABOUT THE EXISTING OR FUTURE SOIL OR ENVIRONMENTAL CONDITIONS ON OR ADJACENT TO THE PROPERTY OR THE SUBDIVISION, INCLUDING POSSIBLE PRESENT OR FUTURE POLLUTION OF THE AIR, WATER OR SOIL FROM ANY SOURCES, INCLUDING BUT NOT LIMITED TO RADON GAS OR UNDERGROUND MIGRATION OR SEEPAGE OF HAZARDOUS SUBSTANCES OR OTHER POLLUTANTS. SELLER EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY TYPE OF DAMAGE, WHETHER DIRECT OR INDIRECT OR CONSEQUENTIAL, WHICH THE LOT OR ITS INHABITANTS MAY SUFFER BECAUSE OF ANY EXISTING OR FUTURE ENVIRONMENTAL OR OTHER CONDITIONS, INCLUDING, BUT NOT LIMITED TO POWER LINES OR RADON, AFFECTING SUCH INHABITANTS, THE LOT OR REAL PROPERTIES IN OR ADJACENT TO THE SUBDIVISION.

14. PUBLIC OFFERING STATEMENT. The Property is part of a Planned Community, as further described in the Public Offering Statement for the Community. Buyer acknowledges having received the Public Offering Statement. The Public Offering Statement is hereby incorporated as part of this Agreement. In the event of any inconsistencies between this Agreement and the Public Offering Statement, the terms of the Agreement shall control.

Buyer's Initials MZ/ ASH

15. PROTECTIVE COVENANTS. The Property may be encumbered by a declaration of covenants and easements for the benefit of all homeowners and Seller. The declaration sets forth certain use and architectural

restrictions, including restrictions on the construction and location of swimming pools, fences, tennis courts, signs, clotheslines, antennas, boats, trailers, campers, storage sheds and other structures.

Buyer's Initials: MEH ASH KG

16. MASTER ASSOCIATION AND OWNERS ASSOCIATION: A Landscape Maintenance Association and the Damonte Ranch Drainage District (collectively, the "Master Association") have been established for the benefit of all homeowners and Seller for the purpose of managing, operating and maintaining certain common areas and community facilities, drainage facilities and/or services within the community in which the Lot is located. Seller does not control the Master Association. Buyer will be a member of the Master Association and will be subject to the provisions of the Master Association's governing documents (the "Master Association Governing Documents") pursuant to which the Master Association has been established and will be operated. The affairs of the Master Association will be conducted by a Board of Directors. Buyer hereby agrees to pay and acknowledges Buyer's continuing liability to pay, when assessed by the Master Association, a share of the expenses of maintaining the Master Association, including, but not limited to, the Landscape Maintenance Association fees and the Damonte Ranch Drainage District fees, as may be amended from time to time. In addition to any other costs incident to the Closing hereunder, Buyer also agrees to pay at Closing the additional sum of FOUR HUNDRED Dollars ($400), as may be amended from time to time, as a non-refundable contribution to the operating revenue, working capital and/or reserves of the Master Association, such contribution to be in addition to and not in lieu of any common expense assessments levied by the Masters Association as they thereafter regularly or specially accrue.

In addition to the Master Association, all homeowners shall also be members of the SADDLE RIDGE Owners Association (the "Owners Association"). Buyer will be a member of the Owners Association and will be subject to the provisions of the Owners Association's Governing Documents (the "Owners Association Governing Documents") pursuant to which the Owners Association has been established and will be operated. The affairs of the Owners Association will be conducted by a Board of Directors. Buyer hereby agrees to pay and acknowledges Buyer's continuing liability to pay, when assessed by the Owners Association, a share of the expenses of maintaining the Owners Association. In addition to any other costs incident to the Closing hereunder, Buyer also agrees to pay at Closing the additional sum of THREE HUNDRED SEVENTY EIGHT Dollars ($378), as may be amended from time to time, as a non-refundable contribution to the operating revenue, working capital and/or reserves of the Owners Association, such contribution to be in addition to and not in lieu of any common expense assessments levied by the Owners Association as they thereafter regularly or specially accrue.

Buyer hereby acknowledges having received copies of the Master Association Governing Documents and Owners Association Governing Documents, which are further described in the above paragraphs.

Buyer's Initials: MEH ASH KG

17. BROKERAGE DISCLOSURE. Buyer acknowledges that the real estate agents marketing lots and residences for Seller at the Subdivision are acting solely as the agents of the Seller and may be affiliated with Seller. Seller does not utilize sub-agents; therefore, if Buyer has been shown the lot by a real estate agent other than one of Seller's project agents, such real estate agent is an agent of the Buyer and solely represents the Buyer. Seller shall not pay any real estate broker or agent a real estate commission or any other compensation unless there is a written agreement signed by Seller and the real estate broker or agent detailing the amount of compensation to be paid, the conditions of payment and confirming that the real estate agent or broker is acting solely on behalf of Buyer and not as a sub-agent of Seller.

18. MISCELLANEOUS.

(a) This Agreement and all Exhibits and Endorsements contain the entire agreement between the parties. No modification of this Agreement shall be binding unless it is in writing and signed by the parties. Any statement of square footage is an estimate and Seller does not guarantee or warrant the square footage of the completed Residence. In the event any marketing materials contain a representation that is different than this Agreement, Buyer acknowledges that any such representation is superseded by and is not a part of this Agreement and that Buyer has not relied upon any such representation in entering into this Agreement.

(b) If this Agreement is signed by more than one Buyer, each Buyer shall be jointly and severally liable hereunder. The numbers and gender used herein shall be deemed to apply to such number and gender as the context requires.

(c) This Agreement shall inure to the benefit of and shall be binding upon the parties, their heirs, personal representatives, successors and assigns, provided, however, neither this Agreement nor any rights hereunder may be assigned or transferred by Buyer prior to the Closing without the prior written consent of the Seller, and any such prohibited assignment shall be void.

(d) Except as otherwise provided herein, no waiver in connection with this Agreement shall be effective unless it is in writing signed by the party against whom enforcement of the waiver is sought. The waiver of a breach of any provision of this Agreement shall not constitute a waiver of the same or a different breach in the future.

(e) Time is of the essence with respect to the performance of all terms, conditions and provisions of this Agreement.

MEH ASH KG

(f) This Agreement shall not be binding upon Seller until accepted by Seller and executed by Seller's authorized representative. Buyer's earnest money deposit is accepted subject to acceptance by Seller and subject to prior sale and this Agreement may be canceled by Seller in the event of prior sale.

(g) Buyer's obligation to pay the entire purchase price, the price of any options/upgrades/extras and costs shall survive Closing.

(h) If prior to the Closing, all or a substantial portion of the Property shall be destroyed or materially damaged by fire or other casualty, either Buyer or Seller may cancel this Agreement, in which event Buyer shall be entitled to a full refund of all amounts paid hereunder, unless Seller agrees to repair and complete construction no later than one hundred eighty (180) days after the date of fire or other casualty, in which event this Agreement shall remain in full force and effect.

(i) This Agreement shall be governed and enforced under the laws of the State of Nevada.

(j) Within five (5) days after request thereof, Buyer and Seller shall execute and deliver any additional documents and provide any additional information required or reasonably requested by the other party, any lender or escrow agent in order to evidence or give effect to the provisions of this Agreement, both prior to and following the Closing. If the parties cannot agree upon the terms and conditions of any documents to be executed which are not specifically agreed upon in this Agreement, then Escrow Agent's standard form of that particular document shall be used.

(k) All provisions of all Endorsements and Exhibits to this Agreement are hereby incorporated by reference into this Agreement.

(l) Unless a Buyer or his/her agent has personally inspected the Property, the Buyer may cancel, by written notice, the Agreement for purchase of the Property until **midnight of the fifth calendar day** following the date of execution of the Agreement. Notice of cancellation must be in writing, delivered by hand or prepaid U.S. mail, addressed to Seller within such five-day period.

(m) Any and all Exhibits or Endorsements signed by any one Buyer are deemed to be authorized and accepted by all signatories to the Agreement who have signed as Buyer.

19. ACKNOWLEDGEMENTS AND RIGHTS OF BUYER.

(a) Buyer understands and accepts that (i) the as-built location of utility lines, utility improvements (such as but not limited to junction boxes, transformers or pedestals) and sewer taps, may vary from locations shown on plot or site layout plans, (ii) there may be minor encroachments by fences on either side of actual lot lines, (iii) future construction on or grading or excavation of the Property by Buyer must comply with applicable drainage plans, and if not correctly engineered, could disrupt drainage and cause ponding or flooding, (iv) the character and uses of property surrounding and in the vicinity of the subdivision may change, (v) there may be deviations in the Property from Seller's standard plans or model or spec homes located within the subdivision and from illustrations and designs shown in promotional materials and some exterior and interior items shown in Seller's spec homes are upgrades over Seller's standard feature and, unless included as extras on Exhibit "B" attached hereto or on a change order approved in writing by Seller, such upgraded items are not included in the Purchase Price, (vi) square footage figures shown in the sample floor plans, preliminary drawings and promotional and other materials provided by or on behalf of Seller are estimates only, (viii) there may be minor variations from the Plans as to the location of the walls of the Residence, (ix) if a portion of the Lot consists of natural area open space ("NAOS"), then pursuant to the ordinances of the municipality in which the Lot is located, Buyer may not construct any improvements in the NAOS area or change the drainage or landscaping in the NAOS area. Seller disclaims liability or responsibility in connection with the foregoing and Buyer hereby releases Seller from any and all responsibility, obligation or liability whatsoever for the occurrence of the same.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

SELLER:
Toll South Reno LLC

By: _____
Authorized Signature

ON: 12/18/14

BUYER(S): _____

_____

_____

Michael and Alisha Hatch and Kari Johnson
Mike Hatch
6022 Monte Rosa Court
Reno, NV 89511

DATE: 12/18/14

Submitted by the following broker/salesperson on this 13 day of December, 20 14.

_____

General Conditions of Escrow
And Escrow Instructions

Escrow No. .....-JN

These "General Conditions of Escrow" shall become an addendum to the agreement entered into on 12-13-14 by and between Toll South Reno, LLC, a Nevada limited liability company as seller and Michael & Alisha Hatch and Kari Johnson, as buyer for property described as: 9845 Firefoot Lane Reno, NV 89521

Lot 0055 of The Estates at Saddle Ridge - Damonte Ranch Village – Unit 11D, according to the map thereof, filed in the office of the County Recorder of Washoe County, State of Nevada, on April 3, 2014, as File No. 4341181, Official Records
Tract Map No. 5071.

More commonly known as 9845 Firefoot Lane Reno, Nevada 89521

and in combination shall serve as escrow instructions to Escrow Agent, for said Agreement to purchase and any modifications thereto.

I authorize Escrow Agent to deliver Seller's instrument of conveyance to the above named party upon payment to Escrow Agent for Seller's account of the full consideration and upon condition that Ticor Title of Nevada, Inc. issue the usual form of A.L.T.A. Standard Owner's policy and A.L.T.A. Lenders Policy for any Lenders.

Subject only to:

1) Taxes, INCLUDING PERSONAL PROPERTY TAXES, IF ANY, and any and all taxes and assessments levied or assessed after close of escrow.
2) RESTRICTIONS, CONDITIONS, RESERVATIONS, RIGHTS, RIGHTS OF WAY AND EASEMENTS NOW OF RECORD, if any, affecting the use and occupancy of said property as the same may now appear of record, except as otherwise specifically required herein.
3) Endorsement to Agreement of Sale.

ESCROW AGENT HAS NO RESPONSIBILITY FOR INVESTIGATING OR GUARANTEEING THE STATUS OF ANY GARBAGE FEE, POWER, WATER, TELEPHONE, GAS, AND/OR OTHER UTILITY OR USE BILL, EXCEPT AS SPECIFICALLY REQUIRED HEREIN.

An installment maturing on existent encumbrances, if any, during the period of this escrow shall be paid by Seller, unless otherwise specifically required herein. All prorations shall be computed on the basis of a 30-day month. The term "close of escrow" shall be deemed to mean the date upon which all necessary documents are filed for record with the appropriate county recorder's office. Escrow Agent is directed to mail the respective policy (ies) of title insurance to the holder of any new encumbrance called for herein and to the Buyer hereunder.

Commission, as per separate agreement, shall be payable to N/A and Escrow Agent is directed to disperse same to the extent that the proceeds of this escrow available become disbursable for Seller's account.
Ticor Title of Nevada, Inc. assumes no liability for, and is hereby relieved of any liability in connection with any PERSONAL PROPERTY which may be part of this escrow.

Escrow Agent is directed to file the necessary Deeds, Trust Deeds, and other instruments and pay for any encumbrance which a title search reveals against the subject property, except as set for herein. Escrow Agent is authorized and directed to pay said encumbrances as directed by the lien holder thereof, acting solely upon the written direction of such lien holder, and it is expressly understood and agreed that Escrow Agent assumes no liability for the accuracy of any such statement or direction.

Escrow Agent is further directed to insert the names of the Grantee in the necessary conveyance and/or encumbering documents prior to the recordation of the same, based upon the written direction tendered by Grantee or in compliance with instructions set for by the beneficiary under any new loan documents. Escrow Agent is expressly authorized to charge to the account of the party obligated to pay same, any charge or expense incurred in connection with this transaction or the terms thereof. Escrow Agent is further directed and authorized to reimburse itself for any charges which it may incur during this escrow by charging such amount to the party obligated to pay the same. All disbursements made under this transaction shall be made in the form of a check by Ticor Title of Nevada.

Any deposit made by Buyer or Seller hereunder into this escrow shall be in the form of certified funds or cashier's check. Any check presented for deposit into this escrow by either party shall be subject to clearance thereof and Escrow Agent shall not be obligated to act upon nor disburse against any such funds until notified by the bank upon which check is drawn that said check has cleared its account. Buyer/Seller acknowledges funds are deposited into a non-interest bearing account.

All notices, demands or changes to these instructions shall be in writing.

MEH AHH KH

Supplemental tax bills, when issued and posted, may not be immediately available; therefore, there may be a gap in time where the bill may be posted, however, we would not have knowledge of the assessment. Therefore, in the event a supplemental tax bill is issued by the County Tax Collector after the date of the above mentioned preliminary report or after the close of escrow and transfer of title, the undersigned parties agree to handle any adjustment which might result from such supplemental tax bill directly between themselves.

Notwithstanding the fact that Escrow Agent may have been provided with a copy of the Purchase Contract in relation to subject property for information purposes, Escrow Agent's liability to the undersigned is limited solely to Escrow Agent's compliance with these instructions, and any modifications hereto given in writing prior to close of escrow.

These instructions are executed for the sole purpose of enabling escrow holder to complete this transaction but are in no way intended to modify, amend, supersede or in any way change that certain agreement executed by and between the parties hereto prior to these instructions. The undersigned acknowledge that Escrow Agent, as escrow holder, are not charged with the responsibility of interpreting the provisions of any contract which may be the basis for this transaction, or making any disclosures relative to such provisions, or otherwise.

In the event any party to this escrow receives funds or is credited with funds that they are not entitled to, for whatever reason, they agree, upon written demand, to return said funds to the proper party entitled or to the escrow for disbursement. Escrow Agent is authorized and instructed to rely upon any statement furnished by any lien holder and the holder, payee or collection agent of payee for any note or contract of sale, without liability or responsibility for the accuracy of such statement.

In the event this transaction is an exchange or part of an exchange, the parties acknowledge the escrow holder has made no representations whatsoever regarding the sufficiency or effect of this transaction in relation to applicable federal and state tax laws. It is further acknowledged by the parties that they are hereby advised by escrow holder to seek the counsel of their own tax attorney or certified public accountant for the determination of any tax consequences of this exchange. The undersigned fully indemnify and hold escrow holder harmless from any loss or damage which the parties may sustain in the event this transaction fails to qualify for any special tax treatment.

In the event a suit is brought by any party (ies) to this escrow to which the escrow holder is named as a party and which results in a judgment in favor of the escrow holder and/or against party or principal of any part hereunder, the principal or principal's agent(s) agree to pay said escrow holder all costs, expenses and reasonable attorney fees which it pays or incurs in said suit, the amount thereof to be fixed and judgment to be rendered by the court in said suit.

Initials Initials

Time is of the essence in this agreement and each party hereto requires that the other party comply with all requirements necessary to place this escrow in a condition to close as provided in said Purchase Contract, however, that if the closing date, or any other compliance date specified herein, falls on a Saturday, Sunday, or Holiday, the time limit set forth herein is extended through the next full business day. In the absence of written direction to the contrary, Escrow Agent is authorized to take any administrative steps necessary to effect the closing of this escrow subsequent to the date set forth herein.

Either party hereunder claiming right of cancellation of this escrow shall file written notice and demand for cancellation in the office of the Escrow Agent in writing. Escrow Agent shall, within three (3) business days following receipt of such written notice, notify the party against whom said cancellation is filed by depositing a copy of said notice in the United States Mail, addressed to such other party at the last address filed with Escrow Agent.

In the absence of written indication from such party as to said party's mailing address, Escrow Agent is directed to deposit such notice in the United States Mail, certified with return receipt requested, addressed to such party in Reno, Nevada, or such other city as Escrow Agent may have written indication that such party resides. Said notice shall be deemed to have been given upon deposit of said notice in the United States Mail, addressed as specified herein, with proper affixed thereto, and no further notice, or evidence of receipt, shall be required.

Unless written objection to any cancellation notice hereunder shall be submitted and received by Escrow Agent from the party to whom such cancellation notice is directed with ten (10) business days following Escrow Agent's mailing of said cancellation notice, Escrow Agent is authorized and directed to comply with such cancellation notice and demand upon payment of its cancellation charges and expenditures.

In the event that such written objection shall be filed, Escrow Agent is are authorized to hold all money and instruments in this escrow pending mutual written instruction by the parties hereto, or a final order by a court of competent jurisdiction. The parties are aware, however, and expressly agree and consent, that Escrow Agent shall have the absolute right, at its sole discretion, to file a suit to counter claim in interpleader and to obtain an order from the court requiring the claimants to interplead and litigate in such court their several claims and rights amongst themselves. In the event such suit or claim is brought, the parties hereto jointly and severally agree to pay Escrow Agent all costs, expenses and reasonable attorney fees which it may expend or incur in such interpleader action, the amount thereof to be fixed and judgment therefore to be rendered by the court in such suit.

Upon the filing of such suit or counterclaim said Escrow Agent shall thereupon by fully released and discharged from all obligations to further perform any duties or obligations otherwise imposed by the terms of this escrow.

It is expressly understood and agreed that the Escrow Agent without any obligation to exercise such right, retains the right to resign its duties as escrow agent under this transaction, at any time and at its sole discretion and/or refrain from taking any act in furtherance of the subject transaction at the sole discretion of Escrow Agent is deemed advisable. No liability shall accrue to said Escrow Agent for any such act or forbearance.

This agreement in all parts applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, and whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

These instructions may be executed in any number of counterparts, each of which shall be considered an original and be effective as such, and all of which, when aggregated, shall constitute one fully executed original.

Sellers and Buyers hereby authorize Escrow Agent to furnish copies of closing statements and escrow instructions to the Lender and or Broker involved herein. Escrow Agent is further authorized to deliver a copy of any notice filed in accordance with the terms set forth herein by one party upon the other, to the Broker(s) involved within.

Buyer and Seller shall notify Escrow Agent in writing of any change in address during the course of this escrow, and unless Escrow Agent is in receipt of written indication to the contrary, to mail any notices filed by either party to or against the other, to the address set forth herein.

Seller is hereby made aware that there is a law which became effective January 1, 1987, which requires all escrow holders to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the escrow holder. Escrow Agent are authorized and instructed to provide this information to the Internal Revenue Service after the close of escrow in the manner prescribed by law, or it is understood that this transaction shall not close with Escrow Agent as the escrow holder.

The undersigned buyer herein acknowledges that the Homeowners Association is the Estates at Saddle Ridge Owners Association. The homeowner's association dues for Saddle Ridge Owners Association are $89.00 monthly (which amount may increase from time to time) and a transfer fee of $100.00 and a Capital Contribution Fee of $378.00. In addition there is a $57.00 quarterly payment to Damonte Ranch LMA along with a transfer fee of $100.00 payable to Eugene Burger Management Company and a Capital Contribution of $100.00 payable to Damonte Ranch LMA. There is also a quarterly payment of $30.00 payable to Damonte Ranch Drainage District, accompanies by a Transfer fee of $100.00 payable to Eugene Burger Management Company and a Capital Contribution of $100.00 to Damonte Ranch Drainage. Escrow Agent is hereby authorized and instructed to collect homeowner's association dues upfront and through escrow.

ABH MEH
Initials Initials

TO THE EXTENT THAT THE TERMS AND CONDITIONS OF SAID PURCHASE AGREEMENT, AND ANY MODIFICATION THERETO, SHALL CONFLICT WITH THESE "GENERAL CONDITIONS OF ESCROW"; THE OBLIGATIONS OF ESCROW AGENT SHALL BE GOVERNED EXCLUSIVELY BY THESE "GENERAL CONDITIONS OF ESCROW AND ESCROW INSTRUCTIONS" CONTAINED HEREIN, ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, ESCROW AGENT IS HEREBY UNCONDITIONALLY RELIEVED FROM ANY LIABILTY OR RESPONSIBILITY WHATSOEVER INVOLVING COMPLIANCE WITH OR ADHERENCE TO CONSUMER CREDIT PROTECTION ACT (TRUTH IN LENDING) OR SIMILAR LAW.

SELLER(S) AND BUYER(S) HEREBY AUTHORIZE ESCROW AGENT TO FURNISH COPIES OF CLOSING STATEMENTS AND ESCROW INSTRUCTIONS TO LENDER AND/OR BROKER INVOLVED.

In the event a post-closing or post-disbursement adjustment is necessary by an entity involved with this escrow transaction, the undersigned authorizes Escrow Agent to, if immediate action to advance funds on their behalf is necessary to promptly effect an accurate closing statement. The undersigned, upon notification, and the opportunity to investigate such necessary advances, agrees to fully cooperate and pay Ticor Title of Nevada, Inc. any and all funds so advanced on their behalf.

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Initials Initials

SELLER

I agree to pay the following escrow charges: ALTA Policy of Title Insurance, Escrow Fee, Recording Fee, Reconveyance Fee, and incidental expenses necessary to convey insurable title as described herein.

Toll South Reno, LLC, a Nevada limited liability company

12/18/14

BY: Jake Lucero, Division President

BUYER

I have read the foregoing General Conditions of Escrow and am buying the property described on the terms and conditions set forth, and will within the time limit either hand Escrow Agent or cause to be handed Escrow Agent, the consideration as specified, and I require that Seller comply with all terms thereof within the time as listed above. I agree to pay the following escrow charges: ALTA Premium, ***Real Property Transfer Tax***, Loan Fee (as required by Lender), Escrow Fee, Recording Fee, and Incidental Expenses as may be incurred in connection with any new loan(s).

These incidental expenses include any appraisals ordered by Lender _____ _____ (initials)

Alisha Hatch 12/13/14
Buyer Date

12/13/14
Buyer Date

Karen D Johnson 12/13/14

6154533
Alisha Hatch : 0055

Toll Brothers
America's Luxury Home Builder®

EXHIBIT B NO. 1

COMMUNITY: Estates at Saddle Ridge **LOT: 0055**
PLAN: Willshire Sonoran

THE AGREEMENT OF SALE made between **Toll South Reno LLC** Seller and **Michael and Alisha Hatch and Kari Johnson** Buyer is hereby modified as follows: Buyer hereby authorizes and offers to Seller the right to make the following construction changes to the new home indicated above. All construction change orders are offered subject to the acceptance of the Seller. The Seller reserves the right for any reason whatsoever, to reject in part or in whole, any requested construction changes.

OPTION NO.	OPTION DESCRIPTION	QTY	OPTION PRICE
	LOT PREMIUM		$5,000
426	SECURITY SYSTEM - A, W/WEST- MINSTER SECURITY MONITORING	1	$0

Diagram Attached: No

For the sum of five thousand DOLLARS	$5,000
To be applied as payment of or on account of extras, upon the following terms:	
Down payment of signing of this Exhibit "B"	$250
Cash or Buyer's Certified Check at Settlement	$4,750

Buyer: _____ Date Offered: 12/13/14

Buyer: _____ 12/13/14

Seller: _____ Date Accepted: _____

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Jacqueline Bryant
Clerk of the Court
Transaction # 8371068

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Mark G. Simons, Esq. (SBN 5132)
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AHall@SHJNevada.com

Attorneys for Defendants

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IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7** **REQUEST FOR SUBMISSION**

It is hereby requested that Defendants' proposed Order Granting Motion to Expunge Lis Pendens, attached hereto as **Exhibit 1**, be submitted for decision in this matter.

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AFFIRMATION: This document does not contain the social security number of any person.

DATED this 31st day of March, 2021.

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509

By: _____
MARK G. SIMONS
ANTHONY L. HALL
Attorneys for Defendants

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **REQUEST FOR SUBMISSION** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Stefanie T. Sharp
Clayton P. Brust
Attorneys for Defendants

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 31st day of March, 2021.

Jodi Atkinson
Employee of Simons Hall Johnston PC

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NO.	DESCRIPTION	PAGES
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SIMONS HALL JOHNSTON PC
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Transaction # 8371068

EXHIBIT 1

EXHIBIT 1

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IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

ORDER GRANTING
MOTION TO EXPUNGE LIS PENDENS

This matter came before the Court on March 22, 2021 on the Motion to Expunge Lis Pendens ("Motion"), filed by defendants Michael Edward Hatch and Alisha Suzanne Hatch (the "Hatches"), by and through their attorney MARK G. SIMONS of SIMONS HALL JOHNSTON PC. Plaintiff Kari Ann Johnson ("Johnson") appeared by and through her attorneys Hannah Winston, Stefanie Sharp and Clayton Brust of Robison Sharp Sullivan & Brust.

FINDINGS OF FACT

The Court finds the following facts:

1. On February 10, 2021, Johnson filed her Verified Complaint ("Complaint") and a Notice of Pendency of Action (Lis Pendens) (herein after the "Lis Pendens).

2. Johnson's Complaint alleged the following as claims: 1) breach of note; 2) demand on loan documents; 3) unjust enrichment on loan documents; 4) fraud in the inducement; 5) equitable lien; 6) constructive trust; and 7) injunctive relief.

3. On February 10, 2021, Johnson recorded the Lis Pendens against the Hatches' property located at 9845 Firefoot Lane, Reno, Nevada 89521 (the "Property").

4. The Lis Pendens was recorded with the Washoe County Recorder on February 10, 2021 as Document Number 5140328

5. On March 5, 2021, Hatches filed their Motion and filed a concurrent Motion to Dismiss the Complaint.

6. On March 15, 2021, Hatches filed their Supplement to their Motion.

7. On March 16, 2021, Johnson filed her Opposition to the Motion and Supplement.

8. Concurrent with the filing of her Opposition, Johnson filed her 1st Amended Complaint ("Amended Complaint").

9. Johnson's Amended Complaint alleged the following as claims: 1) breach of contract (PSA); 2) breach of note; 3) breach of confidential relationship; 4) unjust enrichment; 5) fraud in the inducement; 6) equitable lien; 7) constructive trust; 8) injunctive relief and 9) declaratory relief.

10. On March 19, 2021, Hatches filed their Reply in support of their Motion and submitted it for decision.

11. The filing of the Amended Complaint rendered moot the Hatches' Motion to Dismiss.

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12. On March 22, 2021, the Court conducted oral arguments on the Motion, having considered the Motion, the Supplement, the Opposition, the Reply and Plaintiffs' Amended Complaint, and counsel's argument.

13. The hearing on the Lis Pendens is governed by NRS 14.015. Plaintiff does not seek to foreclose on a mortgage instrument, instead Plaintiff's action is based upon a simple note, which note is unsecured.

14. The Plaintiff seeks to color the Hatches title in their Property claiming a security interest in the Property. Plaintiff's Lis Pendens seeks to act as security for the collection of money she alleges she loaned to Hatches.

15. Plaintiff's Exhibit 5 to the Complaint and the Amended Complaint, is a document entitled Endorsement to Agreement of Sale, which Plaintiff purportedly signed on July 29th, 2015, removed Plaintiff from the purchase agreement and not referenced in the Deed. After that, the Deed was recorded on August 6, 2015. Comp., Am. Compl., Ex. 4.

16. In addition, the Plaintiff's own affidavit indicates she asked for a copy of the Deed after the Hatches purchased the Property in August 2015, and never got it.

17. If any Finding of Fact is more appropriately a Conclusion of Law, it is so determined.

CONCLUSIONS OF LAW

18. Plaintiff does not seek to foreclose upon a mortgage but instead seeks to enforce a simple note.

19. Plaintiff's Lis Pendens seeks to operate as security for repayment of the note.

20. NRS 14.015(3) requires that the party who recorded the notice must establish to the satisfaction of the court either:

(a) That the party who recorded the notice is likely to prevail in the action; or

(b) That the party who recorded the notice has a fair chance of success on the merits in the action and that any injury suffered by the transfer of an interest in the property would be greater than the hardship on the defendant resulting from the notice of pendency.

NRS 14.015(3)(a) and (b).

21. Based upon the facts presented by Plaintiff, the Court finds that Plaintiff is not likely to prevail and does not have even a fair chance of success on the merits coupled with a hardship that Johnson did not know or understand, and therefore, Plaintiff has failed to satisfy its obligations under NRS 14.015(3).

22. The Court finds that the Lis Pendens should be expunged.

23. If any Conclusion of Law is more appropriately a Finding of Fact, it is so determined.

For the reasons set forth above,

IT IS SO ORDERED that the Motion to Expunge is **GRANTED the** Lis Pendens recorded with the Washoe County Recorder on February 10, 2021 as Document Number 5140328 for the property located at 9845 Firefoot Lane, Reno, Nevada, 89521, is expunged in total.

DATED this ___ day of _____, 2021.

_____
DISTRICT JUDGE

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

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Jacqueline Bryant
Clerk of the Court
Transaction # 8373553 : csulezic

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Attorneys for Plaintiff Kari Anne Johnson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual, Plaintiff, vs. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I THROUGH X, inclusive; Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED ORDER GRANTING MOTION TO EXPUNGE LIS PENDENS

Plaintiff Kari Anne Johnson ("Plaintiff") hereby objects to the Proposed Order Granting Motion to Expunge Lis Pendens (the "Proposed Order") submitted by Defendants Michael Edward Hatch and Alisha Suzanne Hatch ("Defendants") as follows.

The Defendants' Proposed Order is overreaching and exceeds the scope of this Court's findings of fact and conclusion of law made at the March 22, 2021 hearing on Defendants' Motion to Expunge Lis Pendens.

At the hearing, this Court specifically limited its ruling to the statutory analysis required by NRS 14.015(3) and based its ruling upon the evidence and arguments presented by the parties in their moving papers and arguments. Defendants now improperly ask the Court for more.

Plaintiff attempted to confer with Defendants about the problematic proposed order, but the parties were unable to reach an agreement on the language of the proposed order. Attached hereto as **Exhibit 1** is Plaintiff's proposed order that removes unnecessary language from the proposed order and corrects typographical errors. Attached hereto as **Exhibit 2** is the redline version for this Court's convenience. Significantly, Plaintiff's proposed order achieves the exact same result as Defendants' order – expunging the lis pendens. However, Plaintiff's version of the proposed order does so without unnecessary suggestions of findings by the Court.

Plaintiff's specific objections are as follows:

1. The Lis Pendens was Not Wrongfully Filed.

Defendants selectively excerpt language from the transcript to suggest that the Court found that Plaintiff filed the lis pendens for a wrongful purpose. However, a lis pendens "*shall*" be filed in cases "affecting the title or possession of real property". NRS 14.010(1). Plaintiff, therefore, had an obligation to record the lis pendens because she asserted claims that affect the title or possession of the real property.

This Court focused its inquiry and ruling on NRS 14.015(3) and Plaintiff's likelihood of prevailing, which presumes the lis pendens was properly recorded but that this Court did not think it should remain throughout the litigation. *See* Transcript, p. 25:23-25 ("To be clear, my ruling is narrowly on NRS 14.015(3)."). Accordingly, the filing of the lis pendens was appropriate and required. However, whether the lis pendens should have been expunged is a different matter.

2. The Lis Pendens Was Not Filed as a Security Instrument.

Defendants include language that the Plaintiff filed the lis pendens as a security instrument to suggest that the Court made a factual determination of an improper motive for filing the lis pendens. This was not even an issue at the hearing. The Court did not examine or determine the motives of the Plaintiff, nor was evidence presented that Plaintiff filed the lis pendens for any other reason than to give notice of the title dispute, which is all a lis pendens does. In fact, argument

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from Plaintiff's counsel specifically stated that the lis pendens was filed to comply with NRS 14.010. (*See* Transcript, p. 16:17-20).

The language in Paragraph 14 of the Proposed Order that "Plaintiff's Lis Pendens seeks to act as security for the collection of money she alleges she loaned to the Hatches" is not reflective of this Court's comments at the hearing. This Court indicated that Plaintiff wants security for the loan, but not that she improperly used a lis pendens to get that security. This Court did not make a finding that the lis pendens was recorded in bad faith or for an improper motive under NRS 14.015(2)(b), and therefore, the Court's order should not reflect as much.

3. The Court Unequivocally Found that Questions of Fact Remain.

Defendants omit important language from the Court where the Court stated questions of fact exist in this matter. "I agree unequivocally there's a question of fact." *See* Transcript, p. 11:18-12:8. Further, this Court stated, "I grant you that there are factual questions, but again, my focus is what is my sense of whether or not your clients can prevail and I'm struggling here." *Id.* at 14:11-15. Excluding the full context of this Court's ruling leaves the proposed order to read as if the Court made findings and rulings that are intended to go beyond the lis pendens hearing and possibly impact the rest of the case. Plaintiff's revisions remove those suggestions by Defendants, honor the Court's express intent, and simplify the order to avoid confusion in the future.

4. Defendants Omit Significant Language from the Court in Regard to Plaintiff's Request for a Copy of the Deed.

In another failure to provide a complete picture, Defendants stop mid-sentence in one of the Court's statements. At paragraph 16, Defendants propose the following language: "In addition, the Plaintiff's own affidavit indicates she asked for a copy of the Deed after the Hatches purchased the Property in August 2015, and never got it." In the first instance, this language is not necessary for the order. However, if it must be included, the Court should be accurately quoted without the omissions the Defendants prefer. The Court's full sentence is: "In addition, the Plaintiff's own affidavit indicates she asked for a copy of the Deed after the Hatches purchased the Property in August 2015, and never got it <u>for reasons that she will no doubt have an explanation for.</u>" *See* Transcript, p. 25:16-18.

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5. The Court Ruled Narrowly.

Again, Defendants omit significant language by the Court. In paragraph 21, Defendants omit language from the Court stating that the Court is narrowly ruling. Specifically, prior the language paraphrased by Defendants in paragraph 21 of the Proposed Order, the Court stated: "To be clear, my ruling is narrowly on NRS 14.015(3)." *See* Transcript, p. 25:23-25. The revision proposed by Plaintiff eliminates confusion and simplifies the order, eliminating the inferences suggested by Defendants selective paraphrasing.

CONCLUSION

Based on the foregoing, Plaintiff believes her revisions to the Proposed Order appropriately reflect the Court's findings that were limited to the issues and evidence presented to the Court at the hearing. Therefore, the Plaintiff's proposed order eliminates the danger of misinterpretation of the Court's ruling at a later juncture in this matter.

Alternatively, additional language used by the Court during the hearing must be added to the proposed Order so that the limitations and intent of the order are clear. Plaintiff believes brevity is the best policy for an order that was intended to be narrowly focused and respectfully requests that the Court enter the order proposed by Plaintiff. Alternatively, Plaintiff requests that the order proposed by Defendants be supplemented to eliminate half-quotes as discussed above, particularly to reflect the Court's statement that the Plaintiff no doubt has an explanation regarding her request for the Deed, that the ruling is limited, and that the Court recognizes that that factual disputes exist in this matter.

...

...

...

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 5th day of April 2021.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: _____
STEFANIE T. SHARP
CLAYTON P. BRUST
HANNAH E. WINSTON
Attorneys for Plaintiff

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Sullivan & Brust
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of **PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED ORDER GRANTING MOTION TO EXPUNGE LIS PENDENS** on all parties to this action by the method(s) indicated below:

____ by placing true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

X by using the Court's CM/ECF Electronic Notification System addressed to:

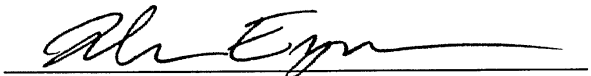
Mark G. Simons, Esq.
Anthony L. Hall, Esq.
SIMONS HALL JOHNSTON PC
Email: MSimons@SHJNevada.com
AHall@SHJNevada.com
Attorneys for Defendants

_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 1st day of April 2021.



Employee of Robison, Sharp, Sullivan & Brust

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EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Order Granting Motion to Expunge Lis Pendens	-4-
Exhibit "2"	Redline Order Granting Motion to Expunge Lis Pendens	-4-

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Clerk of the Court
Transaction # 8373553 : csulezic

EXHIBIT "1"

EXHIBIT "1"

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Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 4**

ORDER GRANTING
MOTION TO EXPUNGE LIS PENDENS

This matter came before the Court on March 22, 2021 on the Motion to Expunge Lis Pendens ("Motion"), filed by defendants Michael Edward Hatch and Alisha Suzanne Hatch (the "Hatches"), by and through their attorney MARK G. SIMONS of SIMONS HALL JOHNSTON PC. Plaintiff Kari Ann Johnson ("Johnson") appeared by and through her attorneys Hannah Winston, Stefanie Sharp and Clayton Brust of Robison Sharp Sullivan & Brust.

FINDINGS OF FACT

The Court finds the following facts:

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1. On February 10, 2021, Johnson filed her Verified Complaint ("Complaint") and a Notice of Pendency of Action (Lis Pendens) (herein after the "Lis Pendens).

2. Johnson's Complaint alleged the following as claims: 1) breach of note; 2) demand on loan documents; 3) unjust enrichment on loan documents; 4) fraud in the inducement; 5) equitable lien; 6) constructive trust; and 7) injunctive relief.

3. On February 10, 2021, Johnson recorded the Lis Pendens against the Hatches' property located at 9845 Firefoot Lane, Reno, Nevada 89521 (the "Property").

4. The Lis Pendens was recorded with the Washoe County Recorder on February 10, 2021 as Document Number 5140328.

5. On March 5, 2021, Hatches filed their Motion and filed a concurrent Motion to Dismiss the Complaint.

6. On March 15, 2021, Hatches filed their Supplement to their Motion.

7. On March 16, 2021, Johnson filed her Opposition to the Motion and Supplement.

8. Concurrent with the filing of her Opposition, Johnson filed her 1st Amended Complaint ("Amended Complaint").

9. Johnson's Amended Complaint alleged the following as claims: 1) breach of contract (PSA); 2) breach of note; 3) breach of confidential relationship; 4) unjust enrichment; 5) fraud in the inducement; 6) equitable lien; 7) constructive trust; 8) injunctive relief and 9) declaratory relief.

10. On March 19, 2021, Hatches filed their Reply in support of their Motion and submitted it for decision.

11. The filing of the Amended Complaint rendered moot the Hatches' Motion to Dismiss.

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12. On March 22, 2021, the Court conducted oral arguments on the Motion, having considered the Motion, the Supplement, the Opposition, the Reply and Plaintiffs' Amended Complaint, and counsels' argument.

13. The hearing on the Lis Pendens is governed by NRS 14.015.

17. If any Finding of Fact is more appropriately a Conclusion of Law, it is so determined.

CONCLUSIONS OF LAW

18. Plaintiff does not seek to foreclose upon a mortgage.

20. NRS 14.015(3) requires that the party who recorded the notice must establish to the satisfaction of the court either:

(a) That the party who recorded the notice is likely to prevail in the action; or

(b) That the party who recorded the notice has a fair chance of success on the merits in the action and that any injury suffered by the transfer of an interest in the property would be greater than the hardship on the defendant resulting from the notice of pendency.

NRS 14.015(3)(a) and (b).

21. Based upon the facts presented by Plaintiff in the Verified Complaint, the Court finds that Plaintiff has not met her burden necessary avoid expungment of the lis pendens under NRS 14.015(3).

22. The Court finds that the Lis Pendens should be expunged.

23. If any Conclusion of Law is more appropriately a Finding of Fact, it is so determined.

For the reasons set forth above,

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IT IS SO ORDERED that the Motion to Expunge is **GRANTED the** Lis Pendens recorded with the Washoe County Recorder on February 10, 2021 as Document Number 5140328 for the property located at 9845 Firefoot Lane, Reno, Nevada, 89521, is expunged in total.

DATED this ___ day of _____, 2021.

_____
DISTRICT JUDGE

SIMONS HALL JOHNSTON PC
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Clerk of the Court
Transaction # 8373553 : csulezic

EXHIBIT "2"

EXHIBIT "2"

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IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 4**

ORDER GRANTING
MOTION TO EXPUNGE LIS PENDENS

This matter came before the Court on March 22, 2021 on the Motion to Expunge Lis Pendens ("Motion"), filed by defendants Michael Edward Hatch and Alisha Suzanne Hatch (the "Hatches"), by and through their attorney MARK G. SIMONS of SIMONS HALL JOHNSTON PC. Plaintiff Kari Ann Johnson ("Johnson") appeared by and through her attorneys Hannah Winston, Stef~~ph~~anie Sharp and Clayton Brust of Robison Sharp Sullivan & Brust.

FINDINGS OF FACT

The Court finds the following facts:

1. On February 10, 2021, Johnson filed her Verified Complaint ("Complaint") and a Notice of Pendency of Action (Lis Pendens) (herein after the "Lis Pendens).

2. Johnson's Complaint alleged the following as claims: 1) breach of note; 2) demand on loan documents; 3) unjust enrichment on loan documents; 4) fraud in the inducement; 5) equitable lien; 6) constructive trust; and 7) injunctive relief.

3. On February 10, 2021, Johnson recorded the Lis Pendens against the Hatches' property located at 9845 Firefoot Lane, Reno, Nevada 89521 (the "Property").

4. The Lis Pendens was recorded with the Washoe County Recorder on February 10, 2021 as Document Number 5140328.

5. On March 5, 2021, Hatches filed their Motion and filed a concurrent Motion to Dismiss the Complaint.

6. On March 15, 2021, Hatches filed their Supplement to their Motion.

7. On March 16, 2021, Johnson filed her Opposition to the Motion and Supplement.

8. Concurrent with the filing of her Opposition, Johnson filed her 1st Amended Complaint ("Amended Complaint").

9. Johnson's Amended Complaint alleged the following as claims: 1) breach of contract (PSA); 2) breach of note; 3) breach of confidential relationship; 4) unjust enrichment; 5) fraud in the inducement; 6) equitable lien; 7) constructive trust; 8) injunctive relief and 9) declaratory relief.

10. On March 19, 2021, Hatches filed their Reply in support of their Motion and submitted it for decision.

11. The filing of the Amended Complaint rendered moot the Hatches' Motion to Dismiss.

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12. On March 22, 2021, the Court conducted oral arguments on the Motion, having considered the Motion, the Supplement, the Opposition, the Reply and Plaintiffs' Amended Complaint, and counsels'~~s~~ argument.

13. The hearing on the Lis Pendens is governed by NRS 14.015. ~~Plaintiff does not seek to foreclose on a mortgage instrument, instead Plaintiff's action is based upon a simple note, which note is unsecured.~~

~~14. The Plaintiff seeks to color the Hatches title in their Property claiming a security interest in the Property. Plaintiff's Lis Pendens seeks to act as security for the collection of money she alleges she loaned to Hatches.~~

~~15. Plaintiff's Exhibit 5 to the Complaint and the Amended Complaint, is a document entitled Endorsement to Agreement of Sale, which Plaintiff purportedly signed on July 29th, 2015, removed Plaintiff from the purchase agreement and not referenced in the Deed. After that, the Deed was recorded on August 6, 2015. Comp., Am. Compl., Ex. 4.~~

~~16. In addition, the Plaintiff's own affidavit indicates she asked for a copy of the Deed after the Hatches purchased the Property in August 2015, and never got it.~~

17. If any Finding of Fact is more appropriately a Conclusion of Law, it is so determined.

CONCLUSIONS OF LAW

18. Plaintiff does not seek to foreclose upon a mortgage. ~~but instead seeks to enforce a simple note.~~

~~19. Plaintiff's Lis Pendens seeks to operate as security for repayment of the note.~~

20. NRS 14.015(3) requires that the party who recorded the notice must establish to the satisfaction of the court either:

(a) That the party who recorded the notice is likely to prevail in the action; or

(b) That the party who recorded the notice has a fair chance of success on the merits in the action and that any injury suffered by the transfer of an interest in the property would be greater than the hardship on the defendant resulting from the notice of pendency.

NRS 14.015(3)(a) and (b).

21. Based upon the facts presented by Plaintiff in the Verified Complaint, the Court finds that Plaintiff has not met her burden necessary avoid expungment of the lis pendens ~~is not likely to prevail and does not have even a fair chance of success on the merits coupled with a hardship that Johnson did not know or understand, and therefore, Plaintiff has failed to satisfy its obligations~~ under NRS 14.015(3).

22. The Court finds that the Lis Pendens should be expunged.

23. If any Conclusion of Law is more appropriately a Finding of Fact, it is so determined.

For the reasons set forth above,

IT IS SO ORDERED that the Motion to Expunge is **GRANTED the** Lis Pendens recorded with the Washoe County Recorder on February 10, 2021 as Document Number 5140328 for the property located at 9845 Firefoot Lane, Reno, Nevada, 89521, is expunged in total.

DATED this ___ day of _____, 2021.

_____
DISTRICT JUDGE

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Attorneys for Plaintiff Kari Anne Johnson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual, Plaintiff, vs. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I THROUGH X, inclusive; Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

OPPOSITION TO MOTION TO DISMISS VERIFIED FIRST AMENDED COMPLAINT

Plaintiff KARI ANNE JOHNSON (hereinafter "Kari" or "Plaintiff"), by and through her counsel of record herein, CLAYTON P. BRUST, ESQ., STEFANIE T. SHARP, ESQ. and HANNAH E. WINSTON, ESQ. of the law firm of ROBISON, SHARP, SULLIVAN & BRUST, LTD., hereby opposes the Motion to Dismiss Verified First Amended Complaint (the "Motion") filed by Defendants MICHAEL EDWARD HATCH and ALISHA SUZANNE HATCH ("Defendants"). This Opposition is made pursuant to Rule 12 of the Nevada Rules of Civil Procedure, the papers and pleadings on file with this Court, and the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants seek dismissal of the entire Verified First Amended Complaint ("FAC") because they recorded the fraudulently obtained deed in 2015. Defendants represent that there is a "bright-line" rule in Nevada which provides that, as a matter of law, constructive notice stemming from a recorded deed begins running the statute of limitations *on all claims*, regardless of the circumstances of a particular case. Defendants maintain this argument despite this Court's express, unequivocal agreement that there are questions of fact whether the statute of limitations began to run upon the recording of the deed.[1]

The Nevada Supreme Court has several times held that whether a plaintiff has acted reasonably and with due diligence in discovering her cause of action is a question of fact that is inappropriate for determination on a Rule 12(b)(5) motion to dismiss. Defendants argue that Nevada's recording statutes are meant to put all people in all circumstances on notice of what is publicly recorded for statute of limitation purposes. This argument has been rejected by the Nevada Supreme Court and found, instead, that the recording statutes do <u>not</u> apply to put all people on notice in all situations.

The facts of this case are simple. Plaintiff loaned Defendants $665,838.40 to purchase a residence. The parties expressly agreed that both the Plaintiff's name and the Defendants' names would appear on the deed to the property. Nevertheless, the Defendants never put Plaintiff's name on the property. After Defendants recorded the deed, Plaintiff had no reason to research the deed to the property because she trusted the Defendants and they initially made their loan payments as agreed. However, when suspect events occurred, Plaintiff immediately acted to research the deed and ascertain her rights.

Defendants' Motion to Dismiss is a self-serving, overreaching attempt to use this Court to perpetrate their own fraud. No matter how vehemently Defendants assert that Defendants have gotten away with stealing their house, it is improper, inequitable, and contrary to law for this Court

[1] *See* Transcript of Proceedings Hearing March 22, 2021, p. 11:11-20 (Plaintiffs' counsel arguing that the recordation of the deed is not a per se start to the clock on the statute of limitations but that it is a question of fact, and this Court stating, "I agree unequivocally there's a question of fact.").

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to condone, approve, or uphold Defendants' scheme. The FAC complies with Rule 8 and puts the Defendants on notice of Plaintiff's claims against them. The FAC is timely. Accordingly, Defendants' Motion must be denied.

II. STATEMENT OF FACTS[2]

A. The Agreement Between the Parties.

Plaintiff and Alisha met in childhood. FAC, ¶7. When they reconnected in adulthood they shared housing for a period of time and Plaintiff and Colin socialized with Defendants and considered them friends. *Id*.

In 2014, Defendants approached Kari and Colin about loaning them money to buy certain real property and improvements commonly known as 9845 Firefoot Lane, Reno, Nevada, Washoe County, APN: 141-254-09 (the "Property") because Defendants were unable to qualify for a conventional mortgage. *Id*. at ¶8. Defendants promised that they would pay the loan as agreed and that Kari's name would be on the title to the Property until the loan was paid in full. *Id*.

Kari agreed to loan (the "Loan") the money to the Defendants based on their representations that they would pay the Loan as agreed and on the condition that Kari would be on the title to the property with Defendants until the Loan was paid in full. *Id*. at ¶9.

The Property was new construction and Kari and the Defendants were identified as the "buyers" in the Purchase Contract and Receipt (the "Purchase Contract"). *Id*. at ¶10. A true and correct copy of the Purchase Contract is attached to the FAC as "Exhibit 1."[3] Prior to the closing under the Purchase Contract, Alisha presented certain escrow documents to Kari representing that the documents needed to be signed for closing. *Id*. at ¶11. Kari trusted Alisha implicitly and believed that Alisha and Michael would honor their agreement with Kari that she would be a joint owner of the Property with the Defendants until the Loan was paid in full. *Id*.

Kari paid the full amount of the purchase price for the Property and all closing costs. *Id*. at ¶12. The total amount of the Loan was $665,838.40. *Id*. The Loan is evidenced by a "Promissory Note For Hatch Residence 9845 Firefoot Lane, Reno, NV 89521" (the "Note") Alisha prepared the

[2] The facts citied herein are from the FAC.

[3] To avoid overburdening the Court with documents, Plaintiff does not reattach the exhibits to this Opposition but instead refers to those exhibits attached to the FAC. If this Court would like Plaintiff to submit the exhibits, Plaintiff will do so.

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Note. *Id*. The Note was signed and initialed by Michael, Alisha and Kari on September 9, 2015. *Id*. A true and correct copy of the Note is attached to the FAC as "Exhibit 2."

The Note specifically refers to the Loan as being a "home loan" and accrues interest at the rate of 3% per annum. *Id*. at ¶13. A payment schedule requiring monthly payments of principal and interest was part of the Note and attached thereto. *Id*. A true and correct copy of the payment schedule is attached to the FAC as "Exhibit 3."

B. Kari Discovers Defendants' Fraud.

On or about November 13, 2020, Kari and Colin discovered that Defendants had manipulated Kari into signing documents removing Kari's name from the title to the Property at closing and interlineated through Kari's name on page 6 of the vesting deed (the "Deed"). *Id*. at ¶14. A true and correct copy of the Deed is attached to the FAC as "Exhibit 4." The Deed also evidences that, but for the deception of the Defendants, Kari would have been a joint title holder on the Property with the Defendants. *Id*.

At the time of closing, Alisha fraudulently obtained Kari's signature or forged Kari's signature on a document titled "Endorsement to Agreement of Sale", which is attached to the FAC as "Exhibit 5". The "Endorsement to Agreement of Sale" is irregular and suspect for several reasons, discussed below.

1. The title of the document is odd because it purports to be an endorsement to an "Agreement of Sale." The term is capitalized indicating that it refers to a particular document. Plaintiff is unaware of a document related to this controversy titled "Agreement of Sale." The title of the purchase contract attached to the FAC is "Purchase Contract and Receipt." *See* Exhibit 1. Therefore, based on the face of the documents, there is already a question of fact about what Defendants intended to "endorse" with the Endorsement they drafted and signed.

2. The Purchase Contract and Receipt prohibited any modification unless it was in writing and signed by the parties—meaning the Hatches and Kari as "buyer" and Toll as "seller". Exhibit 1, p. 6 ¶18(a).[4] Oddly, Alisha Hatch signed the "Endorsement to Agreement of Sale" as the

[4] To the extent Defendants try to argue that the Purchase Contract contemplated "endorsements" as referenced in paragraph 18(a), Plaintiff notes that the Purchase Contract was signed in December 2014 and the "Endorsement to Agreement of Sale" was not signed until July 29, 2015.

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"seller." *See* Exhibit 4. In fact, Toll (the actual seller) did not sign the "Endorsement to Agreement of Sale" at all, in direct violation of the Purchase Contract. *See id.*; *see also* Exhibit 1, p. 6 ¶18(a). Equally troubling, the "Endorsement to Agreement of Sale" still identifies Kari as a "buyer" and confirms that she will remain liable under the Purchase Contract. *See* Exhibit 4.

3. The Purchase Contract prohibits assignment or transfer by the "buyer" prior to closing without the prior written consent of the "seller", Toll. Exhibit 1, p. 6 ¶18(c). Any attempt to make such a prohibited assignment "shall be void." *Id*. Nevertheless, Alisha's "Endorsement to Agreement of Sale" directly refers to the creation of an "Assignment". *See* Exhibit 4.

The "Endorsement to Agreement" of Sale is entirely irregular and suspect. Defendants obtained Plaintiff's signature on this document through forgery or through Defendants' representations and assurances that it was necessary for the closing and did not change the deal between the parties. FAC, ¶14.

On or about November 13, 2020, Kari and Colin also discovered that on or about December 9, 2019, Defendants obtained a loan in the original principal amount of $259,000 from Guild Mortgage Company secured by the Property. *Id*. at ¶14. A true and correct copy of the Deed of Trust securing the Guild Mortgage Company loan is attached to the FAC as "Exhibit 5." Defendants never told Kari that they were obtaining a new loan against the house which further interferes with Kari's ability to recover the money she loaned her "friends", the Defendants. This further demonstrates the secretive and manipulative actions by Defendants.

Kari would never have extended the Loan to the Defendants without their agreement that Kari's name would be on the title to the Property until the Loan was paid in full. *Id*. at ¶15-18. Defendants used their relationship with Kari and Colin to exert influence over Kari and Colin to manipulate and convince Kari to make the Loan. *Id*.

Plaintiff is informed and believes that when Defendants represented to her and Colin that Defendants would pay the Loan in full as agreed and that Kari would be a joint owner of the Property until the Loan was paid in full that (i) Defendants knew the representations were false; (ii) Defendants made the representations for the purposes of, and with the intent to, induce Kari to make the Loan and getting Kari to enter into the Note; and (iii) Defendants never intended to pay the Loan

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as agreed. *Id*. at ¶19. Plaintiff is informed and believes that the Defendants drafted the Note to be favorable to their interests to her detriment. *Id*.

Plaintiff had trust and confidence in Defendants, and the Defendants, through deception, intimidation, and/or undue influence, obtained the Loan from her with the intention of depriving her of the ownership, use, benefit, and possession of her money. *Id*. at ¶21.

Plaintiff trusted and relied on the Defendants and the Defendants wrongfully asserted undue influence over her to obtain the Loan without it being secured by the Property and to obtain an advantage over her by allowing the Defendants to still retain title to the Property even if they defaulted under the Loan. *Id*. at ¶22. The Defendants defaulted under the Loan by failing and refusing to pay the monthly payment due under the Loan on January 1, 2021, and for failing and refusing to pay any amounts thereafter despite demand that they do so. *Id*. at ¶23.

In the Verified Complaint, Plaintiff alleged causes of action for (1) Breach of Contract; (2) Breach of the Note; (3) Breach of Confidential Relationship; (4) Unjust Enrichment; (5) Fraud in the Inducement; (6) Imposition of Equitable Lien; (7) Imposition of Constructive Trust; (8) Injunctive Relief; and (9) Declaratory Judgment.

III. STANDARD OF REVIEW

Under NRCP 12(b)(5), a complaint may be dismissed if the allegations in the pleading are insufficient to state a claim upon which relief may be granted. While commonly filed, these motions are rarely granted because the standard is so rigorous. *See Torres v. Nev. Direct Ins. Co.,* 131 Nev. 531, 541, 353 P.3d 1203, 1210 (Nev. 2015) (holding that motions to dismiss are subject to rigorous review on appeal). Motions to dismiss are only appropriately granted when there is no doubt that a plaintiffs' allegations, <u>even if true</u>, would not afford relief. *Buzz Stew, LLC v. City of N. Las Vegas,* 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (emphasis added).

In Nevada, a properly pled claim need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." NRCP 8(a). This is because "Nevada is a notice-pleading jurisdiction." *Nev. State Bank v. Jamison Family P'ship,* 106 Nev. 792, 801, 801 P.2d 1377, 1383 (1990). Thus, "pleadings should be liberally construed to allow issues that are fairly noticed to the adverse party." *Id*. The notice-pleading requirement is met if the allegations

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supporting the claim provide the party with "fair notice of the nature and basis" of the claim. *Vacation Village, Inc. v. Hitachi Am. Ltd.,* 110 Nev. 481, 484, 874 P.2d 744, 746 (1994).

When reviewing an order granting a motion to dismiss, "[t]his [C]ourt presumes all factual allegations in the complaint are true and draws all inferences in favor of the plaintiff." *Id.* The allegations in the complaint must be taken at "face value" and "construed favorably" on the plaintiff's behalf. *Morris v. Bank of Am. Nev.,* 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994). Furthermore, this Court may not make factual findings on a motion to dismiss. *Breliant v. Preferred Equities Corp.,* 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). That is because motions to dismiss are intended to test the pleadings, *see* NRCP 12(b), but subsequent motions and trial are intended to test the facts. *See, e.g.,* NRCP 56(f). "[W]hen the plaintiff knew or in the exercise of proper diligence should have known of the facts constituting the elements of [her] cause of action is a question of fact for the trier of fact." *Siragusa v. Brown*, 114 Nev. 1384, 1393, 971 P.2d 801, 807 (1998).

IV. ANALYSIS

A. Plaintiff's Claims are not Barred by the Statute of Limitations.

Defendants seek to dismiss Plaintiff's claims for breach of confidential relationship, unjust enrichment, fraud in the inducement, equitable lien, constructive trust, and injunctive relief as barred by their respective statute of limitations because the fraudulent deed was recorded on August 6, 2015. Under Defendants' self-serving theory of the law, constructive notice automatically begins the statute of limitations for all claims of relief, regardless of the specific circumstances of each case. The Nevada Supreme Court has never adopted such a bright line rule for purposes of tolling the statute of limitations.

i. Nevada Law is Clear that Inquiry Notice Begins the Statute of Limitations—Not Constructive Notice.

Defendants provide a lengthy discussion explaining what constructive notice is. *See* Motion, p. 10-16. There is no dispute about what constructive notice is. What Defendants refuse to accept is that it is *inquiry notice* that begins the statute of limitations, not constructive notice.

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In fact, the Nevada Supreme Court has made clear that whether a plaintiff used due diligence to discover her claim—even where the document at issue is recorded—is a question of fact inappropriate for determination at this early stage in the proceedings. *Bemis v. Est. of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998).

Further, and contrary to Defendants' representations to this Court, the Nevada Supreme Court has explained that Nevada's recording statutes and the doctrine of constructive notice are intended to impart notice on potential purchasers of real estate, not necessarily all persons in all situations. *Crescent v. White*, 88 Nev. 71, 72, 493 P.2d 1323, 1323 (1972) (holding that NRS 111.320 does not give "notice to all persons in all situations") (internal quotation marks and citation omitted); *Allen v. Webb*, 87 Nev. 261, 270, 485 P.2d 682 (1971) ("Ordinarily the constructive knowledge of recording statutes is held to prospective purchasers of realty. It does not necessarily follow that people in the position of the Allens are stuck with the same application.").

In a discovery-based cause of action, a plaintiff must use due diligence in determining the existence of a cause of action. *Sierra Pacific Power Co. v. Nye,* 80 Nev. 88, 389 P.2d 387 (1964). Whether Plaintiff exercised reasonable diligence in discovering her causes of action "is a question of fact to be determined by the jury or trial court after a full hearing." *Millspaugh v. Millspaugh,* 96 Nev. 446, 448, 611 P.2d 201, 203 (1980). "Dismissal on statute of limitations grounds is only appropriate when *uncontroverted evidence irrefutably demonstrates* plaintiff discovered or should have discovered the facts giving rise to the cause of action." *Bemis*, 114 Nev. at 1025, 967 P.2d at 440 (internal quotation marks omitted) (emphasis added).

Here, the recorded deed alone is not "uncontroverted evidence" that "irrefutably demonstrates" Plaintiff should have discovered the facts giving rise to her claims. Indeed, the Nevada Supreme Court has made clear that this question is one of fact that is based on the particular circumstances of each case making it inappropriate to resolve on a Rule 12(b)(5) motion.

Allen v. Webb is instructive in this case. In *Allen*, the Allens held a note secured by a deed of trust on a ranch. The Allens gave their escrow agent the deed of trust for recording, but the escrow agent did not record it. *Id.* at 87 Nev. at 264, 485 P.2d at 678. The Allens eventually realized their deed of trust was not recorded, so they recorded it on August 29, 1956. *Id.* at 87 Nev. at 267,

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485 P.2d at 681. Unbeknownst to the Allens, the ranch owner had conveyed the ranch to a third-party purchaser, and the deed for that conveyance was recorded nineteen days prior to the date the Allens recorded their deed of trust. *Id*. at 267, 485 P.2d at 680. Despite it being record, the Allens did not learn of the third-party purchaser's deed until 1968. *Id*. at 267-68, 485 P.2d at 680-81. Litigation ensued, and the Allens ultimately sued their escrow agent for negligence in failing to record the deed of trust. *Id*. at 267, 485 P.2d at 680.

The escrow agent moved to dismiss the Allens' claim arguing that it was barred by the statute of limitations because the Allens had constructive notice of the third-party purchaser's deed as of 1956 when it was recorded. *Id*. The Nevada Supreme Court framed the issue as follows:

> May it be said on these facts that the Allens acted in a reasonable manner in failing to inquire further as to the status of their title, or must it be said as a matter of law that they had constructive knowledge of the Phillips-to-Yuma deed in August 1956 or in early 1957 because they knew of certain facts which would have led a reasonable person to further inquiry?

Id. at 270, 485 P.2d at 682.

The Court specifically held that the issue was "a question of reasonableness of conduct" and therefore, "**[i]t cannot be said as a matter of law on these facts that the Allens should have known of the Yuma deed and, hence, of the constructive fraud. Instead, further proceedings must be had.**" *Id*. at 270-71, 485 P.2d at 682 (emphasis added).

Interestingly, Defendants cite *Allen* to support their contention that there is a "bright-line" rule requiring dismissal of the Verified Complaint in this case. But clearly, *Allen* stands for the opposite. In fact, in *Allen*, the Court expressly rejected the same argument Defendants' make in this case, explaining that "[o]rdinarily the constructive knowledge of recording statutes is held to prospective purchasers of realty. It does not necessarily follow that people in the position of the Allens are stuck with the same application." *Id*. at 270, 485 P.2d at 682.

Moreover, Defendants try to distinguish the facts of *Allen* from the facts of this case by focusing on the fact that the Allens' deed was unrecorded. Defendants completely ignore that *Allen* involved *both* a recorded and unrecorded deed. *See id*. at 267, 485 P.2d at 680 (explaining that the third-party purchaser's deed was recorded nineteen days *prior* to the date the Allens recorded their

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deed of trust). In fact, the entire issue of notice in *Allen* was related to the *recorded deed*. Therefore, *Allen* is directly on point to this case.

The Court explained why it is necessary to attribute constructive notice differently depending on the facts of each case. For the Allens, and for Plaintiff in this case, the incident at issue occurred at the conclusion of the transaction. Therefore, "[t]heirs was a final position, not preliminary" as would be the situation where a prospective purchaser does not do due diligence to discover the status of title to real property. *Id*. at 270, 485 P.2d at 682. The expectation for a person like Plaintiff to research title to property *after* she purchased it is certainly different than the expectation for a potential purchaser of real estate to investigate title *prior* to purchasing the property. *See id*. As the Court explained, "**the mere fact of the record notice does not provide sufficient basis for holding the Allens to have had notice unless they had reason to check the real estate records**." *Id*. (emphasis added). The Allens simply kept receiving payments under the note following the transaction, just as Plaintiff did in this case.

Nevada Supreme Court cases following *Allen* similarly demonstrate that there is no bright line rule requiring dismissal in this case simply because the deed was recorded in 2015. Defendants cite *Bemis v. Bemis*, 114 Nev. 1021, 967 P.2d 437, 441 (1998) to argue that "as a matter of law" recordation of a deed starts the clock running for the statute of limitations on *all claims*. Again, Defendants cite authority that does not support their position.

Not only does *Bemis* expressly provide that "[w]hether plaintiffs exercised reasonable diligence in discovering their causes of action is a question of fact to be determined by the jury or trial court after a full hearing," but it also provides another circumstance under which the Court held it unreasonable to attribute the plaintiffs with constructive notice of a publicly available document for purposes of running the statute of limitations for their claims. *Id.* at 114 Nev. at 1025, 967 P.2d at 440 (internal quotation marks omitted).

In *Bemis*, the plaintiffs asserted claims against their father's estate based on his failure to fund their trusts as required by the divorce agreement between the plaintiffs' father and mother. *Id*. at 1023, 967 P.2d at 439. The father's estate moved to dismiss the complaint, filed in 1995 after the father's death, arguing that the plaintiffs were put on constructive notice of the parents' divorce

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agreement, which was filed in 1972. *Id*. After a full discussion of the specific facts of the case, the Court held that "it cannot be said as a matter of law that Kevin and Scott should have known of their parents' divorce agreement simply because it was public record." *Id*. at 1026, 967 P.2d at 441. Finally, the Court explained that "[w]hether Kevin and Scott exercised due diligence in discovering their cause of action is a question of fact which on remand should be determined by the trier of fact." *Id*.

Millspaugh v. Millspaugh is also informative in this case because it involves facts almost identical to the facts of this case. In *Millspaugh*, the plaintiff desired to convey her residence to her children upon her death, but she intended to remain the sole owner of the house until then. 96 Nev. at 447, 611 P.2d at 201. Nevertheless, the plaintiff's son drafted a deed that immediately conveyed the plaintiff's interest in the property to the children. *Id*. The plaintiff's son falsely represented that the deed reflected the plaintiff's wishes in order to fraudulently induce her to sign the deed. *Id*. Thereafter, the plaintiff herself recorded the deed in 1971. *Id*.

In 1976, plaintiff tried to record a declaration of homestead and discovered that she was no longer the sole owner of the house. *Id*. Two years later, the plaintiff filed suit to cancel the deed on the ground that the deed was the result of fraud and mistake. *Id*. The son moved to dismiss the plaintiff's suit, arguing that it was barred by the statute of limitations because the plaintiff had met with an attorney to draft her will in 1972, which should have caused her to review the deed and learn of the fraud. *Id*. at 448, 611 P.2d at 202.

The Nevada Supreme Court rejected the son's argument that the plaintiff's complaint was time barred, stating that "[t]he pertinent question here is whether appellant should have learned, through the exercise of proper diligence, of the fraud or mistake when she met with her attorney in 1972, thereby triggering the statute of limitations." *Id*. "This is a question of fact to be determined by the jury or trial court after a full hearing where, as here, the facts are susceptible to opposing inferences." *Id*. at 448-49, 611 P.2d at 202.

If there was such a "bright-line" rule that constructive notice begins running the statute of limitations from the date of recording, as Defendants would have this Court believe, the plaintiff's suit in *Millspaugh* would have been immediately dismissed as *the plaintiff herself recorded the*

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fraudulent deed. Defendants completely misrepresent the law to this Court. There is no bright line rule "that as a matter of law, the recordation of a deed starts the statute of limitations relating to all [Plaintiff's] claims arising out of or relating to the transaction involving the Deed." Motion, p. 8. Defendants' theory would only promote the type of fraudulent conduct in which they engaged in this case. *See Large v. Cafferty Realty, Inc.*, 123 Idaho 676, 680, 851 P.2d 972, 976 (1993) (explaining that recording statutes are "not meant to be a shield against fraud and misrepresentation.").

ii. Other States Also Hold that Inquiry Notice, Not Constructive Notice, Begins the Statute of Limitations.

Notably, Defendants similarly represent that this is "the entire law of the United States," but that is not true. Many courts are in accord with Nevada law that the fact alone that a deed is recorded does not automatically begin the statute of limitations. *See, e.g.*, *Am. Freehold Land Mortg. Co. of London v. Pace*, 23 Tex. Civ. App. 222, 235-36, 56 S.W. 377, 384 (1900) ("It would be an anomalous doctrine to assert that one who has been defrauded, relying with confidence upon his adversary, should immediately or within a definite and particular time enter upon a voyage of discovery to ascertain whether a wrong had been perpetrated, where there are no facts or circumstances occurring in the meantime suggestive of any imposition."); *Fine v. Checcio*, 582 Pa. 253, 267, 870 A.2d 850, 858 (2005) ("[T]here are [very] few facts which diligence cannot discover, but there must be some reason to awaken inquiry and direct diligence in the channel in which it would be successful. This is what is meant by reasonable diligence."); *Davis v. Tuma*, 167 Idaho 267, 469 P.3d 595, 603 (2020) ("[T]his Court has not held that the principle of "record-as-notice" will establish discovery for purposes of the commencement of the statute of limitations in a fraud action. In fact, this Court held in *Large* that Idaho's record-as-notice statute was not meant to be a shield against fraud and misrepresentation.") (internal quotation marks omitted); *Maul v. Rider*, 59 Pa. 167, 167 (1869) ("The record of a deed is notice only to those who are bound to search for it. It is not publication to the world at large.").

Interestingly, Defendants urge that a California case, *Parsons v. Tickner*, 31 Cal. App. 4th 1513, 1525, 37 Ca. Rptr. 816 (1995) "discussed why constructive notice applies in a fraud case".

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Motion, p. 15. But the *Parsons* Court did not engage in such a discussion because constructive notice was not an issue in *Parsons*.

Contrary to Defendants' representations, California law is consistent with Nevada law in that "Under a long line of cases, the fact that the victim had constructive notice of the truth from public records is no defense to fraud. The existence of such public records may be relevant to whether the victim's reliance was justifiable, but it is not, by itself, conclusive." *Alfaro v. Cmty. Hous. Improvement Sys. & Plan. Assn., Inc.*, 171 Cal. App. 4th 1356, 1385–86, 124 Cal. Rptr. 3d 271, 298 (2009), *as modified on denial of reh'g* (Mar. 18, 2009). Similar to the Nevada Supreme Court's position in the cases cited herein, "The rationale for this exception is, "The purpose of the recording acts is to afford protection not to those who make fraudulent misrepresentations but to *bona fide* purchasers for value." *Id*. at 1386, 124 Cal. Rptr. 3d at 298 (quoting *Seeger v. Odell*, 18 Cal. 2d 409, 415, 115 P.2d 977, 980 (1941)).

The allegations in the FAC make clear that Plaintiff did not have a reason to check the deed until she learned of the loan the Defendants obtained from Guild Mortgage Company. FAC, ¶17. When Plaintiff learned of that Guild Mortgage loan in November 2020, she immediately researched and discovered the fraudulent deed. *Id*. Thereafter, she initiated this lawsuit to protect her rights. Based upon the facts asserted in the FAC, which this Court must accept as true, the Motion should be denied.

B. Plaintiff Stated a Claim for Breach of the Purchase Contract.

Defendants contend the Breach of Contract claim regarding the Purchase Contract should be dismissed because (1) the Defendants did not owe Plaintiff a contractual duty thereunder; (2) the terms of the Purchase Contract bar Plaintiff's claim; (3) the Note and parole evidence rule bar Plaintiff's claim; (4) the statute of frauds bars Plaintiff's claim; and (5) the statute of limitations bars Plaintiff's claim. Plaintiff addresses each argument in turn.

i. Defendants Breached the Purchase Contract.

A simple review of the Purchase Contract demonstrates that the parties intended and agreed that both Plaintiff and Defendants were purchasing the Property and would therefore, be the record owners of the Property. *See Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105,

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106 (2015) ("The objective of interpreting contracts is to discern the intent of the contracting parties. Traditional rules of contract interpretation are employed to accomplish that result.") (internal quotation marks omitted).

The Purchase Contract expressly identifies that Plaintiff and Defendants are considered the "buyer" of the property:

> THIS PURCHASE CONTRACT AND RECEIPT (the "Agreement") dated this 13 day of December, 2014is [sic] by and between Toll South Reno LLC ("Seller") and **Michael and Alisha Hatch and Kari Johnson ("Buyer")** under the following terms and conditions . . . .

Exhibit 1, p. 1. This is an express agreement between Plaintiff and Defendant that they were both purchasing the Property together as joint owners. While this is also an agreement between Plaintiff, Defendant, and Toll that Plaintiff and Defendants were the buyers of the property, that does not mean Plaintiff and Defendants were not also agreeing to purchase the Property together. When Defendants took inappropriate action to ensure Plaintiff was no longer considered a joint owner of the Property, they breached the Purchase Contract.

Notably, even if this Court determines Defendants did not technically breach the Purchase Agreement, at the very least, they certainly breached the implied covenant of good faith and fair dealing. *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991) ("Where the terms of a contract are literally complied with but one party to the contract deliberately countervenes the intention and spirit of the contract, that party can incur liability for breach of the implied covenant of good faith and fair dealing."); *Morris v. Bank of Am. Nevada*, 110 Nev. 1274, 1278, 886 P.2d 454, 457 (1994) ("Whether a breach of the *letter* of the contract exists or not, the implied covenant of good faith is an obligation independent of the consensual contractual covenants. The covenant of good faith and fair dealing is implied into every contract.") (internal quotation marks omitted). In the case at bar, Plaintiff has sought this Court's permission to file a Second Amended Complaint which asserts such claim for breach of the implied covenant of good faith and fair dealing.

Regardless, Plaintiff has asserted a claim upon which relief can be granted. The Motion should be denied.

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ii. The Purchase Contract Does Not Bar Plaintiff's Claim.

Ironically, despite having argued that the Purchase Contract does not create contractual obligations between Plaintiff and Defendants, Defendants now try to seek dismissal of Plaintiff's claim based on the contractual terms in the Purchase Contract.

Defendants argue that Paragraphs 10(a) and 10(b) of the Purchase Contract bar her claim because they prohibit and/or disavow existence of any other agreements related to the Property. But the Purchase Contract *is* the agreement regarding ownership of the Property. Rhetorically, why would a separate agreement be required to identify that Plaintiff was also buying the Property when she is identified as the buyer of the Property in the Purchase Contract? Plaintiff and Defendants expressly agreed that they were purchasing the Property together, and that is exactly what the Purchase Contract provides. No other agreement reflecting that arrangement was necessary.

Defendants ask this Court to hold Plaintiff to the "Endorsement to Agreement of Sale" on a Rule 12(b)(5) motion to dismiss. But at this stage in the proceedings, this Court must accept the allegations in the FAC as true. Plaintiff expressly alleged that if her signature is actually on the "Endorsement to Agreement of Sale", it was obtained through forgery or the Defendants' false representations and assurances that the document was just another closing document that was consistent with the parties' agreement and needed to be signed to effectuate the Purchase Contract. FAC, ¶ 14. These factual allegations defeat Defendants' Motion to Dismiss.[5]

Defendants additionally contend that the Endorsement is valid under Paragraph 18(m) of the Purchase Contract, which provides that "Any and all Exhibits or Endorsements signed by any one Buyer are deemed to be authorized and accepted by all signatories to the Agreement who have signed as Buyer." There are several flaws in Defendants' interpretation of Paragraph 18(m).

First, the Purchase Contract was signed in December 2014 and the "Endorsement to Agreement to Agreement of Sale" was not signed until July 29, 2015. *See* FAC, Exhibit 1; Exhibit 4. Therefore, the Purchase Contract was not referring to the "Endorsement to Agreement of Sale".

[5] Defendants cite *Pentax Corp. v. Boyd*, 111 Nev. 1296, 1299, 904 P.2d 1024, 1026 (1995) to support their argument. But the Court in *Boyd* applied Colorado law, there were no allegations of fraud involved in the case, and the case proceeded through summary judgment. *Boyd* is entirely inapplicable to this case.

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Second, Paragraph 18(m) is a boilerplate clause which means that because there are multiple buyers identified in the Purchase Contract, only one of their signatures is necessary to bind them all to any "endorsement" or "exhibit" made with the seller, Toll. This is made clear by the third reason Defendants' argument fails. The Purchase Contract expressly prohibits any modification "unless it is in writing and **signed by the parties**. Exhibit 1, ¶18(a) (emphasis added). Therefore, the Purchase Contract could not be modified in the way the Defendants tried because Toll was not a party to the purported "Endorsement to Agreement of Sale."

Defendants' interpretation of Paragraph 18(m) is unreasonable because it would create inconsistent provisions within the same contract or render certain provisions meaningless, both of which would lead to an absurd result. *Nevada State Educ. Ass'n v. Clark Cty. Educ. Ass'n*, 137 Nev. Adv. Op. ___, ___ P.3d ___ (2021) ("[A]n interpretation is not reasonable if it makes any contract provisions meaningless, or if it leads to an absurd result."). Accordingly, Defendants' arguments fail as a matter of law.

iii. Neither the Note nor the Parol Evidence Rule Bar Plaintiff's Breach of Contract Claim.

Defendant argues that the Note bars Plaintiff's claim for breach of contract because the Note was unsecured and "the Court cannot blue pencil the Note under the guise of interpreting the PSA to make Johnson a secured party." Motion, p. 21. But that is not what Plaintiff asks this Court to do. Plaintiff was the buyer of the Property and therefore, was supposed to be the owner of the Property. *See* Exhibit 1. Plaintiff asks this Court to enforce the parties' agreement as reflected in the Purchase Contract.

Notably, the Note does not state that Plaintiff would *not* be a joint owner of the Property. Therefore, placing Plaintiff on the deed to the Property would not "blue pencil" or otherwise contradict the Note. In fact, reading the Note and Purchase Contract together demonstrates that they are consistent and constitute the entire agreement of the parties.

For the same reason, Defendants' parole evidence rule contention clearly fails. There is no term in the Note that Plaintiff seeks to contradict. There is no provision that prohibits Plaintiff from

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being an owner of the house *or* from having a security interest in the Property. Defendants' arguments should be rejected by this Court.

iv. The Statute of Frauds Does Not Bar Plaintiff's Claim.

Defendants further argue that NRS 111.220(1) bars Plaintiff's claim because an agreement that cannot be performed within one year must be in writing. But the Purchase Contract is a written contract. As noted above, Plaintiff and Defendants signed the Purchase Contract as *buyers* and therefore, *owners* of the Property. The fact that the parties agreed that Plaintiff would be removed from title upon repayment of the Note is the only fact that is not in writing. However, that does not mean the statute of fraud bars Plaintiff's claim. Ironically, that Plaintiff would eventually be taken off title to the Property is a term that benefits Defendants. The Purchase Contract as written simply provides that Plaintiff is a buyer and therefore owner of the Property.

To the extent this Court determines there is an issue under NRS 111.220(1) regarding Plaintiff's contention that she should be on the deed to the Property, Defendants' argument further fails because "Full performance by one party may also remove a contract from the statute of frauds." *Edwards Indus., Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1032, 923 P.2d 569, 574 (1996). To determine whether the doctrine of part performance applies, "the terms of the oral agreement must be definitely established, the acts of the party . . . must be done with a view to the agreement being performed, and the party seeking enforcement must have performed or be ready and willing to perform all essentials of the agreement on his part." *Summa Corp. v. Greenspun*, 96 Nev. 247, 253, 607 P.2d 569, 572 (1980), *on reh'g*, 98 Nev. 528, 655 P.2d 513 (1982), and *disapproved of on other grounds by Sandy Valley Assocs. v. Sky Ranch Ests. Owners Ass'n*, 117 Nev. 948, 35 P.3d 964 (2001).

Plaintiff clearly alleged facts demonstrating that the doctrine of part performance would apply in this case as she fully performed by paying the full amount of the purchase price for the Property, including all closing costs, in the amount of $665,838.40, FAC, ¶12. Therefore, this argument fails and the Motion should be denied.

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v. Plaintiff's Breach of Contract Claim is Timely.

Finally, Defendants contend that Plaintiff's breach of contract claim is barred by the statute of limitations for oral contracts. But Plaintiff sued for breach of the Purchase Contract—a written document. Therefore, Plaintiff filed suit within the 6-year statute of limitations. *See* NRS 11.190(1)(b).

To the extent this Court determines an oral agreement is asserted, Plaintiff's claim is not barred because, as alleged, she did not discover Defendants' breach until November 2020. *Bemis v. Est. of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998) (holding that an action for breach of contract accrues as soon as the plaintiff *knows or should know* of facts constituting a breach").

As fully explained above, whether Plaintiff exercised due diligence in discovering her claim is a question of fact that cannot be decided at this juncture. This argument also fails. The Motion should be denied.

C. This Court has Jurisdiction Over the Breach of Note Claim.

Defendants argue that this Court lacks jurisdiction over the breach of contract claim because the amount in controversy is less than $15,000. Motion, p. 22-23. Defendants ignore that Plaintiff also seeks injunctive relief and other claims for damages. Defendants' arguments are meritless.

First, the amount in controversy is determined by combining the amount of damages for all claims made in a complaint, which, here well exceeds the jurisdictional amount. *Castillo v. United Fed. Credit Union*, 134 Nev. 13, 18, 409 P.3d 54, 58 (2018) (holding that a litigant can combine her damages claims to determine the jurisdictional amount). Here, the total amount of damages sought is well in excess of $15,000. Second, "[t]he district court possesses original jurisdiction . . . over claims for injunctive relief." *Id*. at 18, 409 P.3d at 59. Therefore, "[w]hen monetary damages *and* injunctive relief are sought, the district court has jurisdiction over all portions of the complaint, even if the damages sought fail to meet the district court's monetary jurisdictional threshold." *Id*. (internal quotation marks omitted). There is no doubt this Court has subject matter jurisdiction in this case.

Moreover, it is certainly a fair inference from the fraudulent conduct of the Defendants as alleged in the FAC, that Defendants have made clear they no longer intend to pay the Loan. Indeed,

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Defendants have not made a payment since January 1, 2021. Such anticipatory repudiation would render the Defendants liable for the entire amount of the debt. *LeTarte v. W. Side Dev., LLC*, 151 N.H. 291, 294, 855 A.2d 505, 508 (2004) ("Successive breaches of a continuing contract, while generally viewed as a series of partial breaches, can result in a total breach when there is a repudiation or a material failure of performance."). Indeed, such anticipatory repudiation is alleged in the FAC .

The Nevada Supreme Court has never rejected application of anticipatory repudiation to a breach of an installment contract. Defendants contend that the Nevada Supreme Court would reject a claim for anticipatory repudiation of an installment contract because the Court has adopted the Restatement (Second) of Contracts § 243. But the Nevada Supreme Court has also adopted the Restatement (Second) of Contracts § 359. In adopting § 359, the Court explained that "specific performance or an injunction may be appropriate when a damages award would be inadequate." *Dynalectric Co. of Nevada v. Clark & Sullivan Constructors, Inc.*, 127 Nev. 480, 485 n.7, 255 P.3d 286, 289 n.7 (2011). Pertinent to this case, § 359, comment b (which is expressly referenced in § 243) provides,

> The fact that damages would be an adequate remedy for failure to render one part of the promised performance **does not preclude specific performance of the contract as a whole**. **In such a case, complete relief should be granted in a single action and that relief may properly be a decree ordering performance of the entire contract if the other requisites for such relief are met**.

Restatement (Second) of Contracts § 359 (emphasis added).

Plaintiff alleges that she has fully performed under the Note. Plaintiff alleges that Defendants have repudiated their obligations under the Note. Plaintiff seeks a judgment from this Court that Defendants owe the entirety of the Note. Plaintiff also seeks equitable remedies because she intends to prove that damages are not an adequate remedy in this case, but that issue is not before the Court at this time and is not appropriate for determination on a motion to dismiss. The one issue before the Court is whether Plaintiff stated a claim upon which relief can be granted. Plaintiff certainly stated a claim for breach of the Note and this Court undoubtably has jurisdiction to adjudicate that claim. This argument lacks merit and the Motion should be denied.

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C. Plaintiff Stated a Claim for Unjust Enrichment

Defendants argue that Plaintiff's claim for unjust enrichment fails because (1) it is barred by the statute of limitations, and (2) Plaintiff cannot assert a claim for unjust enrichment where an express contract exists. As fully explained above, Defendants' statute of limitation argument is meritless.

Further, Defendants again ignore applicable law to make their argument. It is common in Nevada litigation to plead breach of contract and unjust enrichment in the alternative. Indeed, Nevada law expressly holds that plaintiffs are "not required to elect between suing on the contract or in quantum meruit before obtaining a jury verdict." *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 289, 89 P.3d 1009, 1017 (2004) (citing *May v. Watt*, 822 F.2d 896 (9th Cir.1987) (determining that a party is not required to make an election between breach of contract remedies and rescission prior to a jury verdict); *North American Graphite Corp. v. Allan,* 184 F.2d 387 (D.C.Cir.1950) (concluding that no election between theories of recovery based on breach of contract and quantum meruit is required prior to a jury verdict). This meritless argument should be rejected and the Motion should be denied.

D. Plaintiff's Equitable Lien, Constructive Trust, Injunctive Relief, and Declaratory Relief Claims are not Barred.

Defendants argue that Plaintiff's claims for equitable lien, constructive trust, injunctive relief, and declaratory relief[6] must be dismissed under the statute of limitations and because they cannot be standalone causes of action. As noted above, the statute of limitations does not bar Plaintiff's claims. Further, it is common to plead as claims constructive trust and injunction in Nevada. Defendants' arguments in this regard are contrary to Rule 8 and Rule 12.

The unofficial treatise in Nevada on claims includes the elements for a claim for constructive trust. Klearman, Wang, and Johnson, "Elements of Nevada Legal Theories" 3rd Edition, page 102. Plaintiff has asserted these claims to put Defendants on notice for what Plaintiff seeks in this case, which is all that is required under Rule 8 (which Defendants even acknowledge in their Motion).

[6] Defendants also contend that Plaintiff could not seek declaratory relief regarding the Note. But, as discussed above, Plaintiff could seek a declaratory judgment or specific performance on the Note. *See Dynalectric Co. of Nevada v. Clark & Sullivan Constructors, Inc.*, 127 Nev. at 485 n.7, 255 P.3d at 289 n.7; *see also* Restatement (Second) of Contracts § 243.

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Moreover, as explained above, Plaintiff need not elect the theory for which she pursues her claims at this stage in the proceedings. *J.A. Jones Const. Co.*, 120 Nev. at 289, 89 P.3d at 1017.

Finally, it is fundamental law that equitable relief can be granted where legal damages are inadequate. *Dynalectric Co. of Nevada*, 127 Nev. at 485 n.7, 255 P.3d at 289 n.7. This case exemplifies the scenario where such principle is true because a money judgment will not make Plaintiff an owner of the Property as she was agreed by the Defendants to be.

The Nevada Supreme Court has affirmed the imposition of equitable relief where damages are insufficient numerous times, including many instances where real property is involved. *See, e.g.*, *Nevada Escrow Serv., Inc. v. Crockett*, 91 Nev. 201, 203, 533 P.2d 471, 472 (1975) ("Taking into consideration the several principles of law that probably will be involved by the time this matter is finally resolved it is the opinion of this court that the preliminary injunction enjoining the foreclosure on the deeds of trust should issue. In this instance the equitable remedy is so far superior that the legal remedy may be rendered inadequate."); *Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987) ("The Dixons had built a log house which they use as their home. If the house is sold at a trustee's sale, they will not be able to reclaim it. The house is worth in excess of $127,000. Thatcher holds the first deed of trust for a debt of approximately $59,000. Clearly, compensatory damages do not provide an adequate remedy in this situation."); *Czipott v. Fleigh*, 87 Nev. 496, 499, 489 P.2d 681, 683 (1971) ("In this case, the equitable remedy is so far superior that the legal remedy is rendered inadequate.").

Again, this is not an appropriate basis to move to dismiss Plaintiff's claims under Rule 12(b)(5). Plaintiff intends to prove why damages, alone, are insufficient in this case. Defendants' Motion is overreaching and completely contrary to Nevada law. The Motion should be denied.

V. CONCLUSION

Based upon the foregoing, Plaintiff respectfully requests that this Court deny the Motion.

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AFFIRMATION: The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED: This 8th day of April 2021.

ROBISON, SHARP, SULLIVAN & BRUST, LTD.
a Professional corporation
71 Washington Street
Reno, NV 89503

BY *\/s/ Stefanie T. Sharp*
STEFANIE T. SHARP, ESQ.
CLAYTON P. BRUST, ESQ.
HANNAH E. WINSTON, ESQ.
Attorneys for Plaintiff Kari Anne Johnson

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of **OPPOSITION TO MOTION TO DISMISS VERIFIED FIRST AMENDED COMPLAINT** on all parties to this action by the method(s) indicated below:

____ by placing true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

__x_ by using the Court's CM/ECF Electronic Notification System addressed to:

Mark G. Simons, Esq.
Anthony L. Hall, Esq.
SIMONS HALL JOHNSTON PC
Email: MSimons@SHJNevada.com
AHall@SHJNevada.com
Attorneys for Defendants

_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 8th day of April 2021.

/s/ Leslie M. Lucero
Employee of Robison, Sharp, Sullivan & Brust

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Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive, Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7** **OPPOSITION TO MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Defendants Michael Edward Hatch and Alisha Suzanne Hatch (the "Hatches"), by and through their attorney Mark G. Simons of SIMONS HALL JOHNSTON PC, hereby Oppose the Motion for Leave to File Amended Complaint ("Motion") filed by Kari Anne Johnson ("Johnson").

I. BASIS OF MOTION.

On February 10, 2021, Johnson filed an original Verified Complaint ("Complaint"). On February 10, 2021, Johnson also recorded a Lis Pendens against Hatches property commonly known as 9845 Firefoot Lane, Reno, Nevada (the "Property").

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Hatches filed a Motion to Dismiss the Complaint because all the claims in the Complaint were subject to dismissal. In response, on March 16, 2021, Johnson filed her 1st Amended Complaint (the "1st Amended Complaint") attempting to assert claims that would survive dismissal. On March 30, 2021, Hatches filed their Motion to Dismiss the Amended Complaint. The 1st Amended Complaint's claims all remain subject to dismissal. Now Johnson seeks leave to file a 2nd Amended Complaint alleging further baseless claims and/or claims facially barred by the applicable statutes of limitations. Johnson's motion must be denied.

A. LACK OF GOOD FAITH.

Bad faith is "an actual or implied awareness of the absence of a reasonable basis" for the complained of conduct. *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 308, 212 P.3d 318, 324 (2009). Johnson now wants a third bite at the apple. Johnson is not entitled to file another amended complaint due to her bad faith conduct already exhibited in this litigation. *Stephens v. Southern Nevada Music Co., Inc.*, 89 Nev. 104, 105-106, 507 P.2d 138, 139 (1973) (bad faith conduct warrants denial of a motion to amend).

The initial Complaint was filed asserting baseless claims as follows: (1) a claim on an installment contract that did not meet the Court's subject matter threshold; (2) included a nonsense claim of "Demand on Loan Documents"; and (3) the remaining claims were all facially barred as a result of the applicable statutes of limitations. The original Complaint did not include a jurisdictional statement as required by NRCP 8(a)(1). In conjunction, Johnson wrongfully recorded a Lis Pendens. Johnson's baseless actions necessitated extensive motion practice to expunge the wrongfully asserted Lis Pendens along with an extensive Motion to Dismiss the Complaint.

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In response, seeking to avoid dismissal on statute of limitations grounds, Johnson filed her 1st Amended Complaint asserting a breach of the PSA alleging this contract was breached by the Hatches. As detailed in the Motion to Dismiss the 1st Amended Complaint, and further detailed herein, there is no legal or factual basis supporting such claim. Again, the 1st Amended Complaint did not include a jurisdictional statement as required by NRCP 8(a)(1). The pending Motion to Dismiss the 1st Amended Complaint is on file detailing the baseless claims and how the claims violate and contradict controlling Nevada law.

Now, Johnson wants to file a 2nd Amended Complaint seeking to assert additional claims relating to the PSA which are also all facially invalid as a matter of law. For instance, the claim for reformation is facially barred by the statute of limitations. Next, as a matter of clear Nevada law, Hatches cannot be liable for an intentional interference with the PSA since they are a party to the PSA. Exhibiting another egregious disregard of controlling Nevada law, Johnson claims that a party can anticipatorily breach an installment contract citing an extra-territorial case as support. However, in *Cain v. Price*, 134 Nev. 193, 198, 415 P.3d 25, 30 (2018), the Nevada Supreme Court adopted section 243 of the Restatement (Second) of Contracts Section 243 (Am. Law. Inst. 1981). Section 243(3) states that a breach of an installment contract whether or not followed by repudiation, "does not give rise to a claim for damages for total breach". Again, clear Nevada law demonstrates Johnson's claims and contentions are baseless.

Johnson cannot claim ignorance of controlling Nevada law as justification for the ongoing abusive litigation practices being perpetrated. The abuses are not simple

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mistakes of fact but are based upon fundamental disregard of controlling Nevada law.[1] Johnson's attorneys have a duty and responsibility to comply with NRCP 11. Asserting claims that are baseless, non-viable, which directly contradict controlling Nevada law and/or which require the Court to ignore the plain language of four (4) different contracts (the PSA, the Deed, the Note and the Endorsement) is facially abusive. The only logical conclusion is this action was not brought to collect minor past-due monthly payments on the Note, this action was initiated to perpetrate an abusive overreaching and taking of the Hatches' real property rights and so Johnson could wrongfully seek a "security" interest in the Hatches' home as a source of repayment of the minor amounts due. 2nd Am. Comp., ¶86 ("The Property is believed to be the only possible source of repayment of the Loan."). Johnson's abusive conduct cannot be rewarded by the Court.

Another major indicia of bad faith conduct is that not one of the three complaints prepared by Johnson complies with NRCP 8(a)(1)'s provision. On March 1, 2019, the Nevada Supreme Court amended NRCP 8(a) to require that a complaint "must" contain:

> (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support . . . .

Id. A statement of the jurisdiction is not a condition that can be overlooked as the Nevada Supreme Court used "must" to implement a mandatory requirement for proper pleading in

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[1] Nevada Rule of Professional Conduct Rule 3.3, titled "**Candor Toward the Tribunal**" provides as follows:

> (a) A lawyer shall not knowingly:
> (1) Make a false statement of fact or law to a tribunal . . .
> or
> (3) Offer evidence that the lawyer knows to be false.

RPC, 3.3(a).

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this State. *Pasillas v. HSBC Bank USA*, 127 Nev. 462, 255 P.3d 1281, 1285 (2011) ("'must' is a synonym of 'shall.'"); *see e.g.*, Nev. Dist. Ct. R. 2(6) ("'Shall' is mandatory . . . ."); *State v. American Bankers Ins. Co.*, 106 Nev. 880, 802 P.2d 1276, 1278 (1990) ("In construing statutes, 'shall' is presumptively mandatory . . . ."). On this ground alone the Motion must be denied as the 2nd Amended Complaint fails to comply with NRCP 8(a)(1)'s mandatory requirements.

B. FUTILE AMENDMENTS ARE DENIED.

In addition, Johnson's Motion must be denied because amendments, which are subject to immediate dismissal and/or summary judgment, are denied as being futile. *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013) ("A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim."); *Klamath Lake Pharmaceutical Ass'n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir.1983) ("futile amendments should not be permitted"); *see also Bache Halsey Stuart Shields, Inc. v. Tracy Collins Bank & Trust Co.*, 558 F. Supp. 1042, 1044 (D. Utah 1983) ("Leave to amend, however, is properly denied when the pleading, as amended, would be subject to dismissal.").

II. PROPOSED NEW CLAIMS.

The proposed new complaint seeks to add the following new claims: (1) 2nd claim for breach of the implied covenant of good faith and fair dealing in the PSA; (2) 7th claim for intentional interference with the PSA by Hatches; and (3) a 10th claim for reformation of the Deed based upon alleged fraudulent activity.

A. SIGNING A PURCHASE AGREEMENT AS A BUYER CONVEYS NO OWNERSHIP INTEREST AS A MATTER OF LAW.

Johnson ignores that the premise of the applicability to her claims for an "ownership interest" in the Property has been specifically rejected by the Nevada

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Supreme Court in *Dimick v. Dimick*, 112 Nev. 402, 915 P.2d 254 (1996). In *Dimick v. Dimick*, the Nevada Supreme Court was tasked with determining if an ex-wife had an ownership interest in real property merely because she and her ex-husband were on a purchase agreement as joint "buyers" of a property.[2] The Nevada Supreme Court specifically rejected the notion that signing a purchase agreement as a purported buyer created an ownership interest as follows:

> Claudette argues that the parties had an interest in the property because the purchase agreement had both their names on it. However, **pursuant to NRS 111.105, merely signing a purchase agreement is insufficient to convey an interest in property. The district court erred in finding that Claudette had an interest in the Fort Apache property** and further erred by awarding her a portion of the proceeds from the assignment of that property and sanctioning Charles for signing her name to the assignment. **The district court's order as to the Fort Apache property and the sanction of $2,000.00 assessed against Charles is reversed.**

Id. at 407, 915 P.2d at 257 (emphasis added).

Again, as applicable in this case, merely because Johnson signed the PSA, that agreement does not convey any real property interest in the Hatches' Property. Contrary to Johnson's claim "merely signing a purchase agreement is insufficient to convey an interest in property." Controlling Nevada law states that as a matter of law, Johnson's claim of an ownership interest in the Hatches' Property based merely upon signing the PSA fails.[3] Accordingly, all claims for an alleged breach of the PSA fail as a matter of law.

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[2] The contract at issue in *Dimick v. Dimick* was a "trade-out purchase agreement" where the husband and wife were to receive property via a trade rather than a straight purchase. This nuance is irrelevant to the applicability to this case.

[3] NRS 111.105 provides: "Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded, as directed in this chapter."

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B. NO VIABLE CLAIM EXISTS FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

This claim is premised upon the contention the PSA allegedly contains a contract provision stating that Johnson and Hatches were alleged to be "joint owners" of the Property. 2nd Am. Compl., ¶32. The PSA contains no such contract provision. The PSA merely identified the Hatches and Johnson as "buyers". The PSA does not equate purchase status to subsequent legal "ownership" of the Property. *See Dimick v. Dimick supra*. Johnson subsequently removed herself from the PSA as a buyer pursuant to the Endorsement. *See* 2nd Am. Comp., Ex. 5 (Endorsement). Johnson claims the Endorsement is not valid because she doesn't remember reading it (irrelevant), the Seller was required to sign it (not true) and she has a subjective belief that she didn't sign it (irrelevant—belief not an evidentiary fact).

Dispositively, Johnson freely admits she entered into the unsecured Note upon which she is suing the Hatches affirmatively representing to this Court the Note is a true and correct recitation of the parties' contractual agreement. 2nd Am. Compl., ¶12 ("The Note was signed and initialized by Michael, Alisha and Kari on September 9, 2015"). The Note is unsecured. The terms of the Note do not include any contract right of "ownership" in the Hatches' Property. The Note does not provide Johnson with a security interest in the Property. Accordingly, this proposed new claim fails facially as Johnson admits the Note is unsecured no contract providing any rights of "security/ownership" to Johnson. Instead, Johnson wants this Court to ignore the clear and unambiguous terms of the PSA, the Endorsement, the Deed and the Note. Johnson's claim fails because this Court cannot ignore the clear and unambiguous terms of four (4) separate contracts. *McNeary Calloway v. JP Morgan Chase Bank, N.A.*, 863 F.Supp.2d 928, 954 (N.D.Cal.,2012) ("An

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implied covenant of good faith and fair dealing cannot contradict the express terms of a contract.").

In addition, as stated in the pending Motion to Dismiss the 1st Amended Complaint, this claim fails for the same reasons the breach of PSA claim in the 1st Amended Complaint fails. These reasons are as follows.

1. The PSA Does Not Contain A Contractual Obligation Requiring Hatches To Put Johnson On The Deed.

There is no contractual obligation in the PSA requiring Hatches to put Johnson on the Deed. Under the PSA, it was solely and exclusively the Seller's obligation to transfer ownership of the Property by deed. 2nd Am. Compl, Ex. 1, ¶6. There is nothing contained in the PSA contractually obligating the Hatches to include Johnson on title to the Property. *Id*. Dismissal of this claim is mandatory because no claim for breach of contract exists. *Alam v. Reno Hilton Corp.*, 819 F.Supp. 905, 909 (D. Nev. 1993) ("Where there is a complete failure of proof concerning an essential element of the nonmoving party's case, all other facts are rendered immaterial, and the moving party is entitled to judgment as a matter of law."). Because no contractual duty exists by and between Hatches and Johnson under the PSA, *a fortiori* there can be no breach and this claim fails as a matter of law.

2. Johnson's Claim Is Barred By The Express Waiver Of The PSA.

The PSA contains an express waiver and consent that no other agreement relating to the Property exists as follows:

> **The entire Agreement between Buyer and Seller must be expressed in writing. Therefor, Buyer shall write in below any representations or promises which are not set out in this Agreement . . . and upon which Buyer is relying in making this purchase, and if there are none Buyer shall so indicate.**
>
> **NONE.**

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2nd Am. Comp., Ex. 1, ¶10(a) (bold). Johnson personally initialed this clause. *Id.* Johnson is bound by her admission that there is no agreement for her to be on title as security for her Loan contained in the PSA. Again the 1st claim fails as a matter of law.

3. Johnson's Claim Is Barred By The Express Integration/Merger Clause In The PSA.

The PSA also contains an integration/merger clause which states that there is no agreement by and between Hatches and Johnson to include her on title to the Property as security for repayment of the Note as follows:

> BUYER ACKNOWLEDGES THAT THERE ARE NO UNDERSTANDINGS, REPRESENTATIONS OR PROMISES OF ANY KIND THAT HAVE BEEN MADE TO INDUCE THE EXECUTION OF THIS AGREEMENT AND THAT AGREEMENT SETS FORTH IN FULL THE ENTIRE AGREEMENT BETWEEN THE PARTIES. BUYER FURTHER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY ORAL AGREEMENT, STATEMENT, REPRESENTATION OR OTHER PROMISE THAT IS NOT EXPRESSED IN WRITING IN THIS CONTRACT.

Id. ¶10(b). This clause expressly states there are no other agreements relating to the Property not contained in the PSA. This clause expressly states that it contains the entire agreement of the parties.

Under Nevada law, an integration clause such as contained in paragraph 10(b) holds "all prior negotiations and agreements are deemed merged in the written contract, and parol evidence is not admissible to vary or contradict its terms." *Tallman v. First Nat. Bank of Nev.*, 66 Nev. 248, 256-57, 208 P.2d 302, 306 (1949); see also *In re University Place/Idaho Water Center Project*, 199 P.3d 102, 111 (Idaho 2008) ("extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to, or detract from the terms of the contract. A written contract that contains a merger clause is complete upon its face.'" (citation omitted)). Johnson is bound by the integration/merger clause confirming there is no agreement for her to be on

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title as security for her Loan contained in the PSA. Again the 1st claim fails as a matter of law.

In addition, this claim fails because Johnson executed the Endorsement expressly removing herself as a buyer under the PSA. 2nd Am. Compl., Ex. 5. Johnson claims that the Endorsement should not be enforced against her because (i) she does not remember signing it; (ii) does not "believe" it contains her signature; (iii) does not have the Seller's signature on it; and (iv) even though the Endorsement is valid "the deal" remained the same. 2nd Am. Comp., ¶14. Each of these contentions fail as a matter of law.

First, whether Johnson remembers signing the Endorsement is irrelevant to its validity. *Pentax Corp. v. Boyd*, 111 Nev. 1296, 1299, 904 P.2d 1024,1026 (1995) ("Boyd's failure to read the guarantee is not relevant in determining its validity."). Second, Johnson's "belief" is nothing more than a conclusory statement and is not a factual statement that can defeat a motion to dismiss.[4] Third, the PSA states any Endorsement signed by any one buyer "is deemed to be authorized and accepted by all signatories to the Agreement who have signed as Buyer." 2nd Am. Compl., Ex. 1, ¶18(m). Accordingly, the Seller does not sign the Endorsement and any single signature on the Endorsement makes it valid and enforceable. *Id.* In this case, the Hatches and Johnson all signed the Endorsement even though any one (1) signature was all that was required. Lastly, Johnson admits that even though the Endorsement is valid, "the deal" that she was supposed to be a secured party under the Note "remained the same." This unknown,

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[4] *See e.g., King v. United Parcel Serv., Inc.*, 152 Cal. App. 4th 426, 433, 60 Cal. Rptr. 3d 359, 366 (2007) ("plaintiff's subjective beliefs . . . do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations."); *Humana of Kentucky, Inc. v. Seitz*, 796 S.W.2d 1, 3 (Ky. 1990) ("'Belief' is not evidence and does not create an issue of material fact.").

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undefined and unsupported "deal" is not contained in any written form and is barred by all the same reasons stated herein.

4. Any Claim Of A Security Interest Under The PSA Is Barred By The Clear And Unambiguous Terms Of The Note.

Independent of the terms of the PSA, Johnson ignores that the terms of the Note are clear and unambiguous. The Note is unsecured. Regardless of what the PSA may say, there cannot be any breach of a contractual duty to put Johnson on title as security when the Note is expressly unsecured. *Davis v. Beling*, 128 Nev. 301, 278 P.3d 501, 515 (2012) ("the initial focus is on whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written."). The Court cannot blue pencil the Note under the guise of interpreting the PSA to make Johnson a secured party. *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. 476, 483, 376 P.3d 151, 156 (2016) (""[w]e are not free to modify or vary the terms of an unambiguous agreement.'"). Again the 1st claim fails as a matter of law.

5. The Parol Evidence Rule Bars Johnson's Claim.

The terms of the Note are clear and unambiguous and it is unsecured. The parol evidence rule bars Johnson's attempt to rewrite the terms of the Note to make it a secured note. *Sandy Valley Associates v. Sky Ranch Estate Owners Ass'n*, 117 Nev. 948, 953-954, 35 P.3d 964, 967-968 (2001) ("When a contract is clear on its face, it will be construed from *954 the written language and enforced as written. Parol evidence is not admissible to vary or contradict the clear and unambiguous terms of a written agreement."). Again this claim fails as a matter of law.

6. Nevada's Statute of Frauds Bars Johnson's claim.

Nevada's statute of fraud states that an agreement that will last longer than one (1) year is void unless it is in writing. NRS 111.220(1) (contract void "that, by the terms, is

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not to be performed within 1 year from the making thereof."). There is no written agreement that purports to give Johnson a temporary ownership in the Property as security for repayment of the Note. The Note's amortization schedule lasts for almost 26 years! 2nd Am. Comp., Ex. 3. As a matter of law, because there is no written agreement that complies with Nevada's statute of frauds, any alleged agreement to make Johnson a joint owner as security for the repayment of the Loan for a 26-year time period is void and unenforceable as a matter of law. Again, this claim fails as a matter of law.

7. Any Alleged Oral Agreement is Barred by the Four-Year Statute of Limitations.

Johnson alleges there is some undefined "other agreement" wherein she claims she was supposed to be a temporary owner as security while the Note was being paid. However, any such oral agreement is barred by the four-year statute of limitations. NRS 11.190(1)(b) (setting a four-year statute of limitations for "[a]n action upon a contract, obligation or liability founded upon an instrument in writing . . . ."). Again this claim fails as a matter of law.

8. Johnson's Judicial Admissions Bars This Claim As A Matter Of Law.

Johnson claims the PSA's terms stated she was to be a "joint owner" of the Property with the Hatches. 2nd Am. Compl., ¶32. However, this false statement is undermined by Johnson's own admission she was not to be a joint owner but rather was intended to be a "lender" making a "loan". Johnson judicially admits she was not an "owner" of the Property and specifically defined her relationship with the Hatches as a lender of money—not an owner--as follows:

Para 8: "Defendants approached Kari about loaning Defendants money to buy [the Property]."

Para. 9: "Kari agreed to loan (the "Loan") the money to the Defendants."

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Para. 12: "The Loan is evidenced by a 'Promissory Note' . . . ."

Para. 15: "Kari never would have loaned the money . . . ."

Para. 20: "Kari would never have extended the Loan to the Defendants . . . ."

Para. 23: "[Hatches] obtained the Loan from [Johnson] . . . ."

2nd Am .Compl. Johnson also admits she was never supposed to be an owner but was only supposed to be an alleged secured party until the Loan was paid off—then she admits she was not an owner. *Id.*, ¶9 ("Kari would be on title to the property . . . until the Loan was paid in full."); *Id.*, ¶20 ("Kari's name would be on the title to the Property until the Loan was paid in full.").

Because Johnson judicially admits she was never intended to be an "owner", and the deal was for her never to be an "owner", but at best, a party holding an alleged security interest in the Property as security for her "loan", her claims are barred as a matter of law. In *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Development Co., Inc.*, 127 Nev. 331, 343, 255 P.3d 268, 276 (2011) the Nevada Supreme Court discussed the application of judicial admissions as follows:

> "Judicial admissions are defined as deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge."

Id. (citation omitted). Nevada's articulation of the application of judicial admission is well-established.

Johnson's judicial admissions that she was merely supposed to be a secured party/lender and not a legal "owner" of the Property is binding upon her as a matter of law. *Gelfo v. Lockheed Martin Corp.*, 140 Cal.App.4th 34, 48, 43 Cal.Rptr.3d 874, 884-885 (Cal. Ct. App. 2006) ("A judicial admission is a party's unequivocal concession of the truth of a matter, and removes the matter as an issue in the case. . . . This principle has

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particular force when the admission hurts the conceder's case."); 29A Am. Jur. 2d Evidence § 783 (July 2010) ("A judicial admission is a party's unequivocal concession of the truth of a matter, and removes the matter as an issue in the case. It is a voluntary concession of fact by a party or a party's attorney during judicial proceedings.").

Johnson admits she was not supposed to be an owner because she was only supposed to stay on title until the Loan was paid off and when the loan was paid off, Johnson was no longer supposed to be on title—because she was not an owner. Am. *St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co.*, 111 Cal.App.4th 1234, 1248, 4 Cal.Rptr.3d 416, 428 - 429 (Cal. Ct. App. 2003) (judicial admissions "are conclusive concessions of the truth of those matters, are effectively removed as issues from the litigation, and may not be contradicted by the party whose pleadings are used against him or her.'"). Johnson's admission that she was expressly not an owner of the Property is binding upon her and demonstrates this claim fails as a matter of law as there is no contract in existence wherein she was allegedly an "owner".

C. NO VIABLE CLAIM FOR INTENTIONAL INTERFERENCE EXISTS.

Johnson's new proposed 7th claim for intentional interference is again not a viable claim. This is because a party cannot, as a matter of law, intentionally interfere with a contract to which they are a party. Hatches are parties to the PSA. Johnson is barred as a matter of law from asserting a claim for intentional interference with the PSA by the Hatches. *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 869 P.2d 454, 459 (Cal. 1994) ("the tort cause of action for interference with contract does not lie against a party to the contract."); *Bolz v. Myers*, 651 P.2d 606, 609 (Mont. 1982) ("tort of intentional interference with contractual or business relationships may be committed only by strangers to the relationships.").

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In addition, demonstrating the baseless nature of this nonsensical claim, Nevada has expressly adopted Restatement (Second) of Torts § 766 (Oct. 2020), which states that an intentional interference claim can only be made against a stranger to a contract and not a party to the contract. *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 275 fn. 7, 71 P.3d 1264, 1268 fn. 7 (2003) (applying §706's provisions); Restatement (Second) of Torts § 766 (only strangers to a contract may be liable for an intentional interference claim). The Hatches are not strangers to the PSA—they are parties. Therefore, as a matter of law this claim fails. A simple review of applicable Nevada law would have made it clear that this cause of action is facially barred. Johnson repeatedly and blindly ignores controlling and dispositive Nevada law. Johnson's abusive conduct has caused Hatches to incur tens of thousands of dollars to protect their rights.

D. NO VIABLE CLAIM FOR REFORMATION EXISTS.

Johnson's new 10th claim seeks reformation of the Deed based upon alleged fraudulent conduct of the Hatches. This claim has a three (3) year statute of limitations. NRS 11.190(3(c) (setting a three-year statute of limitations for "an action for relief on the ground of fraud or mistake . . . ."). Again this claim is facially barred as a matter of law since the claim was asserted after the three-year statute of limitation expired on August 5, 2018. *Welsher v. Glickman*, 272 Cal. App. 2d 134, 140, 77 Cal. Rptr. 141, 145 (Cal. Ct. App. 1969) (reformation claim subject to "three-year statute of limitations.").

III. OVERVIEW OF REMAINING CLAIMS AND FATAL DEFECTS MANDATING DISMISSAL.

The 2nd Amended Complaint in this matter continues to be poorly crafted and facially does not appear to even come close to satisfying NRCP 11's requirements. As will be described in further detail below, this motion must be granted in its entirety because of the following fatal defects with regard to the identical claims that remain

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unchanged in the 1st Amended Complaint. The identical claims in the 1st Amended Complaint which are subject to the pending Motion to Dismiss 1st Amended Complaint are as follows. These claims will be discussed in context of the 1st Amended Complaint and the pending Motion to Dismiss 1st Amended Complaint.

1. **1st Claim:** breach of contract—the PSA. (1st Am. Comp. 1st Claim)

   Fatal Defect:
   a. No contractual obligation to put Johnson on deed exists.
   b. alleged claim of a security interest agreement in the PSA is barred by waiver clause in PSA
   c. alleged claim of a security interest agreement in the PSA is barred by integration/merger clause in PSA
   d. alleged claim of a security interest agreement in the PSA is barred by unambiguous terms the Note.
   e. alleged claim of a security interest barred by parol evidence rule
   f. alleged claim of a security interest barred by statute of frauds.
   g. oral agreement for a security interest is barred by statute of limitations.

2. **3rd Claim:** breach of contract on the Note (1st Am. Comp. 2nd Claim).

   Fatal Defect:
   a. Damage amount does not trigger this Court's subject matter jurisdiction. Claim asserts damages in the amount of $8,421.60 plus interest which amount is not within the subject matter jurisdiction of this Court and this claim must be dismissed.[5]

3. **4th Claim:** breach of confidential relationship (1st Am. Comp. 3rd Claim):

   Fatal Defects:
   a. Barred by 3-year statute of limitations.

4. **5th Claim:** Unjust Enrichment: (1st Am. Comp. 4th Claim)

   Fatal Defects:
   a. Barred by 4-year statute of limitations.

[5] *See* NRCP 12(b)(1) ("lack of subject matter jurisdiction" may be brought by motion).

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b. Barred by breach of contract claim on alleged Note.

5. **6th Claim:** Fraud in the Inducement: (1st Am. Comp. 5th Claim)

Fatal Defects: a. Barred by 3-year statute of limitations.

6. **8th Claim:** Equitable Lien: (1st Am. Comp. 6th Claim)

Fatal Defects:
a. Barred by 4-year statute of limitations.
b. Barred because an equitable lien is a remedy—not a claim.

7. **9th Claim:** Constructive Trust: (1st Am. Comp. 7th Claim)

Fatal Defects:
a. Barred by 4-year statute of limitations.
b. Barred because a constructive trust is a remedy—not a claim.

8. **11th Claim:** injunctive relief: (1st Am. Comp. 8th Claim)

Fatal Defects:
a. Barred by 4-year statute of limitations.
b. Barred because an injunction is a remedy—not a claim.

9. **12th Claim:** Declaratory Relief (1st Am. Comp. 9th Claim)

Fatal Defects:
a. limited to breach of contract claims.
b. contract claims do not survive dismissal.

Each of the fatal defects mandating dismissal of this action are described in more detail below.

IV. JOHNSON'S CONSTRUCTIVE NOTICE OF THE DEED.

Nevada's law on constructive notice of the recordation of a deed is dispositive of many of Johnson's claims. In *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 498, 471 P.2d 666, 669 (1970) the Nevada Supreme Court affirmed that "constructive notice" is a strict legal inference charged against a party for "'matters which he necessarily ought to know, or which, by the exercise of ordinary diligence, he might know.'" *Id.* (citation omitted). Accordingly, a "duty of inquiry" to undertake such easily accomplished things as

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review recorded documents imposes "constructive notice" upon a party as a matter of law. *Id.* Whether a party undertakes any investigation is actually irrelevant because under the law **"[h]e is said to have constructive notice of their existence whether he does or does not make the investigation**." *Id.* at 498, 471 P.2d at 668 (emphasis added).

In *Bemis v. Bemis*, 114 Nev. 1021, 1026, fn.2, 967 P.2d 437, 441 fn. 2 (1998) the Nevada Supreme Court reiterated the "**well-known principal that the public recording of real estate deeds constitutes constructive notice of the transaction**". (Emphasis added).[6] As a matter of law, Johnson had constructive notice of this "transaction" whereby the Deed was recorded. *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 519, 286 P.3d 249, 259 (2012), ("In Nevada, the purpose of recording a beneficial interest under a deed of trust is to provide 'constructive notice . . . to all persons.'" (citation omitted). The reason Nevada imposes a bright line rule that holds a party is deemed to have discovered a cause of action relates to Nevada's recording statute NRS 111.320 which states that every recorded deed "**impart[s] notice to all persons of the contents thereof**" relating to and/or arising out of that specific transaction. (Emphasis added).

As a matter of law, the recordation of the Deed on **August 6, 2015**, imposed constructive notice upon Johnson of the contents of the Deed and triggered the commencement of all applicable statutes of limitations. *Bemis v. Bemis*, 114 Nev. 1021,

[6] This well-known bright line rule of law that the recording of a real estate deed constitutes constructive notice of the transaction was previously articulated in *Allen v. Webb*, 87 Nev. 261, 270, 485 P.2d 677, 682 (1971). Consequently, this rule of law has been "well-known" in Nevada jurisprudence for at least fifty years.

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1026, fn.2, 967 P.2d 437, 441 fn. 2 (1998) ("well-known principal that the public recording of real estate deeds constitutes constructive notice of the transaction".[7]

A. CONSTRUCTIVE NOTICE MANDATES A PARTY SHOULD HAVE DISCOVERED A CAUSE OF ACTION AS A MATTER OF LAW.

It is well-established hornbook law that constructive notice is equivalent to actual knowledge. This concept was discussed in *Parsons v. Tickner*, 31 Cal. App. 4th 1513, 1525, 37 Cal. Rptr. 2d 810, 816 (1995), a case where the plaintiff alleged fraud and tolling based on the discovery rule. The *Parson* court discussed why constructive notice applies in a fraud case as follows:

> Under this rule **constructive and presumed notice or knowledge are equivalent to knowledge**. So, **when the plaintiff** has notice or information of circumstances to put a reasonable person on inquiry, or **has the opportunity to obtain knowledge from sources open to [her] investigation (such as public records or corporation books), the statute commences to run**." (3 Witkin, Cal. Procedure (3d ed. 1985) Actions, § 454, pp. 484–485.)

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[7]Johnson consistently misconstrues prior Nevada cases seeking to argue Nevada does not have a bright line rule and cites to *Bemis v. Bemis*, 114 Nev. 1021, 1026, 967 P.2d 437, 441 (1998) arguing that this case demonstrates there is no bright line rule. However, contrary to Johnson's statement, the *Bemis* case did not trigger the application of the rule because the document at issue was the "parents' divorce agreement". *Id.* The bright line rule did not apply "simply because [parents' divorce agreement] was public record." *Id.* However, when the recorded document is **a deed**, then the bright line rule does in fact apply. *Bemis v. Bemis*, 114 Nev. 1021, 1026, fn.2, 967 P.2d 437, 441 fn. 2 (1998) (Nevada Supreme Court reiterating the "**well-known principal that the public recording of real estate deeds constitutes constructive notice of the transaction**". (Emphasis added)).

Similarly, Johnson also attempts to find solace in the case *Allen v. Webb*, 87 Nev. 261, 270, 485 P.2d 677, 682 (1971) for the proposition that the recordation of a deed is not a bright line trigger for the running of a statute of limitations. Again, *Allen* does not support Johnson's arguments in any fashion. In *Allen*, the document at issue was an "unrecorded" deed of trust. Because the document was "unrecorded", it did not trigger the bright line rule. *Id.* (plaintiffs "had no notice of the earlier unrecorded trust deed . . . ."). Lastly, Johnson will likely try to rely upon other unrelated or irrelevant case law to avoid the application of Nevada's bright line rule, however, cases not addressing Nevada's bright line rule are irrelevant. *See e.g. Webster v. Fall*, 266 U.S. 507, 511, 45 S. Ct. 148, 149, 69 L. Ed. 411 (1925) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.")

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Id. (emphasis added)); *Communities for a Better Env't v. Bay Area Air Quality Mgmt. Dist.*, 1 Cal. App. 5th 715, 724, 205 Cal. Rptr. 3d 12, 19 (2016) (discovery rule does not apply if "the plaintiff has actual or constructive notice of an injury . . . ."). Accordingly, in the situation of a recorded deed, a party has constructive notice of the transaction as a matter of law because the party may easily look at the publicly recorded deeds.

Recordation of the Deed in this action placed Johnson on constructive notice of the contents of the Deed. *See Pincay v. Andrews*, 238 F.3d 1106, 1109-110 (9th Cir. 2001) ("constructive notice begins to run the statute of limitations regardless of any fiduciary relationship between the injured and the injurer."); *Fahmy v. Jay-Z*, 835 F. Supp. 2d 783, 790 (C.D. Cal. 2011) ("The plaintiff is deemed to have had constructive knowledge if it had enough information to warrant an investigation which, if reasonably diligent, would have led to discovery of the [claim.]"); *Alspach v. Swartzmiller*, 2020 WL 610799, *2 (Ohio C t. App. 2020) ("the statute put everyone on notice . . . all deeds were now constructive notice for purposes of the discovery rule.").

V. DISMISSAL OF ALL CLAIMS IS MANDATORY.

Claim 1 in the 1st Amended Complaint, which is restated as claim 1 in the 2nd Amended Complaint, must be dismissed because of any and all of the following reasons: (1) a party who signs a PSA has no property interest as a matter of law; (2) no contractual obligation upon Hatches to put Johnson on Deed as a secured party; (3) Johnson's alleged claim of a security interest agreement in the PSA is barred by the waiver clause in the PSA; (4) Johnson's alleged claim of a security interest agreement in the PSA is barred by the integration/merger clause in the PSA; (5) Johnson's alleged claim of a security interest agreement in the PSA is barred by unambiguous terms of the Note; (6) Johnson's alleged claim of a security interest is barred by the parol evidence rule; (7)

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Johnson's alleged claim of a security interest is barred by the statute of frauds; (8) any alleged oral agreement for a security interest is barred by the statute of limitations and (9) Johnson judicially admits at all times she was allegedly a "lender" with a purported security interest in the Hatches' Property and not an "owner" of the Property.

Claim 2 in the 2nd Amended Complaint alleging a claim for breach of an implied covenant of fair dealing in the PSA fails as a matter of law for all the same reasons that the 1st claim fails.

Claim 3 in the 2nd Amended Complaint for breach of the instalment Note fails as a matter of law because the instalment note does not trigger this Court's subject matter jurisdiction and a party cannot accelerate amounts due under an instalment contract under the guise of anticipatory repudiation.

Claims 4 through 11 in the 2nd Amended Complaint all fail for a breach of confidential relationship is barred by the 3-year and 4-year statute of limitations. Constructive notice is applied as a matter of law against Johnson. Merely because Johnson now claims ignorance of the contents of the Deed is irrelevant and immaterial to the application of the statutes of limitations against her. *See e.g., Pincay v. Andrews*, 238 F.3d 1106, 1110 (9th Cir. 2001) ("[plaintiffs] had constructive notice of their injuries prior to 1985 as a matter of law. Thus, they cannot prevail on their fraudulent concealment claim."). *Bemis v. Bemis*, 114 Nev. 1021, 967 P.2d 437, 439 (1998) ("A court can dismiss a complaint for failure to state a claim upon which relief can be granted if the action is barred by the statute of limitations."); *Kellar v. Snowden*, 87 Nev. 488, 491, 489 P.2d 90, 92 (1971) ("When the defense of the statute of limitations appears from the complaint itself a motion to dismiss is proper."). Claim 12 fails for all the foregoing reasons.

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A. 1ST CLAIM "BREACH OF PSA" MUST BE DISMISSED.

When faced with the original Motion to Dismiss, Johnson redrafted her Complaint trying to find a way to avoid dismissal on a statute of limitations basis. Johnson then asserted a breach of the PSA because a written contract claim has a six-year statute of limitations. Of critical note, Johnson alleges there are supposedly two (2) different agreements working in tandem to under which Johnson was supposed to be a "joint owner" of the Property as follows: "Pursuant to the PSA, **and** the agreement of the parties, Kari was to be a . . . joint owner of the Property . . . ." 2nd Am. Compl., ¶26 (emphasis added); ¶93 (same). Accordingly, Johnson's own pleading recognizes that the PSA does not contain any contractual provision requiring Hatches to put Johnson on the Deed as a secured party. Instead, as alleged by Johnson, there is some other alleged oral agreement that allegedly contains that contractual duty that Johnson somehow tries to magically transmute into a cause of action that survives a four-year statute of limitation.

However, Johnson's 1st claim asserts a specific breach of the PSA. There exists no claim for breach of the PSA as discussed herein. Johnson's rudimentary attempt to avoid dismissal by generically alleging a breach of the PSA, in conjunction with some other oral agreement, should be rejected by this Court and not rewarded. As shown herein, because the 1st claim is so factually and legally unsound, there are a multitude of reasons dismissal of the claim is mandatory.

1. The PSA Does Not Contain A Contractual Obligation Requiring Hatches To Put Johnson On The Deed.

There is no contractual obligation in the PSA requiring Hatches to put Johnson on the Deed. Under the PSA, it was solely and exclusively the Seller's obligation to transfer ownership of the Property by deed. 2nd Am. Compl., Ex. 1, ¶6. There is nothing contained in the PSA contractually obligating the Hatches to include Johnson on title to

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the Property. *Id.* Dismissal of this claim is mandatory because no claim for breach of contract exists. *Alam v. Reno Hilton Corp.*, 819 F.Supp. 905, 909 (D. Nev. 1993) ("Where there is a complete failure of proof concerning an essential element of the nonmoving party's case, all other facts are rendered immaterial, and the moving party is entitled to judgment as a matter of law."). Because no contractual duty exists by and between Hatches and Johnson under the PSA, *a fortiori* there can be no breach and this claim fails as a matter of law.

2. Johnson's Claim Is Barred By The Express Waiver Of The PSA.

The PSA contains an express waiver and consent that no other agreement relating to the Property exists as follows:

> **The entire Agreement between Buyer and Seller must be expressed in writing. Therefor, Buyer shall write in below any representations or promises which are not set out in this Agreement . . . and upon which Buyer is relying in making this purchase, and if there are none Buyer shall so indicate.**
>
> **NONE.**

2nd Am. Compl., Ex. 1, ¶10(a) (bold). Johnson personally initialed this clause. *Id.* Johnson is bound by her admission that there is no agreement for her to be on title as security for her Loan contained in the PSA. Again the 1st claim fails as a matter of law.

3. Johnson's Claim Is Barred By The Express Integration/Merger Clause In The PSA.

The PSA also contains an integration/merger clause which states that there is no agreement by and between Hatches and Johnson to include her on title to the Property as security for repayment of the Note as follows:

> BUYER ACKNOWLEDGES THAT THERE ARE NO UNDERSTANDINGS, REPRESENTATIONS OR PROMISES OF ANY KIND THAT HAVE BEEN MADE TO INDUCE THE EXECUTION OF THIS AGREEMENT AND THAT AGREEMENT SETS FORTH IN FULL THE ENTIRE AGREEMENT BETWEEN THE PARTIES. BUYER FURTHER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY

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ORAL AGREEMENT, STATEMENT, REPRESENTATION OR OTHER PROMISE THAT IS NOT EXPRESSED IN WRITING IN THIS CONTRACT.

Id. ¶10(b). This clause expressly states there are no other agreements relating to the Property not contained in the PSA. This clause expressly states that it contains the entire agreement of the parties.

Under Nevada law, an integration clause such as contained in paragraph 10(b) holds "all prior negotiations and agreements are deemed merged in the written contract, and parol evidence is not admissible to vary or contradict its terms." *Tallman v. First Nat. Bank of Nev.*, 66 Nev. 248, 256-57, 208 P.2d 302, 306 (1949); see also *In re University Place/Idaho Water Center Project*, 199 P.3d 102, 111 (Idaho 2008) ("extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to, or detract from the terms of the contract. A written contract that contains a merger clause is complete upon its face.'" (citation omitted)). Johnson is bound by the integration/merger clause confirming there is no agreement for her to be on title as security for her Loan contained in the PSA. Again the 1st claim fails as a matter of law.

In addition, this claim fails because Johnson executed the Endorsement expressly removing herself as a buyer under the PSA. 2nd Am. Compl., Ex. 5. Johnson claims that the Endorsement should not be enforced against her because (i) she does not remember signing it; (ii) does not "believe" it contains her signature; (iii) does not have the Seller's signature on it; and (iv) even though the Endorsement is valid "the deal" remained the same. 1st Am. Compl., ¶14. Each of these contentions fail as a matter of law.

First, whether Johnson remembers signing the Endorsement is irrelevant to its validity. *Pentax Corp. v. Boyd*, 111 Nev. 1296, 1299, 904 P.2d 1024,1026 (1995) ("Boyd's failure to read the guarantee is not relevant in determining its validity."). Second,

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Johnson's "belief" is nothing more than a conclusory statement and is not a factual statement that can defeat a motion to dismiss.[8] Third, the PSA states any Endorsement signed by any one buyer "is deemed to be authorized and accepted by all signatories to the Agreement who have signed as Buyer." 2nd Am. Compl., Ex. 1, ¶18(m). Accordingly, the Seller does not sign the Endorsement and any single signature on the Endorsement makes is valid and enforceable. *Id.* In this case, the Hatches and Johnson all signed the Endorsement even though any one (1) signature was all that was required. Lastly, Johnson admits that even though the Endorsement is valid, "the deal" that she was supposed to be a secured party under the Note "remained the same." This unknown "deal" is not contained in any written form and is barred by all the same reasons stated herein.

4. Any Claim Of A Security Interest Under The PSA Is Barred By The Clear And Unambiguous Terms Of The Note.

Independent of the terms of the PSA, Johnson ignores that the terms of the Note are clear and unambiguous. The Note is unsecured. Regardless of what the PSA may say, there cannot be any breach of a contractual duty to put Johnson on title as security when the Note is expressly unsecured. *Davis v. Beling*, 128 Nev. 301, 278 P.3d 501, 515 (2012) ("the initial focus is on whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written."). The Court cannot blue pencil the Note under the guise of interpreting the PSA to make Johnson a secured party. *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. 476, 483, 376 P.3d 151, 156 (2016) (""[w]e

[8] *See e.g., King v. United Parcel Serv., Inc.*, 152 Cal. App. 4th 426, 433, 60 Cal. Rptr. 3d 359, 366 (2007) ("plaintiff's subjective beliefs . . . do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations."); *Humana of Kentucky, Inc. v. Seitz*, 796 S.W.2d 1, 3 (Ky. 1990) ("'Belief' is not evidence and does not create an issue of material fact.").

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are not free to modify or vary the terms of an unambiguous agreement.'"). Again the 1st claim fails as a matter of law.

5. The Parol Evidence Rule Bars Johnson's Claim.

The terms of the Note are clear and unambiguous and it is unsecured. The parol evidence rule bars Johnson's attempt to rewrite the terms of the Note to make it a secured note. *Sandy Valley Associates v. Sky Ranch Estate Owners Ass'n*, 117 Nev. 948, 953-954, 35 P.3d 964, 967-968 (2001) ("When a contract is clear on its face, it will be construed from *954 the written language and enforced as written. Parol evidence is not admissible to vary or contradict the clear and unambiguous terms of a written agreement."). Again the 1st claim fails as a matter of law.

6. Nevada's Statute of Frauds Bars Johnson's claim.

Nevada's statute of fraud states that an agreement that will last longer than one (1) year is void unless it is in writing. NRS 111.220(1) (contract void "that, by the terms, is not to be performed within 1 year from the making thereof."). There is no written agreement that purports to give Johnson a temporary ownership in the Property as security for repayment of the Note. The Note's amortization schedule lasts for almost 26 years! 2nd Am. Comp., Ex. 3. As a matter of law, because there is no written agreement that complies with Nevada's statute of frauds, any alleged agreement to make Johnson a joint owner as security for the repayment of the Loan for a 26-year time period is void and unenforceable as a matter of law. Again the 1st claim fails as a matter of law.

7. Any Alleged Oral Agreement is Barred by the Four-Year Statute of Limitations.

Johnson alleges there is some undefined "other agreement" wherein she claims she was supposed to be a temporary owner as security while the Note was being paid. However, any such oral agreement is barred by the four-year statute of limitations. NRS

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11.190(1)(b) (setting a four-year statute of limitations for "[a]n action upon a contract, obligation or liability founded upon an instrument in writing . . . ."). Again the 1st claim fails as a matter of law.

B. 2ND CLAIM.

Barred as a matter of law as discussed above at Argument III A - B.

C. 3RD CLAIM "BREACH OF NOTE" BARRED.

Johnson's 3rd claim asserts a claim for breach of contract of the Note. Because the Note is a written document, this claim has a six-year statute of limitations. NRS 11.190(1)(a)). However, even though this breach of contract claim has been brought within the statute of limitation, this Court lacks subject matter jurisdiction due to the failure to satisfy this Court's monetary threshold.

1. The Note Is An Installment Contract.

Johnson has alleged that the Note is an installment contract. 2nd Am. Comp., ¶13. Under an installment contract, only those amounts due each month are owed. Therefore, for each payment that is missed, a new cause of action commences. *Metromedia Co. v. Hartz Mountain Assoc.*, 655 A.2d 1379, 1381 (N.J. 1995) ("In an installment contract a new cause of action arises from the date each payment is missed. . . . a plaintiff may sue for each breach only as it occurs, and the statute of limitations begins to run at that time." (citations omitted)); *F.D. Stella Prod. Co. v. Scott*, 875 S.W.2d 462, 466 (Tx. Ct. App. 1994) ("when periodic payments are required to be made, each failure to pay creates a new cause of action.").

Because the Note is an installment contract the only amounts that arguably are due are the January, February and March payments of $2,807.20 per month, for a total due of $8,421.60 as of the date of filing the 1st Amended Complaint. This allegation is

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identical in the proposed 2nd Amended Complaint. 2nd Am. Compl., ¶22. The Note does not contain an acceleration clause; therefore, Johnson is barred as a matter of law from attempting to sue on the entire unpaid debt. *Clayton v. Gardner*, 107 Nev. 468, 470, 813 P.2d 997, 999 (1991) (each failure to pay an installment when due constitutes a separate breach, and the period of limitations begins to run on each installment only when that installment is due).

2. Nevada Has Adopted Restatement (Second) of Contracts § 243.

Attempting to avoid dismissal, Johnson's 2nd Amended Complaint asserts that the Hatches have allegedly anticipatorily breached allowing Johnson to accelerate the entire debt. Am. Comp., ¶43. Johnson relies upon the extra-jurisdictional case of *LeTarte v. W. Side Dev., LLC*, 855 A.2d 505 (N.H. 2004) for this inapplicable legal theory. Johnson's argument fails because Nevada law does not allow an anticipatory repudiation to apply to an installment contract. Further, the case law cited by Johnson is facially inapplicable to established Nevada law.

In *Cain v. Price*, 134 Nev. 193, 198, 415 P.3d 25, 30 (2018), the Nevada Supreme Court adopted section 243 of the Restatement (Second) of Contracts Section 243 (Am. Law. Inst. 1981).[9] Section 243(3) states that a breach of an installment contract whether

[9] In addition to the adoption of Section 243, Nevada has adopted a multitude of other Restatement (Second) of Contracts provisions. *Cain v. Price*, 134 Nev. 193, 197, 415 P.3d 25, 30 (2018) (citing to Restatement (Second) of Contracts §§ 237, 309, 347); *Dynalectric Co. of Nevada v. Clark & Sullivan Constructors, Inc.*, 127 Nev. 480, 483-485, 255 P.3d 286, 288-289 (2011) (citing Restatement (Second) of Contracts §§ 90, 351, 352); *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012) (citing Restatement (Second) of Contracts § 131); *A.C. Shaw Const., Inc. v. Washoe Cty.*, 105 Nev. 913, 914, 784 P.2d 9, 9 (1989) (citing Restatement (Second) of Contracts §205). For most attorneys, it appears well-known Nevada typically follows the Restatement (Second) of Contracts.

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or not followed by repudiation, "does not give rise to a claim for damages for total breach" as follows:

> (3) Where at the time of the breach the only remaining duties of performance are those of the party in breach and are for the payment of money in installments not related to one another, his **breach by non-performance as to less than the whole, whether or not accompanied or followed by a repudiation, does not give rise to a claim for damages for total breach**.

Id. (emphasis added). Comment c then goes on to explain that "a breach as to any number less than the whole of such installments gives rise to a claim merely for damages for partial breach." *Id.* As this language makes clear, anticipatory repudiation does not apply to payment of an installment note.

Dispositively, the Restatement (Second) of Contracts even provides useful illustrations for lawyers to follow when trying to determine if an anticipatory repudiation applies to installment contracts in Nevada. When one reads the illustrations, it is clear that *anticipatory repudiation does not apply to installment contracts:*

> 4. A borrows $10,000 from B and promises to repay with interest in ten monthly installments. A unjustifiably fails to pay the first four installments. B has a claim against A merely for damages for partial breach for non-payment of the four unpaid installments. The result is the same even if A repudiates by telling B that he will not make the payments.
>
> 5. A, an insurer, issues a policy of disability insurance to B under which monthly payments are to be made to B and the payment of additional premiums waived if B is totally and permanently disabled. B suffers total and permanent disability. A makes monthly payments for a year and then unjustifiably fails to make further payments. After A has been in default for a year, B sues A. B has a claim against A merely for damages for partial breach for non-payment during the second year. The result is the same even if A repudiates by telling B that he will not make the payments.

Restatement (Second) of Contracts §243, Illustrations 4 and 5. Accordingly, Nevada applies section 243 which clearly and unmistakably states that anticipatory repudiation does not apply to an installment contract. Accordingly, Johnson's 3rd claim fails to trigger this Court's subject matter jurisdiction as a matter of law and must be dismissed.

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3. Johnson Relies On Inapplicable Law Which Contravenes Precedential Controlling Law Of Nevada.

As stated above, Johnson also relies upon the case *LeTarte v. W. Side Dev., LLC*, 855 A.2d 505, 509 (2004) for the proposition that a party can anticipatorily repudiate a contract. While there is controlling Nevada law demonstrating Johnson's position is facially incorrect, *LeTarte* also demonstrates it is not applicable to Nevada because the *Le Tarte* court held: "we declined to follow the Restatement [(Second of Contracts)] since it did not meet 'the practical realities of such cases as this one.'" *Le Tarte* does not follow the Restatement (Second) of Contracts §243—Nevada does. Johnson's arguments are baseless.

4. This Court's Monetary Subject Matter Threshold for Subject Matter Jurisdiction is $15,000.

The district courts are granted original jurisdiction of all cases except those specifically under the purview of the justices' courts. Nev. Const. art. 6, § 6(1).[10] NRS 4.370 states: "justice courts have jurisdiction of the following civil actions . . . in actions arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed $15,000." Based upon the undisputed facts as alleged by Johnson, it is a legal certainty that her breach of contract claim falls well-below the subject matter threshold of $15,000 necessitating mandatory dismissal of the 3rd claim. *Morrison v. Beach City LLC*, 116 Nev. 34, 38, 991 P.2d 982, 984 (2000) (dismissal for lack of subject matter jurisdiction required when it is a "legal certainty that the claim is worth less than the jurisdictional amount.").

[10] Nev. Const. art. 6, § 6(1) states: "The District Courts in the several Judicial Districts of this State have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts."

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D. 4TH CLAIM "BREACH OF CONFIDENTIAL RELATIONSHIP" BARRED.

Johnson's 4th claim asserts a claim for breach of a confidential relationship. This claim is barred due to the applicable three-year statute of limitations. The existence of a claim for a breach of a confidential relationship was first identified in the case *Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 338 (1995) when the Nevada Supreme Court held:

> When a confidential relationship exists, the person in whom the special trust is placed owes a duty to the other party similar to the duty of a fiduciary, requiring the person to act in good faith and with due regard to the interests of the other party.

Id. The *Perry* court confirmed that the claim for breach of a confidential relationship derives from the "duty of a fiduciary".

Claims arising out of breach of a fiduciary duty are subject to a three-year statute of limitations. *Stalk v. Mushkin*, 125 Nev. 21, 29, 199 P.3d 838, 843–44 (2009) ("Nevada cases hold[] that claims for breach of fiduciary duty are akin to claims for fraud and are therefore subject to the three-year limitation on actions in NRS 11.190(3)(d)."); *Nevada State Bank v. Jamison Fam. P'ship*, 106 Nev. 792, 799, 801 P.2d 1377, 1382 (1990) ("A breach of fiduciary duty is fraud and, therefore, the three-year statute of limitation set forth in NRS 11.190(3)(d) is applicable."); *Golden Nugget, Inc. v. Ham*, 98 Nev. 311, 313, 646 P.2d 1221, 1223 (1982) ("The applicable statute of limitations for breach of fiduciary duty is the three year period provided by NRS 11.190(3)(d).").

E. 5th CLAIM "UNJUST ENRICHMENT" BARRED.

Johnson's 5th claim asserts a claim for unjust enrichment for breach of the Note. This claim has a four-year statute of limitations. NRS 11.190(2)(c) (setting a four-year statute of limitations for "[a]n action upon a contract, obligation or liability not founded

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upon an instrument in writing."). This claim is barred as a matter of law since the claim was asserted after the four-year statute of limitations expired on August 5, 2019.

In addition, as an independent basis, a claim for unjust enrichment is also barred because Johnson cannot assert a claim for unjust enrichment when there exists a contract that Johnson claims is enforceable, *i.e.*, the Note. *Leasepartners Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 755-756, 942 P.2d 182, 187 (1997) ("An action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express agreement. A party is barred from seeking equitable relief such as unjust enrichment when the party has a legal claim."). While Johnson claims that she can "elect" remedies at a later date, a claim for unjust enrichment is not a remedy. It is an equitable claim that is barred by Johnson's legal claim for breach of Note. Regardless, this claim fails because of the four-year statute of limitations.

F. 6TH CLAIM "FRAUD IN THE INDUCEMENT" BARRED.

Johnson's 6th claim asserts a claim for fraud in the inducement. This claim has a three-year statute of limitations. NRS 11.190(3(c) (setting a three-year statute of limitations for "an action for relief on the ground of fraud . . . ."). This claim is barred as a matter of law since the claim was asserted after the three-year statute of limitation expired on August 5, 2018. Johnson is deemed as a matter of law to have constructive notice of the contents of the Deed. Therefore, in this instance, there is no tolling of any statute of limitations for fraud. *Bemis v. Bemis*, 114 Nev. 1021, 1026, fn.2, 967 P.2d 437, 441 fn. 2 (1998) ("the public recording of real estate deeds constitutes constructive notice of the transaction").

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G. 7TH CLAIM FOR INTENTIONAL INTERFERENCE.

Barred as a matter of law as discussed above in Argument III C.

H. 8TH CLAIM "EQUITABLE LIEN" BARRED.

Johnson's 8th claim wrongfully asserts as a "claim" for the imposition of a remedy of an "equitable lien". An equitable lien is not a substantive claim for relief. Instead, it is merely a remedy that is applied in the absence of a legal remedy.[11] *Maki v. Chong*, 119 Nev. 390, 394, 75 P.3d 376, 379 (2003) ("'Equitable liens become necessary on account of the absence of similar remedies at law.'" (citation omitted)). Accordingly, a "claim" for an equitable lien is defective pleading and dismissal is mandated since this remedy is not a claim.[12]

Independently, and even if the remedy of an "equitable lien" is treated as a "claim" then at best a four-year statute of limitation could be argued to apply. NRS 11.190(2)(c) (setting a four-year statute of limitations for "[a]n action upon a contract, obligation or liability not founded upon an instrument in writing."). Even assuming this Court treated an "equitable lien" as a legal claim, it is again barred as a matter of law by the application of the statute of limitations.

---

[11] "Equitable relief is premised upon the unavailability of an adequate legal remedy." *Vercellono v. Gerber Products Co.*, No. CIVA-09-CV-2350 (DMC), 2010 WL 455388, at *9 (D.N.J. Feb. 3, 2010) (applying Nevada law and citing *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals*, 182 P.3d 764, 767 n. 14 (Nev. 2008). When a plaintiff asserts a breach of contract, then a claim for damages is an adequate remedy. *Id.* at *10 ("Plaintiffs exclusively assert pure economic harm. Therefore, the Court concludes that a claim for damages affords Plaintiffs an adequate remedy if Plaintiffs prevail."). Therefore, "equitable relief is precluded where an adequate legal remedy exists. *Id.* at *9. Because a legal remedy exists in favor of Johnson, an equitable remedy of an "equitable lien" is barred as a matter of law.

[12] *Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*, 440 F.Supp.2d 1184, 1197 (D. Nev. 2006) ("Where a plaintiff can maintain an action at law and the legal remedy is adequate, resort to equity is not appropriate.").

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I. 9TH CLAIM "CONSTRUCTIVE TRUST" BARRED.

Johnson's 9th claim wrongfully asserts as a "claim" for the imposition of a remedy of a "constructive trust". Identical to an equitable lien, a constructive trust is not a substantive claim for relief, it is instead merely a remedy that may be available in the event a valid claim is successful. *Locken v. Locken*, 98 Nev. 369, 650 P.2d 803, 804-05 (1982) (a constructive trust is "a remedial device . . . ."). *Am. Master Lease LLC v. Idanta Partners, Ltd.*, 225 Cal. App. 4th 1451, 1485, 171 Cal. Rptr. 3d 548, 575 (Cal. Ct. App. 2014), as modified (May 27, 2014) ("[i]mposition of '[a] constructive trust is an equitable remedy . . . .'").

Requests seeking to impose a constructive trust as a remedy are subject to the applicable statutes of limitations on the underlying substantive claim. *Embarcadero Mun. Imp. Dist. v. County of Santa Barbara,* 88 Cal. App. 4th 781, 793, 107 Cal. Rptr. 2d 6, 15 (Cal. Ct. App. 2001) ("an action seeking to establish a constructive trust is subject to the limitation period of the underlying substantive right."). When the substantive right is barred by a statute of limitations, then there is no ability to obtain a constructive trust as a remedy. *Davies v. Krasna*, 14 Cal. 3d 502, 516, 535 P.2d 1161, 1170, 121 Cal. Rptr. 705, 714 (Cal. 1975) ("'A constructive trust is not a substantive device but merely a Remedy' . . . an action seeking to establish a constructive trust is subject to the limitation period of the underlying substantive right. . . . If that substantive right is barred by the statute of limitations, as here, the remedy necessarily fails.").

Independently, and even if the remedy of a "constructive trust" is treated as a "claim" then at best a four-year statute of limitation could be argued to apply. NRS 11.190(2)(c) (setting a four-year statute of limitations for "[a]n action upon a contract, obligation or liability not founded upon an instrument in writing."). Again, even assuming

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this Court treated a "constructive trust" as a stand alone claim, it is also barred as a matter of law.

J. 10TH CLAIM.

Barred as a matter of law as discussed above at Argument III D.

K. 11TH CLAIM.

Johnson's 11th Claim again wrongfully asserts as a "claim" the request for the remedy of injunctive relief.[13] Identical to an equitable lien and a constructive trust, injunctive relief is exactly what it says—relief, not a legally recognized claim for relief. Independently, and even if the remedy of a "constructive trust" is treated as a "claim" then at best a four-year statute of limitation could be argued to apply. NRS 11.190(2)(c) (setting a four-year statute of limitations for "[a]n action upon a contract, obligation or liability not founded upon an instrument in writing."). Again, even assuming this Court treated "injunctive relief as a claim, it is also barred as a matter of law.

L. 12TH CLAIM "DECLARATORY RELIEF" BARRED.

Johnson's 12th Claim asserts declaratory relief as a "claim" stating: "Plaintiff is entitled to a declaration that she is to be added to the deed . . . ." 2nd Am. Comp., ¶94. Plaintiff provides no support for this contention. But, based upon other allegations, this assertion merely seeks to reiterate that Johnson claims this should be granted as an equitable remedy. However, as repeatedly stated, the Court has no authority to grant equitable remedies when legal remedies exist.

[13] While local custom is to separately plead injunctive relief as a stand alone "claim", it is not a claim. It is merely a mechanism to alert litigants that injunctive relief may be sought and functions no differently than a "Prayer for Relief" in a complaint.

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VI. CONCLUSION.

The Deed was recorded on **August 6, 2015**. As a matter of law, Johnson is charged with constructive notice of the contents and existence of the Deed as of that date and all statutes of limitation immediately commenced to run. As discussed above, all claims fail as a matter of law and the motion must be denied.

AFFIRMATION: This document does not contain the social security number of any person.

DATED this 8th day of April, 2021.

SIMONS HALL JOHNSTON PC
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Reno, NV 89509

By: _____
MARK G. SIMONS
ANTHONY L. HALL
Attorneys for Defendants

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **OPPOSITION TO MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Stefanie T. Sharp
Clayton P. Brust
Hannah Winston
Attorneys for Defendants

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 8 day of April, 2021.

Employee of Simons Hall Johnston PC

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Clerk of the Court
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IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED ORDER GRANTING MOTION TO EXPUNGE LIS PENDENS

Defendants Michael Edward Hatch and Alisha Suzanne Hatch (the "Hatches"), by and through their attorney MARK G. SIMONS of SIMONS HALL JOHNSTON PC, hereby submit the following response to Plaintiff's Objection to Defendants' Proposed Order Granting Motion to Expunge Lis Pendens.

I. BASIS OF OBJECTION.

The objection filed by Plaintiff Kari Anne Johnson ("Johnson") is merely an attempt to rewrite the evidence and the Court's ruling at the March 22, 2021 hearing on

Defendants' Motion to Expunge Lis Pendens ("Motion"), filed by the Hatches. The proposed Order is not overreaching and does not exceed the Court's findings of fact and conclusions of law.

The Court did conduct an analysis of NRS 14.015(3). The basis of the Court's hearing and the analysis conducted by the Court is not in dispute. Johnson merely wants to avoid the consequences of her wrongful conduct. NRS 14.015(3) requires the Court to conduct a "merit analysis" of Johnson's claims to determine if she is likely to prevail in the action or that she has a fair chance of success coupled with a hardship, and that if the party who recorded the lis pendens prevails, they will be entitled to relief affecting the property. Specifically, 14.015(3) states:

> In addition to the matters enumerated in subsection 2, the party who recorded the notice must establish to the satisfaction of the court either:
>
> (a) That the party who recorded the notice is likely to prevail in the action; or
>
> (b) That the party who recorded the notice has a fair chance of success on the merits in the action and the injury described in paragraph (d) of subsection 2 would be sufficiently serious that the hardship on him or her in the event of a transfer would be greater than the hardship on the defendant resulting from the notice of pendency,
>
> and that if the party who recorded the notice prevails he or she will be entitled to relief affecting the title or possession of the real property.

Id. The Court conducted the merit analysis of Johnson's claims evaluating whether based upon her allegations, she was "likely to prevail in the action" or she "has a fair chance of success on the merits in the action" and finally, that even if the foregoing findings are made, then Johnson would "be entitled to relief affecting title or possession of the real property."

The foregoing statue and analysis forms the basis of the Order submitted by the Hatches. Merely because Johnson does not like the findings and conclusions rendered

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by the Court, and does not like the contents of the Order, those reasons are not sufficient to object to the submitted Order.

A. JOHNSON'S OBJECTIONS 1 AND 2 ARE BASELESS.

First, Johnson argues that her Lis Pendens was not filed in bad faith because NRS 14.015(3) "presumes" the Lis Pendens was properly recorded. Initially, there is no evidentiary presumption in NRS 14.015(3) supporting Johnson's baseless contentions. AS shown in this litigation, merely because Johnson's counsel argues something, their arguments are not supported by any legal basis. Second, the Court never conducted any analysis to determine if the Lis Pendens was initially recorded properly. NRS 14.015(3) actually focuses on whether the Lis Pendens should be expunged, the antithesis of a properly recorded lis pendens. While Johnson ignores logic in her argument, you cannot both have a properly recorded lis pendens and a lis pendens that must be expunged because it is improperly recorded in violation of Nevada law.

Next, Johnson argues that the Lis Pendens she filed was not for "security" for the loan Johnson allegedly made to the Hatches. These objections have no support in the record and is mere after-the-fact argument by Johnson that the Lis Pendens was not wrongful.[1] The Court expunged the Lis Pendens because the claims asserted by Johnson did not have merit and did not affect title or possession of the Hatches' property. The Court specifically found that Johnson filed her action wanting "security" for her unsecured loan. This conclusion is factually and legally undisputed.

[1] Obviously, if the Lis Pendens was expunged, it was not "rightfully" recorded, *i.e,*, it was wrongfully recorded.

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What Johnson fails to include in her objection is the following statement by Johnson's counsel seeking to justify the Lis Pendens as: "security for repayment of the loan . . . ." **Exhibit 1**, excerpt of transcript of March 22, 2021 hearing, p. 15:19-20. In addition, Johnson's counsel stated the Lis Pendens was "security for repayment". Id. p. 16:8.

The Court specifically ruled that all Johnson wants is security for her loan. Id. p. 25:2-6 ("What plaintiffs want is security."). The Court even noticed that Johnson's counsel repeatedly argued that her action was security of the loan. Id. Johnson seeks to avoid the consequences of her arguments to this Court, the Court's rulings and the basis of her lawsuit. Accordingly, the order submitted by the Hatches is proper and fully addresses the issues presented for consideration under NRS 14.015(3).

B. THE REMAINING QUESTIONS OF FACT (OBJ. 3) IS IRRELEVANT.

Johnson argues that questions of fact remain in the litigation. Johnson uses this argument to ask the Court to simplify the Order. Simplification of the Order is improper under NRS 14.015(3). The Court was obligated to conduct a merit analysis of Johnson's claims and determine if those claims affected title to the Hatches' Property supporting the Lis Pendens. The Court was required to (1) conduct an analysis of Johnson's claims and (2) analyze and determine whether or not the claims supported a Lis Pendens recorded against the Hatches' Property. The submitted Order addresses the legal requirements imposed upon the Court in properly determining to expunge the Lis Pendens.

C. WHETHER JOHNSON REQUESTED A COPY OF THE DEED (OBJ. 4) IS IRRELEVANT.

Johnson next objects that the Hatches' submitted Order omitted significant language that Johnson asked for a copy of the Deed. This objection is irrelevant. Whether Johnson asked for a copy of a deed or not has no relevance to the claims

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asserted by Johnson. Johnson's entire action merely seeks "security" for repayment of her alleged loan. There is no logical, factual or legal relevance of the language Johnson references.

D. THE COURT'S RULING IS GOVERNED BY NRS 14.015(3).

Johnson argues that the findings and analysis conducted by the Court and embodied in the Order submitted by the Hatches should be reduced. However, Johnson continues to ignore (1) what NRS 14.015(3) contains and (2) what the Court's analysis had to focus on. The Court ruled exactly as contained in Paragraph 21 of the submitted Order which states:

> 21. Based upon the facts presented by Plaintiff, the Court finds that Plaintiff is not likely to prevail and does not have even a fair chance of success on the merits coupled with a hardship that Johnson did not know or understand, and therefore, Plaintiff has failed to satisfy its obligations under NRS 14.015(3).

The transcript of the hearing details the Judge's findings and conclusion as follows:

> On those facts, I cannot say the plaintiff is likely to prevail or has a fair chance of success given my understanding of the additional legal clouds related to statute of limitations, jurisdiction, et cetera. To be clear, my ruling is narrowly on NRS 14.015, subsection three. I do not find the plaintiff is likely to prevail or even has a fair chance of success coupled with the hardship that she didn't know of or understand.

Ex. 1, pp. 25:19-26:2.

As stated above, NRS 14.015(3) specifically mandates the Court conduct a merit analysis of Johnson's claims. Specifically, 14.015(3) states:

> In addition to the matters enumerated in subsection 2, the party who recorded the notice must establish to the satisfaction of the court either:
>
> (a) That the party who recorded the notice is likely to prevail in the action; or
>
> (b) That the party who recorded the notice has a fair chance of success on the merits in the action and the injury described in paragraph (d) of subsection 2 would be sufficiently serious that the hardship on him

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> or her in the event of a transfer would be greater than the hardship on the defendant resulting from the notice of pendency,
>
> and that if the party who recorded the notice prevails he or she will be entitled to relief affecting the title or possession of the real property.

Id. The Court conducted the merit analysis of Johnson's claims evaluating whether based upon her allegations, she was "likely to prevail in the action" or she "has a fair chance of success on the merits in the action" and finally, that even if the foregoing findings are made, then Johnson would "be entitled to relief affecting title or possession of the real property."

Accordingly, the factual basis of the claims, the legal basis of the claims and the relief sought are all mandated to be analyzed by the Court and included in the Order. Hatches' submitted Order includes the relevant factual and legal findings by the Court. Merely because Johnson does not like the contents of the Order does not make it objectionable.

II. CONCLUSION.

Johnson's objection is baseless. Johnson wants to rewrite history simply by complaining about the contents of the Order expunging her Lis Pendens. The Court found that the Lis Pendens was required to be expunged under Nevada law.

AFFIRMATION: This document does not contain the social security number of any person.

DATED this 8th day of April, 2021.

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Reno, NV 89509

By: _____
MARK G. SIMONS
ANTHONY L. HALL
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED ORDER GRANTING MOTION TO EXPUNGE LIS PENDENS REQUEST FOR HEARING PURSUANT TO NRS 14.015** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

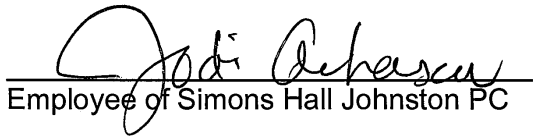
Stefanie T. Sharp
Clayton P. Brust
Hannah Winston
Attorneys for Defendants

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 8 day of April, 2021.



Employee of Simons Hall Johnston PC

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EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Excerpts of Transcript	7

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EXHIBIT 1

EXHIBIT 1

4185

STEPHANIE KOETTING

CCR #207

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE EGAN WALKER, DISTRICT JUDGE

--oOo--

KARI A. JOHNSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CV21-00246
	)	
MICHAEL EDWARD HATCH and ALISHA SUZANNE HATCH,	)	Department 7
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS

HEARING

March 22, 2021

1:30 p.m.

Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, Computer-Aided Transcription

1 APPEARANCES:

2 For the Plaintiff:

3 SIMONS HALL JOHNSTON
By: MARK SIMONS, ESQ.
4 6490 S. McCarran
Reno, Nevada
5

6 For the Defendant:
ROBISON SHARP SULLIVAN & BRUST
7 By: HANNAH WINSTON, ESQ.
71 Washington
8 Reno, Nevada

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1 here where there's this close relationship, there's this
2 implicit trust of the defendants, the transaction closes and
3 it's over and things proceed as normal.
4 And the defendants do begin making the payments on
5 the note and these -- you know, they're friends. They're
6 close. There's no reason for plaintiff to suspect that
7 something went awry, to suspect that the defendants didn't
8 uphold their promises and their agreements. There's nothing
9 to put plaintiff on inquiry notice that she needs to go check
10 the deed.
11 And I understand the Court's concern that she did
12 ask for a copy of the deed and the defendants said no. And
13 at this point, though, the allegations are plaintiff trusted
14 her friends. She trusted them that they followed through
15 with what the agreement would be.
16 And, you know, it's not common that one person
17 would give over $650,000 to another person without any
18 security at all and that's really what having plaintiff be a
19 record owner was in this situation. It really was security
20 for repayment of the loan, because the agreement was as soon
21 as the loan is repaid, then plaintiff is taken off title to
22 the property.
23 So it makes sense. It makes sense that would be
24 the arrangement. What doesn't make sense and what means that

1 defendants will not prevail is that somebody would just give
2 someone else over $600,000, be considered a purchaser of the
3 property, but then not be a record owner of the property.
4 That doesn't make sense.
5 And I think that just the facts and the equities
6 of the case show that plaintiff will prevail, because this is
7 not -- people don't just give other people over $600,000 to
8 buy property without some sort of security for repayment.
9 THE COURT: Thank you. I believe I understand
10 that argument.
11 MS. WINSTON: With that, your Honor, you know, we
12 believe all the elements are satisfied for a lis pendens.
13 This action certainly affects title to real property, because
14 if this Court does grant the relief that plaintiff seeks, her
15 name will be on the title to the property. She will be a
16 record owner as originally agreed by the parties.
17 And the reason for a lis pendens is to put
18 potential purchasers on notice that somebody claims an
19 interest in the title to the property and that is what
20 plaintiff seeks by way of her complaint. She expressly asked
21 to be placed on title to the property and there's no legal
22 remedy that will give her that. And potential purchasers of
23 the property should have notice that that's what plaintiff
24 seeks in this case.

1 trust without a trial.

2 What plaintiffs want is security. Plaintiff

3 claims she loaned money to the defendants. She loaned money

4 to the defendants, and Ms. Winston eloquently argues, who

5 loans $600,000 to people without security? Well, I don't

6 know.

7 In fact, in the plaintiff's own documents are

8 this: Exhibit 5 to the complaint and the amended first

9 verified complaint is a document entitled endorsement to

10 agreement of sale, which is purportedly signed by the

11 plaintiff on July 29th, 2015, which removes her from the

12 agreement at closing so that she will be removed and not

13 referenced in any conveyance document provided by any of them

14 for any reason, apparently. After that, the deed was

15 recorded on August 6th.

16 The plaintiff's own affidavit indicates she asked

17 for a copy of the deed, never got it for reasons that she

18 will no doubt have an explanation for.

19 On those facts, I cannot say the plaintiff is

20 likely to prevail or has a fair chance of success given my

21 understanding of the additional legal clouds related to

22 statute of limitations, jurisdiction, et cetera.

23 To be clear, my ruling is narrowly on NRS 14.015,

24 subsection three. I do not find the plaintiff is likely to

1 prevail or even has a fair chance of success coupled with the
2 hardship that she didn't know of or understand.
3 Mr. Simons, I'm going to ask you to craft the
4 order expunging the lien. Do you have any questions for
5 purposes of drafting that order?
6 MR. SIMONS: No. You were very clear. Thank you.
7 THE COURT: Ms. Winston, is there anything you
8 would like to place into the record?
9 MS. WINSTON: I would just like the order to
10 reflect that Mr. Simons did not present any counter
11 affidavits or actual evidence for this Court's consideration.
12 THE COURT: I'm not going to place that in the
13 order. If that is the status of the record, it is. In the
14 end, of course, you bear the burden of proof and using your
15 own evidence is appropriate in the ruling. So thank you for
16 that.
17 It appears to me, counsel, that you're all
18 healthy. I'm fond of all of you. I hope it is true. I hope
19 your extended families are likewise healthy. These are
20 remarkable times. Please take good care. I look forward to
21 being of assistance to this case as the case proceeds in
22 whatever manner it does.
23 --oOo--
24

STATE OF NEVADA)
) ss.
County of Washoe)

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 7 of the above-entitled Court on March 22, 2021, at the hour of 1:30 p.m. and took verbatim stenotype notes of the proceedings had upon the hearing in the matter of KARI A. JOHNSON, Plaintiff, vs. MICHAEL EDWARD HATCH and ALISHA SUZANNE HATCH, Defendants, Case No. CV21-00246, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 27, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

DATED: At Reno, Nevada, this 24th day of March 2021.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive, Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7** **REPLY IN SUPPORT OF MOTION TO DISMISS VERIFIED FIRST AMENDED COMPLAINT**

Defendants Michael Edward Hatch and Alisha Suzanne Hatch (the "Hatches"), by and through their attorney Mark G. Simons of SIMONS HALL JOHNSTON PC, hereby submit the following Reply in support of their Motion to Dismiss Verified First Amended Complaint filed by Kari Anne Johnson ("Johnson").

I. BASIS OF MOTION.

The Verified First Amended Complaint ("Amended Complaint") must be dismissed because all claims are barred by the statute of limitations or assert claims over which this court has no subject matter jurisdiction. *See e.g. Bemis v. Bemis*, 114 Nev. 1021, 967

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P.2d 437, 439 (1998) ("A court can dismiss a complaint for failure to state a claim upon which relief can be granted if the action is barred by the statute of limitations.").

The original Verified Complaint ("Complaint") was the subject of a previous motion to dismiss. All claims in the Complaint were invalid as a matter of law either because of the applicable statute of limitations and/or because the single installment contract claim did not trigger this Court's subject matter jurisdiction. The Amended Complaint was filed trying to correct these fatal defects. The Amended Complaint, however, does not assert a viable claim for relief and dismissal is mandated as detailed herein.

II. JOHNSON'S ARGUMENTS FAIL.

A. NEVADA IS A CONSTRUCTIVE NOTICE STATE.

Johnson's opposition spends a great deal of time attempting to argue that Johnson was placed on inquiry notice and did not have constructive notice of the recordation of the Deed. Opp., pp. 7-13. Johnson bases her opposition on the false premise that "*inquiry notice* begins the statute of limitations, not constructive notice." *Id.*, p. 7:27. This statement is a blatant misstatement of Nevada law with regard to the application of constructive notice.

The Nevada Supreme Court has repeatedly stated that **"public recording of real estate deeds constitutes constructive notice of the transaction"**. *Bemis v. Bemis*, 114 Nev. 1021, 1026, fn.2, 967 P.2d 437, 441 fn. 2 (1998) (emphasis added). See also *Allen v. Webb*, 87 Nev. 261, 270, 485 P.2d 677, 682 (1971) (same); *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 519, 286 P.3d 249, 259 (2012) ("In Nevada, the purpose of recording a beneficial interest under a deed of trust is to provide 'constructive notice . . . to all persons.'" (citation omitted). The Nevada Supreme Court explained what "constructive notice" means in Nevada as follows: it is a strict legal inference charged

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against a party for "'matters which he necessarily ought to know, or which, by the exercise of ordinary diligence, he might know.'" *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 498, 471 P.2d 666, 669 (1970) (citation omitted).

While Johnson appears to fabricate the concept of "inquiry" notice in Nevada, the application of inquiry notice is irrelevant because whether a party undertakes any investigation is actually irrelevant because under the law **"[h]e is said to have constructive notice of their existence whether he does or does not make the investigation**." *Id.* at 498, 471 P.2d at 668 (emphasis added). While Johnson cites to other jurisdictions for support of her "inquiry notice" argument, Hatches instead rely upon clear controlling Nevada law that states a recordation of a deed establishes "constructive notice", not inquiry notice.

Johnson also spends a great deal of time citing to *Millspaugh v. Millspaugh*, 96 Nev. 446, 611 P.2d 201 (1980). *Millspaugh* did not address Nevada's bright line rule, the holdings of *Bemis* or *Allen* or Nevada's recording statute NRS 111.320. Accordingly, *Millspaugh* has no applicability or relevance to this action. *Webster v. Fall*, 266 U.S. 507, 511 (1925) (questions which merely lurk in the record, but are neither brought to a court's attention nor ruled upon, are not considered to have been decided so as to constitute precedent); *Bershauer/Phillips Const. Co. v. Seattle School Dist. No.1*, 881 P.2d 986, 991 (Wash. 1994) ("In cases where a legal theory is not discussed in the opinion, that case is not controlling on a future case where the legal theory is properly raised.").

Next, strangely Johnson argues she did not have reason to check the recordation of the Deed event though she claims she was a secured party under the transaction. Opp., p. 13 ("Plaintiff did not have a reason to check the deed . . . ."). This baseless statement is undermined by Johnson's own admission of fact that she specifically asked

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for a copy of the Deed. 1st Am. Compl., ¶16 ("Kari requested a copy of the Deed.") Clearly, not only did Johnson have constructive notice of the recordation of the Deed, she had specifical knowledge of the recordation of the Deed and she claimed she was a secured party under that Deed. Based upon Johnson's own judicial admission, she not only had constructive notice of the recordation of the Deed, Johnson had actual notice of the recordation of the Deed.

B. THE 1ST CLAIM FOR BREACH OF THE PSA FAILS.

Johnson does not contest that there is no specific contractual provision that was allegedly breached by the Hatches, thereby conceding dismissal is proper. *Alam v. Reno Hilton Corp.*, 819 F. Supp. 905, 908 fn. 3 (D. Nev. 1993) ("Plaintiffs did not argue to the contrary to this issue in their opposition papers, thereby conceding this point.").

Instead, Johnson tries to argue there is an implied condition in the PSA to make Johnson an alleged owner with some type of property rights in the Property. However, Nevada law is absolutely clear that merely signing a PSA does not vest a buyer with <u>any</u> property rights. Johnson ignores that the premise of the applicability to her claims for an "ownership interest" in the Property has been specifically rejected by the Nevada Supreme Court in *Dimick v. Dimick*, 112 Nev. 402, 915 P.2d 254 (1996). In *Dimick v. Dimick*, the Nevada Supreme Court was tasked with determining if an ex-wife had an ownership interest in real property merely because she and her ex-husband were on a purchase agreement as joint "buyers" of a property.[1] The Nevada Supreme Court

[1] The contract at issue in *Dimick v. Dimick* was a "trade-out purchase agreement" where the husband and wife were to receive property via a trade rather than a straight purchase. This nuance is irrelevant to the applicability to this case.

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specifically rejected the notion that signing a purchase agreement as a purported buyer created an ownership interest as follows:

> Claudette argues that the parties had an interest in the property because the purchase agreement had both their names on it. However, **pursuant to NRS 111.105, merely signing a purchase agreement is insufficient to convey an interest in property. The district court erred in finding that Claudette had an interest in the Fort Apache property** and further erred by awarding her a portion of the proceeds from the assignment of that property and sanctioning Charles for signing her name to the assignment. **The district court's order as to the Fort Apache property and the sanction of $2,000.00 assessed against Charles is reversed.**

Id. at 407, 915 P.2d at 257 (emphasis added).

Again, as applicable in this case, merely because Johnson signed the PSA, that agreement does not convey any real property interest in the Hatches' Property. Contrary to Johnson's claim "merely signing a purchase agreement is insufficient to convey an interest in property." Controlling Nevada law states that as a matter of law, Johnson's claim of an ownership interest in the Hatches' Property based merely upon signing the PSA fails.[2] Accordingly, all claims for an alleged breach of the PSA fail as a matter of law.

2. Johnson's Claim Is Barred By The Express Waiver and Integration/Merger Clause In The PSA.

Johnson tries to argue that the Court should treat as a fact that Johnson believes her signature on the Endorsement was a forgery. Opp. 15:12-15. Johnson claims that the Court must accept Johnson's belief as a "fact". *Id.* Johnson's 1st Amended Complaint does not state that the Endorsement is a forgery as her counsel alleges in the opposition,

[2] NRS 111.105 provides: "Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded, as directed in this chapter."

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far from it. Johnson asserts in her Verified 1st Amended Compliant four (4) separate reasons she thinks the Endorsement is not binding upon her as follows: (i) she does not remember signing it; (ii) does not "believe" it contains her signature; (iii) does not have the Seller's signature on it; and (iv) even though the Endorsement is valid "the deal" remained the same. Am. Comp., ¶14. Each of these contentions fail as a matter of law.

Alleging a variety of excuses in an attempt to avoid the legal effect of the Endorsement is entirely appropriate for resolution of the legality of the Endorsement under an NRCP 12 motion. This is because the interpretation of a contract is a matter of law for the Court to determine at any stage of the proceedings. *Musser v. Bank of America*, 114 Nev. 945, 947, 964 P.2d 51, 52 (1998) ("'The question of the interpretation of a contract when the facts are not in dispute is a question of law.'" (citation omitted)). Next, whether Johnson remembers signing the Endorsement is irrelevant to its validity. *Pentax Corp. v. Boyd*, 111 Nev. 1296, 1299, 904 P.2d 1024,1026 (1995) ("Boyd's failure to read the guarantee is not relevant in determining its validity.").

Johnson however claims that her subjective belief that the Endorsement is not applicable is because they claim in their motion Johnson's signature was a forgery. Opp. p. 15:15. However, the 1st Amended Complaint does not use the word "forgery" and instead references Johnson's "belief" that she did not sign the Endorsement because she does not remember it. The law is clear that a party's subjective belief is nothing more than a conclusory statement and is not a factual statement that can defeat a motion to dismiss.[3] Third, the PSA states any Endorsement signed by any one buyer "is deemed to

[3] *See e.g., King v. United Parcel Serv., Inc.*, 152 Cal. App. 4th 426, 433, 60 Cal. Rptr. 3d 359, 366 (2007) ("plaintiff's subjective beliefs . . . do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations."); *Humana of Kentucky, Inc. v. Seitz*, 796

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be authorized and accepted by all signatories to the Agreement who have signed as Buyer." Am. Compl., Ex. 1, ¶18(m).

4. Any Claim Of A Security Interest Under The PSA Is Barred By The Clear And Unambiguous Terms Of The Note and the Parole Evidence Rule.

The Note is unsecured. The Court cannot blue pencil the Note under the guise of interpreting the PSA to make Johnson a secured party. The parol evidence rule bars Johnson's attempt to rewrite the terms of the Note to make it a secured note. *Sandy Valley Associates v. Sky Ranch Estate Owners Ass'n*, 117 Nev. 948, 953-954, 35 P.3d 964, 967-968 (2001) ("When a contract is clear on its face, it will be construed from *954 the written language and enforced as written. Parol evidence is not admissible to vary or contradict the clear and unambiguous terms of a written agreement."). Again the 1st claim fails as a matter of law.

6. Nevada's Statute of Frauds Bars Johnson's claim.

Johnson's opposition makes dismissal of this action mandatory. This is because Johnson's entire action is premised on the following statement by Johnson:

> Plaintiffs and Defendants signed the Purchase Contract as *buyers* and therefore, *owners* of the Property.

Opp., p. 17: 6-7. This statement is false and the law is clear that merely signing a PSA does not grant any party an ownership interest.

As discussed above, in *Dimick v. Dimick*, 112 Nev. 402, 915 P.2d 254 (1996), the Nevada Supreme Court held a party did not have any ownership interest under a purchase agreement merely as being on the purchase agreement as joint "buyers" of a

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S.W.2d 1, 3 (Ky. 1990) ("'Belief' is not evidence and does not create an issue of material fact.").

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property. The Nevada Supreme Court specifically rejected Johnson's argument made in this action and held:

> **pursuant to NRS 111.105, merely signing a purchase agreement is insufficient to convey an interest in property. The district court erred in finding that Claudette had an interest in the Fort Apache property** and further erred by awarding her a portion of the proceeds from the assignment of that property . . . .

Id. at 407, 915 P.2d at 257 (emphasis added). Accordingly, dismissal of Johnson's 1st Amended Complaint is mandatory give Johnson's admission in her opposition. The statute of frauds applies and bars Johnson's claim as a matter of law.

Johnson next argues that part performance of the PSA takes it out of the statute of frauds. Again this argument is baseless. Johnson performed under the Note by allegedly lending money. That contract does not contain any ownership rights. Johnson's performance under another the Note does not apply to the PSA.

B. 2ND CLAIM "BREACH OF NOTE" BARRED.

Johnson's 2nd claim asserts a claim for breach of contract of the Note. Johnson now concedes that anticipatory breach does not apply to an installment note under Nevada.[4] Instead, Johnson argues she can consolidate all her claims to achieve the $15,000 threshold limit. While that proposition may be true, Johnson has no other claim that survives dismissal. Accordingly, dismissal is mandated because this Court does not have subject matter of the one minor claim that is not barred as a matter of law.

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/ / /

[4] Johnson again alleges irrelevant material by claiming an action for specific performance may allow for accelerating an instalment note. Opp., p. 19. This argument is again irrelevant because there is no claim for specific performance.

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C. 3rd THROUGH 9TH CLAIMS ARE BARRED.

Hatch stands on her Opening Motion regarding the applicability of the law to these claims.

VII. CONCLUSION.

The Deed was recorded on **August 6, 2015**. As a matter of law, Johnson is charged with constructive notice of the contents and existence of the Deed as of that date and all statutes of limitation immediately commenced to run. Claim 1 does not state a claim for which relief can be granted and must be dismissed—for any of seven reasons detailed above. Claim 2 does not trigger this Court's subject matter jurisdiction. Claims 3 through 9 are barred by the applicable statutes of limitations.

AFFIRMATION: This document does not contain the social security number of any person.

DATED this 8th day of April, 2021.

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By: _____
MARK G. SIMONS
ANTHONY L. HALL
Attorneys for Defendants

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **REPLY IN SUPPORT OF MOTION TO DISMISS VERIFIED FIRST AMENDED COMPLAINT** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Stefanie T. Sharp
Clayton P. Brust
Hannah Winston
Attorneys for Defendants

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 8 day of April, 2021.

Employee of Simons Hall Johnston PC

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Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

REQUEST FOR SUBMISSION

is hereby requested that Defendants Motion to Dismiss Verified First Amended Complaint that was filed with the Court on March 30, 2021, be submitted for decision in this matter.

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AFFIRMATION: This document does not contain the social security number of any person.

DATED this 8 day of April, 2021.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **REQUEST FOR SUBMISSION** on all parties to this action by the method(s) indicated below:

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Attorneys for Plaintiff Kari Anne Johnson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual, Plaintiff, vs. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I THROUGH X, inclusive; Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

REPLY IN SUPPORT OF PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED ORDER GRANTING MOTION TO EXPUNGE LIS PENDENS

Plaintiff Kari Anne Johnson ("Plaintiff") hereby replies to Defendants' Opposition to Plaintiff's Objection to Defendants' Proposed Order Granting Motion to Expunge Lis Pendens (the "Proposed Order"). Defendants' Opposition fails to cure or justify the overreaching and misleading nature of Defendants' Proposed Order. Plaintiff is not trying to do anything as dramatic as "rewrite history." Plaintiff is merely ensuring that the Court's order accurately and precisely reflects the Court's ruling. Accordingly, Plaintiff respectfully requests that either the revised version of the Proposed Order submitted by Plaintiff be entered or that the Court modify the Proposed Order to more accurately reflect the Court's ruling, including the Court's repeated statements that there are

issues of fact in this matter, that the Court intended to rule narrowly and that the Court found the lis pendens was expungable.

1. The Court Remains Misquoted.

The Defendants' justification for misquoting the Court inverts their relationship with the Court. First, Defendants gave no indication in their Proposed Order that they were stopping mid-sentence in a statement by the Court. Now, they claim that the "extra" language when the Court was announcing its ruling is irrelevant. Apparently, Defendants believe they are in a position to tell the Court what it should say, and what portions of the Court's thoughts are irrelevant. (Isn't it supposed to be the other way around?) Defendants do not cite any authority giving them the power to dictate and/or edit the Court's thoughts, and Plaintiff is unaware of any authority that would allow Defendants to exert such extraordinary influence.

There is no reason to misquote the Court or alter the Court's language in a way that misconstrues the full extent of the Court's language. It should not be allowed. The entire sentence should be eliminated, or the entire sentence should be included.

2. The Lis Pendens Was Properly Filed.

This case concerns title to property. Plaintiff has consistently argued that she was supposed to be included on the deed to the property and has consistently asked the Court to cause her to be placed on the deed. NRS 14.010(1) explicitly required Plaintiff to file a lis pendens, and Plaintiff complied. The Court did not even address the mandates of NRS 14.010(1). Instead, the Court went directly to an examination of NRS 14. 010(3), which, logically, is only invoked if NRS 14.010(1) is satisfied. Indeed, Defendants' argument that there cannot be a properly recorded lis pendens that is expunged ignores the logic of the statutory construct by improperly conflating the subsections of NRS 14.010. The language of the statute explicitly requires a step-by-step analysis of first determining whether the matter involves a title to property. If so, then the Court is to determine at an early stage of the proceedings whether the plaintiff has met its burden of convincing the Court that the plaintiff is likely to prevail on the title related claims.

This is the exact analysis followed by the Court. The matter clearly regards title. Plaintiff acknowledges that the Court found the Plaintiff is not likely to prevail based on the evidence

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presented at the hearing. This initial finding is not determinative, and the Court did not intend for it to be determinative. Any suggestion that the lis pendens should not have been filed because the matter does not concern title is overreaching and inaccurate. As stated in Plaintiff's opening papers, whether the lis pendens was expungable is a different matter and was the precise and only issue upon which the Court ruled. Of course, Plaintiff does not like the Court's ruling, but that does not prevent Plaintiff from objecting to an inaccurate recitation of the Court's ruling.

3. **Questions of Fact Remain**.

Defendants should not be allowed to omit the repeated sentiment of the Court that questions of fact remain in this matter. Plaintiff's opening papers identify two separate occasions where the Court specifically stated that questions of fact remain. Suggesting otherwise is unsupportable and does not vitiate the Court's merit analysis under NRS 14.010(3). Plaintiff's revisions to the Proposed Order still demonstrate a merit analysis by the Court, retain the ruling of the Court that Plaintiff did not demonstrate a likelihood of success, but stops short of suggesting that the Court has pre-determined the significant remaining factual issues. This matter needs to go to a jury, without the cloud of an overreaching order drafted by Defendants.

4. The Court Ruled Narrowly.

Plaintiff has not ignored the Court's analysis. The order suggested by Plaintiff retains the Court's analysis and finding that the Plaintiff did not demonstrate likelihood of prevailing. However, the Court ruled narrowly, as it should have. Again, Defendants omit significant language by the Court. Prior to the language paraphrased by Defendants in paragraph 21 of the Proposed Order, the Court stated: "To be clear, my ruling is narrowly on NRS 14.015(3)." *See* Transcript, p. 25:23-25. The revision proposed by Plaintiff preserves this sentiment.

Further, the language in the Proposed Order about the lis pendens being a security interest in the property is misplaced. Even though the Court likened a lis pendens to security, it was not the Court's ruling that a lis pendens is security interest. The Court was merely framing the discussion for the hearing. Clearly, a lis pendens is not a security interest. A lis pendens cannot be foreclosed upon or executed upon. It only gives notice of a dispute. (For that matter, even Plaintiff's claim that she should be on title is not a security interest. Putting her on the deed is reflective of immediate

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ownership, not a future potential interest in the property.) Accordingly, removal of the "security interest" language from the Proposed Order is appropriate.

CONCLUSION

Defendants do not provide any valid reasons to reject Plaintiff's suggested revisions to the Proposed Order. Defendants fail to legitimately justify their misquoting of the Court or their omissions of the Court's express limitations of the Court's ruling. Plaintiff's revisions to the Proposed Order appropriately reflect that the Court's findings were limited to the issues and evidence presented to the Court at the hearing. Therefore, the Plaintiff's proposed order eliminates the danger of misinterpretation of the Court's ruling at a later juncture in this matter.

Alternatively, Plaintiff respectfully requests that the order proposed by Defendants be supplemented to eliminate half-quotes as discussed above. Particularly, the order should reflect the Court's statement that the Plaintiff has an explanation regarding her request for the Deed, that the ruling is limited, and that the Court recognizes that that factual disputes exist in this matter.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 12th day of April 2021.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: *___/s/ Stefanie T. Sharp*
STEFANIE T. SHARP
CLAYTON P. BRUST
HANNAH E. WINSTON
Attorneys for Plaintiff

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(775) 329-3151

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of **REPLY IN SUPPORT OF PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED ORDER GRANTING MOTION TO EXPUNGE LIS PENDENS** on all parties to this action by the method(s) indicated below:

____ by placing true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

__x_ by using the Court's CM/ECF Electronic Notification System addressed to:

Mark G. Simons, Esq.
Anthony L. Hall, Esq.
SIMONS HALL JOHNSTON PC
Email: MSimons@SHJNevada.com
AHall@SHJNevada.com
Attorneys for Defendants

_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 12th day of April 2021.

/s/ Leslie M. Lucero
Employee of Robison, Sharp, Sullivan & Brust

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Attorneys for Plaintiff Kari Anne Johnson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual, Plaintiff, vs. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I THROUGH X, inclusive; Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

REQUEST FOR SUBMISSION OF PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED ORDER GRANTING MOTION TO EXPUNGE LIS PENDENS

Plaintiff Kari Anne Johnson ("Plaintiff") by and through her counsel, respectfully requests that Plaintiff's Objection to Defendants' Proposed Order Granting Motion to Expunge Lis Pendens filed with this Court on April 1, 2021, be submitted to the Court for decision.

./.../

./.../

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AFFIRMATION: The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 12th day of April 2021.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: *__/s/ Stefanie T. Sharp__*
STEFANIE T. SHARP
CLAYTON P. BRUST
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CERTIFICATE OF SERVICE

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AHall@SHJNevada.com
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_____ by personal delivery/hand delivery addressed to:

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DATED: This 12th day of April 2021.

/s/ Leslie M. Lucero
Employee of Robison, Sharp, Sullivan & Brust

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Attorneys for Plaintiff Kari Anne Johnson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual, Plaintiff, vs. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I THROUGH X, inclusive; Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

REPLY IN SUPPORT OF MOTION FOR

LEAVE TO FILE SECOND AMENDED COMPLAINT

Plaintiff Kari Anne Johnson ("Plaintiff") hereby replies in support of her Motion for Leave to File Second Amended Complaint as follows.

Defendants begin their Opposition with an offensive attack on the credibility, competency, and motives of Plaintiff's counsel—even referencing Rule 11 and Nevada Rule of Professional Conduct Rule 3.3 to insinuate that the undersigned has not been truthful with this Court. These accusations are both inaccurate and inappropriate. To the contrary, Defendants' position and argument regarding the "bright line" provided by the recording statute is misleading. The caselaw

clearly holds that notice given by a recording statute applies to prospective purchasers of real property, not to impute constructive knowledge on a party that has been defrauded. No amount of repetition or feigned confidence to the contrary by Defendants changes this legal principle.

Notwithstanding the baseless statements of Defendants' to the contrary, the record in this case clearly demonstrates that Plaintiff has complied with the Nevada Rules of Civil Procedure, and has appropriately argued the applicable law regarding constructive notice and the statute of limitations. Defendants clearly disagree with Plaintiff's position, but it is a rare day where opposing counsel agree on all issues presented in a case. Plaintiff could certainly argue that it violates Rule 11 for Defendants' counsel to maintain that constructive notice bars all of Plaintiff's claims when Nevada law holds the opposite and this Court expressly agreed that issues of fact exist regarding the statute of limitations. But Plaintiff will not let this case devolve into a litigious prosecution of counsel because the focus should be on the parties, facts, and legal issues—not the attorneys of record (despite the animus one attorney may have for the others). Defendants' lack of professional courtesy is disappointing; however, it should not be allowed to detract from the actual issues before this Court.

I. AMENDING THE COMPLAINT IS NOT FUTILE.

Defendants contend that the Motion should be denied because further amendment of the complaint would be futile.[1] However, as discussed below, Plaintiff seeks to assert valid claims upon which relief can be granted. Defendants try to attack the proposed Second Amended Complaint on the exact same grounds as they moved to dismiss the First Amended Complaint. As discussed in detail in Plaintiffs Opposition to Defendants' motion to dismiss the First Amended Complaint, all of those arguments fail. Moreover, Defendants argue evidentiary and factual issues warrant denying the Motion, but those arguments are improper at this stage in the proceedings.

Defendants solely contest the Motion based on futility, but it is clear that amendment is not futile. Notably, Defendants do not contend at all that they would be prejudiced by amendment, which is the factor which carries the greatest weight in a Court's consideration of the effect of

1 Defendants also include a bizarre argument that the Motion should be denied because Plaintiff did not include a jurisdictional statement. Despite the absurd basis to oppose the Motion, Plaintiff will certainly include a jurisdictional statement pursuant to Rule 8(a)(1) in the Second Amended Complaint. Plaintiff's omission of the jurisdictional statement is not a basis to deny amendment.

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allowing an amendment on the opposing party. *See, Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) ("[I]t is the consideration of prejudice to the opposing party that carries the greatest weight."). There is a strong presumption in favor of granting leave to amend, especially under the circumstances which exist in this case where there is no prejudice to the other party, no answer filed, and no discovery has been conducted. *Eminence Cap., supra,* 316 F.3d 1052 ("Absent prejudice, or a strong showing of any [other relevant] factor[ ], there exists a presumption under Rule 15(a) in favor of granting leave to amend.")

Initially, it should be noted that Defendants copy and paste the same arguments from their Motion to Dismiss the First Amended Complaint into their Opposition to the instant Motion. Those arguments are that (1) the Hatches do not owe Plaintiff a contractual duty under the PSA (*see* Opposition, p. 8; *see also* Motion to Dismiss p. 18); (2) Plaintiff's breach of PSA claim is barred by the "waiver" of the PSA (*see* Opposition, p. 8-9; *see also* Motion to Dismiss, p. 18-19); (3) Plaintiff's breach of PSA claim is barred by the integration clause (*see* Opposition, p. 9-11; *see also* Motion to Dismiss, p. 19-20); (4) the Note bars a security interest (*see* Opposition, p. 11; *see also* Motion to Dismiss, p. 21); and (5) the parole evidence rule, statute of frauds, and statute of limitations bars Plaintiff's claim (*see* Opposition, p. 11-12; *see also* Motion to Dismiss, p. 21-22).

Rather than reiterate all of the same arguments herein, Plaintiff incorporates by reference the opposing points and authorities contained in Plaintiff's Opposition to Defendant's Motion to Dismiss the Verified First Amended Complaint. Defendants' copy and paste of the exact arguments contained in their Motion to Dismiss into their Opposition to Plaintiffs' Motion for Leave to Amend is only wasting time and resources. This reply will address the additional matters not previously addressed in the Defendants' Motion to Dismiss the Verified First Amended Complaint and Plaintiff's Opposition thereto.

A. Breach of the Implied Covenant of Good Faith and Fair Dealing

"Where the terms of a contract are literally complied with but one party to the contract deliberately countervenes the intention and spirit of the contract, that party can incur liability for breach of the implied covenant of good faith and fair dealing." *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991). Here, the Purchase Contract

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and Receipt ("PSA") is a contract that Plaintiff and Defendants entered together as buyers. Plaintiff paid the entire purchase price for the property and paid all closing costs. The Second Amended Complaint states the Defendants deliberately contravened the spirit of the contract. *See* Proposed Second Amended Complaint, ¶¶32-38.

Defendants rely on *Dimick v. Dimick*, 112 Nev. 402, 407, 915 P.2d 254, 257 (1996) to argue that "merely because Johnson signed the PSA, that agreement does not convey any real property interest in the Hatches' Property." Opposition, p. 6. Rhetorically, what does buying a property do then? Because in this case, Plaintiff did not "merely sign the PSA", she *paid the full purchase price and all closing costs*. She was a named buyer of the Property and liable for any breach of the PSA.

The ruling in *Dimick* is clearly inapplicable to this case. The wife in *Dimick* did not pay any consideration to obtain an interest in the property and she did not even sign the trade-out purchase agreement. 112 Nev. at 406, 915 P.2d at 257. Plaintiff purchased the Property in this case. Therefore, *Dimick* is factually and legally distinct from the facts and circumstance which exist in this case.

Further, Defendants try to argue evidentiary issues at this juncture, which is completely improper. For example, Defendants contend that Plaintiff signed the Endorsement. However, Plaintiff alleged the Endorsement was fraudulently obtained. *See* Proposed Second Amended Complaint, ¶14-15, 59-60. At this stage in the proceedings, Plaintiff's allegations are taken as true. *Pack v. LaTourette,* 128 Nev. 264, 266, 277 P.3d 1246, 1248 (2012) (When considering a motion to dismiss, this court must "accept the plaintiffs' factual allegations as true and then determine whether the allegations are legally sufficient to satisfy the elements of the claim asserted."); *Bemis*, 114 Nev. at 1025, 967 P.2d at 440 ("Dismissal on statute of limitations grounds is only appropriate when *uncontroverted evidence irrefutably demonstrates* plaintiff discovered or should have discovered the facts giving rise to the cause of action.") (internal quotation marks omitted) (emphasis added).

Moreover, Defendants contend that because Plaintiff alleged she loaned the Defendants money pursuant to the Note, she has admitted that she was not going to be an owner of the Property. But Johnson expressly pleads in the Proposed Second Amended Complaint that she was supposed

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to be an owner of the Property. *See e.g.*, Proposed Second Amended Complaint, ¶¶11, 16, 18, 21, 23, 24, 26, 27, 32, 47, 50. This Court should reject Defendants' attempt to litigate this case on the facts before an answer has even been filed.

Plaintiff's claim for breach of the implied covenant of good faith and fair dealing clearly passes a Rule 12(b)(5) analysis. Therefore, the Motion should be granted.

B. Intentional Interference with the PSA

In an action for intentional interference with contractual relations, a plaintiff must establish: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage. *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003).

Defendants contend that they cannot be liable for interfering with a contract to which they are a party. But Defendants contend they had no contractual duties to Plaintiff under the PSA. *See* Motion to Dismiss; *see also* Opposition. Therefore, under Defendants' theory of the case, the PSA is not a contract between the Plaintiff and Defendant. Accordingly, this claim is proper as an alternative to the breach of contract claim because Plaintiff certainly contracted with Toll to purchase the Property. Defendants knew that Plaintiff entered the PSA with Toll and took egregious, intentional acts to ensure that contractual relationship was disrupted. The arguments made by the Defendants are nonsensical and the Motion should be granted .

C. Reformation

Defendants contend the reformation claim is barred by the statute of limitations because the deed is a publicly recorded document. However, the discovery rule applies to Plaintiff's claim, and Plaintiff did not discover Defendants' fraud until November 2020. Therefore, the statute of limitations has not run. The issue of due diligence in discovering a claim is a question of fact inappropriate for determination on a motion to amend or a motion to dismiss. *Bemis v. Est. of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998). Accordingly, the Motion should be granted.

D. Plaintiff's Claims are Not Barred by the Statute of Limitations.

Defendants contend that Plaintiff has acted abusively and caused Defendants to incur unnecessary fees. But Defendants' Opposition is *thirty-seven pages long*. The majority of the

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Opposition is a copy and paste of the Defendants' Motion to Dismiss the First Amended Complaint. Cutting and pasting the same meritless arguments certainly did not take much time. Indeed, Defendants again copy and paste the same statute of limitations arguments into their brief as they have already argued in their Motion to Dismiss. Worse, Defendants even copy and paste the same arguments into two different sections of their Opposition. Therefore, pages 8-12 and pages 22-26 repeat the exact same arguments. Whether an attempt to try and lengthen their briefing to make their position appear stronger or a result of mistake, Defendants are causing Plaintiff to incur unnecessary fees in this case.

As argued *ad nauseum* in the briefing on the Motion to Dismiss, and as agreed by this Court at the hearing, whether a plaintiff has acted diligently in discovering her claims <u>is a question of fact</u> inappropriate on a Rule 12(b)(5) motion to dismiss and inappropriate for determination on a motion for leave to amend. *Millspaugh v. Millspaugh,* 96 Nev. 446, 448, 611 P.2d 201, 203 (1980) (Whether Plaintiff exercised reasonable diligence in discovering her causes of action "is a question of fact to be determined by the jury or trial court after a full hearing."). Plaintiff will refer to the full analysis contained in her Opposition to the Motion to Dismiss rather than overburden this Court with paperwork that provides a copy and paste recitation of previously argued points. Plaintiff's Motion for leave to file the Second Amended Complaint should be granted.

II. <u>CONCLUSION</u>

Based on the foregoing, Plaintiff respectfully requests that this Court grant Plaintiff leave to file her proposed Second Amended Complaint.

AFFIRMATION: The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 14th day of April 2021.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: /s/ *Stefanie T. Sharp*
STEFANIE T. SHARP
CLAYTON P. BRUST
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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of the **REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** on all parties to this action by the method(s) indicated below:

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AHall@SHJNevada.com
Attorneys for Defendants

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_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 14th day of April 2021.

/s/ Leslie M. Lucero
Employee of Robison, Sharp, Sullivan & Brust

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Transaction # 8394860

3860
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Attorneys for Plaintiff Kari Anne Johnson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual, Plaintiff, vs. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I THROUGH X, inclusive; Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

REQUEST FOR SUBMISSION OF PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Plaintiff Kari Anne Johnson ("Plaintiff") by and through her counsel, respectfully requests that Plaintiff's MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT filed with this Court on March 25, 2021, be submitted to the Court for decision.

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AFFIRMATION: The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 14th day of April 2021.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: *__/s/ Stefanie T. Sharp__*
STEFANIE T. SHARP
CLAYTON P. BRUST
HANNAH E. WINSTON
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

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DATED: This 14th day of April 2021.

/s/ Leslie M. Lucero
Employee of Robison, Sharp, Sullivan & Brust

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Transaction # 8414094

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

KARI ANNE JOHNSON, an individual,

Plaintiff,

Case No.: CV21-00246

vs.

Dept. No.: 7

MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNA HATCH; and DOES I-X,

Defendants.

_____/

ORDER GRANTING MOTION TO EXPUNGE LIS PENDENS

Presently before the Court is the *Emergency Motion to Expunge Lis Pendens* ("the Motion"). Defendants MICHAEL EDWARD HATCH and ALISHA SUZANNA HATCH filed the Motion and the *Request for Hearing Pursuant to NRS 14.015* on March 5, 2021. The Court heard oral arguments on March 22, 2021. Having considered the pleadings and papers on file herein and the oral arguments, the Court finds as follows:

Findings of Fact

1. On February 10, 2021, Plaintiff KARI ANNE JOHNSON filed her Verified Complaint ("Complaint") and a Notice of Pendency of Action (Lis Pendens) (herein after the "Lis Pendens").

2. Plaintiff's Complaint alleged the following as claims: 1) breach of note; 2) demand on loan documents; 3) unjust enrichment on loan documents; 4) fraud in the inducement; 5) equitable lien; 6) constructive trust; and 7) injunctive relief.

3. On February 10, 2021, Plaintiff recorded the Lis Pendens against the Hatches' property located at 9845 Firefoot Lane, Reno, Nevada ("the Property").

4. On February 10, 2021, the Lis Pendens was recorded with the Washoe County Recorder as Document Number 5140328.

5. On March 5, 2021, the Hatches filed their Motion and filed a concurrent Motion to Dismiss the Complaint.

6. On March 15, 2021, the Hatches filed their Supplement to their Motion.

7. On March 16, 2021, Plaintiff filed her Opposition to the Motion and Supplement.

8. Concurrent with the filing of her Opposition, Johnson filed the Verified First Amended Complaint ("Amended Complaint").

9. Plaintiff's Amended Complaint alleged the following as claims: 1) breach of contract (PSA); 2) breach of note; 3) breach of confidential relationship; 4) unjust enrichment; 5) fraud in the inducement; 6) equitable lien; 7) constructive trust; 8) injunctive relief and 9) declaratory relief.

10. On March 19, 2021, the Hatches filed their Reply in support of their Motion and submitted it for decision.

11. The filing of the Amended Complaint rendered moot the Hatches' Motion to Dismiss.

12. On March 22, 2021, the Court conducted oral arguments on the Motion, having considered the Motion, the Supplement, the Opposition, the Reply and Plaintiff's Amended Complaint, and counsel's argument.

13. The hearing on the Lis Pendens is governed by NRS 14.015. Plaintiff does not seek to foreclose on a mortgage instrument, instead Plaintiff's action is based upon a simple note, which note is unsecured.

14. The Plaintiff seeks to color the Hatches title in their Property claiming a security interest in the Property. Plaintiff's Lis Pendens seeks to act as security for the collection of money she alleges she loaned to Hatches.

15. Plaintiff's Exhibit 5 to the Complaint and the Amended Complaint, is a document entitled Endorsement to Agreement of Sale, which Plaintiff purportedly signed on July 29th, 2015, removed Plaintiff from the purchase agreement and not referenced in the Deed. After that, the Deed was recorded on August 6, 2015. *See* Comp., Am. Compl., Ex. 4.

16. In addition, the Plaintiff's own affidavit indicates she asked for a copy of the Deed after the Hatches purchased the Property in August 2015, and never got it.

17. If any Finding of Fact is more appropriately a Conclusion of Law, it is so determined.

Conclusion of Law

18. Plaintiff does not seek to foreclose upon a mortgage but instead seeks to enforce a simple note.

19. Plaintiff's Lis Pendens seeks to operate as security for repayment of the note.

20. NRS 14.015(3) requires that the party who recorded the notice must establish to the satisfaction of the Court either:

> (a) That the party who recorded the notice is likely to prevail in the action; or
>
> (b) That the party who recorded the notice has a fair chance of success on the merits in the action and that any injury suffered by the transfer of an interest in the property would be greater than the hardship on the defendant resulting from the notice of pendency.

NRS 14.015(3)(a) and (b).

21. Based upon the facts presented by Plaintiff, the Court finds that Plaintiff has failed to satisfy its obligations under NRS 14.015(3).

22. The Court finds that the Lis Pendens should be expunged.

23. If any Conclusion of Law is more appropriately a Finding of Fact, it is so determined.

For these reasons set forth above,

IT IS ORDERED that the *Emergency Motion to Expunge Lis Pendens* is **GRANTED**. The Lis Pendens recorded with the Washoe County Recorder on February 10, 2021 as Document Number 5140328 for the property located at 9845 Firefoot Lane, Reno, Nevada, is expunged in total.

DATED this 26 day of April, 2021.

EGAN K. WALKER
District Judge

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 27 day of April, 2021, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

CLAYTON BRUST, ESQ.
STEFANIE SHARP, ESQ.
MARK SIMONS, ESQ.
ANTHONY HALL, ESQ.

Judicial Assistant

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Clerk of the Court
Transaction # 8414919

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Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7** **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Granting Motion to Expunge Lis Pendens was entered by the Honorable Egan Walker on the 26th day of April, 20201, and filed with this Court on the 27th day of April, 2021, in the above-entitled matter. See **Exhibit 1.**

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AFFIRMATION: This document does not contain the social security number of any person.

DATED this 27th day of April, 2021.

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By: _____
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Attorneys for Defendants

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Phone: (775) 785-0088

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **NOTICE OF ENTRY OF ORDER** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Stefanie T. Sharp
Clayton P. Brust
Attorneys for Defendants

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 27 day of April, 2021.

Employee of Simons Hall Johnston PC

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Order	5

SIMONS HALL JOHNSTON PC
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Reno, NV 89509
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EXHIBIT 1

EXHIBIT 1

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Alicia L. Lerud
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Transaction # 8414094

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

***

KARI ANNE JOHNSON, an individual,

Plaintiff,

vs.

MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNA HATCH; and DOES I-X,

Defendants.

Case No.: CV21-00246

Dept. No.: 7

ORDER GRANTING MOTION TO EXPUNGE LIS PENDENS

Presently before the Court is the *Emergency Motion to Expunge Lis Pendens* ("the Motion"). Defendants MICHAEL EDWARD HATCH and ALISHA SUZANNA HATCH filed the Motion and the *Request for Hearing Pursuant to NRS 14.015* on March 5, 2021. The Court heard oral arguments on March 22, 2021. Having considered the pleadings and papers on file herein and the oral arguments, the Court finds as follows:

Findings of Fact

1. On February 10, 2021, Plaintiff KARI ANNE JOHNSON filed her Verified Complaint ("Complaint") and a Notice of Pendency of Action (Lis Pendens) (herein after the "Lis Pendens").

2. Plaintiff's Complaint alleged the following as claims: 1) breach of note; 2) demand on loan documents; 3) unjust enrichment on loan documents; 4) fraud in the inducement; 5) equitable lien; 6) constructive trust; and 7) injunctive relief.

3. On February 10, 2021, Plaintiff recorded the Lis Pendens against the Hatches' property located at 9845 Firefoot Lane, Reno, Nevada ("the Property").

4. On February 10, 2021, the Lis Pendens was recorded with the Washoe County Recorder as Document Number 5140328.

5. On March 5, 2021, the Hatches filed their Motion and filed a concurrent Motion to Dismiss the Complaint.

6. On March 15, 2021, the Hatches filed their Supplement to their Motion.

7. On March 16, 2021, Plaintiff filed her Opposition to the Motion and Supplement.

8. Concurrent with the filing of her Opposition, Johnson filed the Verified First Amended Complaint ("Amended Complaint").

9. Plaintiff's Amended Complaint alleged the following as claims: 1) breach of contract (PSA); 2) breach of note; 3) breach of confidential relationship; 4) unjust enrichment; 5) fraud in the inducement; 6) equitable lien; 7) constructive trust; 8) injunctive relief and 9) declaratory relief.

10. On March 19, 2021, the Hatches filed their Reply in support of their Motion and submitted it for decision.

11. The filing of the Amended Complaint rendered moot the Hatches' Motion to Dismiss.

12. On March 22, 2021, the Court conducted oral arguments on the Motion, having considered the Motion, the Supplement, the Opposition, the Reply and Plaintiff's Amended Complaint, and counsel's argument.

13. The hearing on the Lis Pendens is governed by NRS 14.015. Plaintiff does not seek to foreclose on a mortgage instrument, instead Plaintiff's action is based upon a simple note, which note is unsecured.

14. The Plaintiff seeks to color the Hatches title in their Property claiming a security interest in the Property. Plaintiff's Lis Pendens seeks to act as security for the collection of money she alleges she loaned to Hatches.

15. Plaintiff's Exhibit 5 to the Complaint and the Amended Complaint, is a document entitled Endorsement to Agreement of Sale, which Plaintiff purportedly signed on July 29th, 2015, removed Plaintiff from the purchase agreement and not referenced in the Deed. After that, the Deed was recorded on August 6, 2015. *See* Comp., Am. Compl., Ex. 4.

16. In addition, the Plaintiff's own affidavit indicates she asked for a copy of the Deed after the Hatches purchased the Property in August 2015, and never got it.

17. If any Finding of Fact is more appropriately a Conclusion of Law, it is so determined.

Conclusion of Law

18. Plaintiff does not seek to foreclose upon a mortgage but instead seeks to enforce a simple note.

19. Plaintiff's Lis Pendens seeks to operate as security for repayment of the note.

20. NRS 14.015(3) requires that the party who recorded the notice must establish to the satisfaction of the Court either:

> (a) That the party who recorded the notice is likely to prevail in the action; or
>
> (b) That the party who recorded the notice has a fair chance of success on the merits in the action and that any injury suffered by the transfer of an interest in the property would be greater than the hardship on the defendant resulting from the notice of pendency.

NRS 14.015(3)(a) and (b).

21. Based upon the facts presented by Plaintiff, the Court finds that Plaintiff has failed to satisfy its obligations under NRS 14.015(3).

22. The Court finds that the Lis Pendens should be expunged.

23. If any Conclusion of Law is more appropriately a Finding of Fact, it is so determined.

For these reasons set forth above,

IT IS ORDERED that the *Emergency Motion to Expunge Lis Pendens* is **GRANTED**. The Lis Pendens recorded with the Washoe County Recorder on February 10, 2021 as Document Number 5140328 for the property located at 9845 Firefoot Lane, Reno, Nevada, is expunged in total.

DATED this 26 day of April, 2021.

EGAN K. WALKER
District Judge

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 27 day of April, 2021, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

CLAYTON BRUST, ESQ.
STEFANIE SHARP, ESQ.
MARK SIMONS, ESQ.
ANTHONY HALL, ESQ.

Judicial Assistant

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Alicia L. Lerud
Clerk of the Court
Transaction # 8418281 : csulezic

2490
STEFANIE T. SHARP, ESQ.
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Attorneys for Plaintiff Kari Anne Johnson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual, Plaintiff, vs. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I THROUGH X, inclusive; Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 8**

NOTICE OF RELEASE OF LIS PENDENS

PLEASE TAKE NOTICE THAT pursuant to the Order Granting Motion to Expunge Lis Pendens entered by this Court on April 27, 2021, Plaintiff, KARI ANNE JOHNSON ("Plaintiff") hereby releases the Notice of Pendency of Action (Lis Pendens) filed in the above-captioned matter on February 10, 2021.

The Real Property at issue is situated in the County of Washoe, State of Nevada, APN: 141-254-09, is commonly known as 9845 Firefoot Lane, Reno, Nevada and is more particularly

described as follows:

Lot 55 of DAMONTE RANCH VILLAGE 11D, according to the map thereof, filed in the Office of the County Recorder of Washoe County, State of Nevada, on April 3, 2014, as File No. 4341181, Official Records, Tract Map No. 5071.

More Commonly Known as 9845 Firefoot Lane, Reno, Nevada

Assessor's Parcel No. 141-254-09

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 28th day of April 2021.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: /s/ *Stefanie T. Sharp*
STEFANIE T. SHARP
CLAYTON P. BRUST
HANNAH E. WINSTON
Attorneys for Plaintiff

Robison, Sharp,
Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of the **NOTICE OF RELEASE OF LIS PENDENS** on all parties to this action by the method(s) indicated below:

____ by placing true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

__x_ by using the Court's CM/ECF Electronic Notification System addressed to:

Mark G. Simons, Esq.
Anthony L. Hall, Esq.
SIMONS HALL JOHNSTON PC
Email: MSimons@SHJNevada.com
AHall@SHJNevada.com
Attorneys for Defendants

_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 28th day of April 2021.

/s/ Leslie M. Lucero
Employee of Robison, Sharp, Sullivan & Brust

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Sullivan & Brust
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(775) 329-3151

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Clerk of the Court
Transaction # 8458984

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

KARI ANNE JOHNSON, an individual,

Plaintiff,

vs.

MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive,

Defendants.

Case No.: CV21-00246
Dept. No.: 7

_____/

ORDER TO SET

Presently before the Court is the *Motion to Dismiss Verified First Amended Complaint* ("the MTD"). Defendants MICHAEL EDWARD HATCH and ALISHA SUZANNE HATCH ("the Defendants") filed the MTD on March 30, 2021. Plaintiff KARI ANNE JOHNSON filed the *Opposition to Motion to Dismiss Verified First Amended Complaint* ("the MTD Opposition") on April 8, 2021. The Defendants filed the *Reply in Support of Motion to Dismiss Verified First Amended Complaint* ("the MTD Reply") on April 8, 2021, and contemporaneously submitted the MTD for the Court's consideration.

The Plaintiff also filed the *Motion for Leave to File Second Amended Complaint* ("the Motion for Leave") on March 25, 2021. The Defendants filed the *Opposition to Motion for Leave to File Second Amended Complaint* on April 8, 2021. The Plaintiff filed the *Reply in Support of Motion for Leave to File Second Amended Complaint* on

April 14, 2021, and contemporaneously submitted the Motion for Leave for the Court's consideration.

Having reviewed the filings and all related documents, the Court finds a hearing would be beneficial to resolve the above-mentioned motions. *See* WDCR 12(5). The parties shall be prepared to offer any evidence, or highlight any undisputed evidence, which support or contradict the assertions in their motion work. A particular example involves the allegations of "fraud" and/or "forgery" related to the Plaintiff's signature on a disputed document as it relates to her constructive notice for purposes of measuring any relevant statutes of limitation.

Accordingly, and good cause appearing, parties to this matter are hereby **ORDERED** to email the Judicial Assistant in Department 7 at laura.watts-vial@washoecourts.us to set a hearing. The parties shall contact the Court Clerk at kim.oats@washoecourts.us of Department 7 to familiarize themselves with the process utilized to mark exhibits prior to the hearing. To reduce the risk of spreading COVID-19 (novel coronavirus), and to support the Washoe County Health District's efforts to decrease the opportunity for disease transmission, the hearing shall be held by audio visual means, using Zoom, pursuant to the Administrative Order 2020-05(E) filed on January 15, 2021, and Nevada Supreme Court Rule Part IX-B. The Zoom invitation for this hearing will be posted to the Court's website at www.washoecourts.com under the banner "online hearings" approximately 48 hours prior to the hearing.

DATED this 21 day of May, 2021.

EGAN K. WALKER
District Judge

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 21 day of May, 2021, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

CLAYTON BRUST, ESQ.

STEFANIE SHARP, ESQ.

MARK SIMONS, ESQ.

ANTHONY HALL, ESQ.

HANNAH WINSTON, ESQ.

Judicial Assistant

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Alicia L. Lerud
Clerk of the Court
Transaction # 8463673 : sacordag

2490
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Attorneys for Plaintiff Kari Anne Johnson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual, Plaintiff, vs. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I THROUGH X, inclusive; Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

PLAINTIFF'S MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF ORDER TO SET, OR, ALTERNATIVELY, REQUEST FOR CLARIFICATION OF ORDER TO SET

Plaintiff Kari Anne Johnson ("Plaintiff") hereby moves this Honorable Court for leave to file a Motion for Reconsideration of the May 21, 2021 Order to Set (the "Order"), or alternatively, seeks clarification of the Order, pursuant to District Court Rule 13(7).

In the Order, this Court ordered the parties to set an evidentiary hearing regarding the regarding the Defendants' Rule 12(b)(5) motion to dismiss and Plaintiff's Motion for Leave to File a Second Amended Complaint and to be prepared to "offer evidence, or highlight any undisputed

evidence, which support or contradict the assertions in their motion work." Plaintiff seeks reconsideration of the Order because Plaintiff is unclear of the purpose of an evidentiary hearing regarding the Defendants' Rule 12(b)(5) motion to dismiss and Plaintiff's Motion for Leave to File a Second Amended Complaint, in light of the fact that on a motion to dismiss the allegations in the complaint are treated as true and leave to amend, especially at this point in the case, is to be liberally granted.

Plaintiff is also unclear what the scope of the evidentiary hearing will be and whether this Court is viewing the pending motions as one for summary judgment. If this Court is treating the motions as ones for summary judgment, Plaintiff would request the opportunity to brief the need for discovery prior to conducting an evidentiary hearing.

Plaintiff understands that oral argument may be useful in determining the pending motions, but Plaintiff requests reconsideration and/or clarification regarding the Court's order to prepare for an evidentiary hearing. Accordingly, Plaintiff requests leave to file the Motion for Reconsideration or Alternatively, Request for Clarification of Order to Set, which is attached hereto as **Exhibit "1"**.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 25th day of May 2021.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: */s/ Stefanie T. Sharp*
STEFANIE T. SHARP
CLAYTON P. BRUST
HANNAH E. WINSTON
Attorneys for Plaintiff

Robison, Sharp,
Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of the **PLAINTIFF'S MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF ORDER TO SET, OR, ALTERNATIVELY, REQUEST FOR CLARIFICATION OF ORDER TO SET** on all parties to this action by the method(s) indicated below:

____ by placing true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

__x__ by using the Court's CM/ECF Electronic Notification System addressed to:

Mark G. Simons, Esq.
Anthony L. Hall, Esq.
SIMONS HALL JOHNSTON PC
Email: MSimons@SHJNevada.com
AHall@SHJNevada.com
Attorneys for Defendants

_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 25th day of May 2021.

/s/ Leslie M. Lucero
Employee of Robison, Sharp, Sullivan & Brust

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Sullivan & Brust
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Reno, NV 89503
(775) 329-3151

EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Motion for Reconsideration or Alternatively, Request for Clarification of Order to Set	-4-

Robison, Sharp,
Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

Exhibit "1"

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Clerk of the Court
Transaction # 8463673 : sacordag

Exhibit "1"

2175
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Nevada State Bar No. 8661
CLAYTON P. BRUST, ESQ.
Nevada State Bar No. 5234
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Attorneys for Plaintiff Kari Anne Johnson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual, Plaintiff, vs. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I THROUGH X, inclusive; Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

PLAINTIFF'S MOTION FOR RECONSIDERATION OR ALTERNATIVELY, REQUEST FOR CLARIFICATION OF ORDER TO SET

Plaintiff Kari Anne Johnson ("Plaintiff") hereby moves this Honorable Court for reconsideration of its Order to Set or alternatively, requests clarification of the Order to Set. This Motion is made pursuant to Washoe District Court Rule ("WDCR") 12 and is based upon the attached Memorandum of Points and Authorities and the pleadings and papers on file herein.

./.../

./.../

DATED this ____ day of May 2021.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: _____
STEFANIE T. SHARP
CLAYTON P. BRUST
HANNAH E. WINSTON
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

In this Court's Order to Set, this Court ordered as follows:

> Having reviewed the filings and all related documents, the Court finds a hearing would be beneficial to resolve the above-mentioned motions. See WDCR 12(5). The parties shall be prepared to offer any evidence, or highlight any undisputed evidence, which support or contradict the assertions in their motion work. A particular example involves the allegations of "fraud" and/or "forgery" related to the Plaintiff's signature on a disputed document as it relates to her constructive notice for purposes of measuring any relevant statutes of limitation.

Order to Set, p. 2.

Plaintiff appreciates this Court's desire to expeditiously determine certain factual disputes between the parties. However, Plaintiff is concerned about the propriety of setting an evidentiary hearing to determine factual disputes in relation to the pending motions, which include a Rule 12(b)(5) motion to dismiss and a Rule 15 motion for leave to file an amended complaint.

Given that Rule 12(b)(5) motions are generally decided based on the allegations in the pleading being accepted as true, it is not clear whether this Court is viewing the Rule 12(b)(5) motion as one for summary judgment. Thus, Plaintiff requests reconsideration and/or clarification of this Court's Order to Set.

II. LEGAL ARGUMENT.

Courts allow reconsideration based on "the need to correct clear or manifest error in law or fact, [and] to prevent manifest injustice." *Osborne v. U.S. Sec'y of Treasury*, 37 F. Supp. 2d 1176,

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1180 (D. Haw. 1997), *aff'd sub nom. Osborne v. Rubin*, 166 F.3d 343 (9th Cir. 1998).

Plaintiff is unclear as to what this Court intends the scope of the evidentiary hearing to be. However, it would be manifestly unjust to require Plaintiff to prove material elements of her case prior to having the opportunity to conduct any discovery or even the benefit of a responsive pleading from Defendants. Plaintiff understands that oral argument could be helpful to this Court's resolution of the Defendants' Rule 12(b)(5) motion to dismiss and Plaintiff's Rule 15 motion for leave to file an amended complaint, but Plaintiff does not believe that an evidentiary hearing on either motion would be appropriate at this stage in the litigation.

When analyzing a motion to dismiss under NRCP 12(b)(5), courts "recognize all factual allegations in [the plaintiff's] complaint as true and draw all inferences in [the plaintiff's] favor." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Complaints should only be dismissed "if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.*

The Court's analysis, however, is confined to the allegations in the pleadings. *See id.* Therefore, "If matters outside the pleading are presented to and not excluded by the court, a motion to dismiss for failure to state a claim upon which relief can be granted shall be treated as one for summary judgment and disposed of as provided in Rule 56." *Schneider v. Cont'l Assur. Co.*, 110 Nev. 1270, 1271, 885 P.2d 572, 573 (1994) (internal quotation marks omitted).

Here, if the Court considers matters outside the pleadings by way of evidence produced at an evidentiary hearing, Defendants' motion to dismiss will be converted to one for summary judgment. *See id.*; *see also Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (explaining that "presentation of matters *outside* the pleadings will convert the motion to dismiss to a motion for summary judgment"). Summary judgment at this point is inappropriate, given the fact that no discovery has occurred. Plaintiff respectfully requests reconsideration of the Order to Set so that the hearing is limited to oral argument rather than an evidentiary hearing. *See Schneider v. Cont'l Assur. Co.*, 110 Nev. at 1271, 885 P.2d at 573 (1994) ("Thus the district court erroneously granted the motion to dismiss after considering materials outside the pleadings.").

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If this Court's intention is to treat the Motion to Dismiss as one for summary judgment, Plaintiff respectfully requests that she be given the opportunity to brief (1) whether the Motion to Dismiss should be treated as one for summary judgment, and (2) that Plaintiff should be granted leave to conduct discovery under NRCP 56(d) prior to an evidentiary hearing. Because such discovery will be limited, Plaintiff also requests identification of specific issues the Court wants addressed at the evidentiary hearing so the discovery can be tailored to such issues.

It is clear from the pleadings and motions on file with this Court that genuine disputes of material fact exist between the parties, but Plaintiff needs time to identify those disputed facts, the parties' respective positions, and the parties' respective evidence supporting their differing positions. Indeed, the Defendants have not yet filed an answer in this case. Therefore, it is unclear whether Defendants admit or deny the allegations Plaintiff asserts in this case. Accordingly, Plaintiff respectfully requests reconsideration or clarification of this Court's Order to Set.

CONCLUSION

Plaintiff respectfully requests that this Court reconsider or clarify its Order to Set and conclude that such hearing be limited to oral argument. Alternatively, Plaintiff respectfully requests that she be given the opportunity to brief whether the Motion to Dismiss should be treated as a motion for summary judgment and to request leave to conduct discovery pursuant to NRCP 56(d), on topics identified by the Court to be addressed at the proposed evidentiary hearing.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this _____ day of May 2021.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: _____
STEFANIE T. SHARP
CLAYTON P. BRUST
HANNAH E. WINSTON
Attorneys for Plaintiff

Robison, Sharp,
Sullivan & Brust
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Alicia L. Lerud
Clerk of the Court
Transaction # 8472815

2550
Mark G. Simons, Esq. (SBN 5132)
Anthony L Hall, Esq. (SBN 5977)
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
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AHall@SHJNevada.com

Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7** **NOTICE OF HEARING**

NOTICE IS HEREBY GIVEN that a hearing on (1) Defendants' Motion to Dismiss Verified First Amended Complaint; and (2) Plaintiff's Motion for Leave to File Second Amended Complaint, has been set for **July 8, 2021 at 1:30 p.m.** in Department 7 of the Second Judicial District Court, 75 Court Street, Reno, Nevada. In an effort to reduce the risk of spreading COVID-19 (novel coronavirus), and to support the Washoe County Health District's efforts to decrease the opportunity for disease transmission, the hearing shall be held by audio visual means, using Zoom, pursuant to the Administrative Order 2020-05(E) filed on January 15, 2021, and Nevada Supreme Court Rule Part IX-B. The

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6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

Zoom invitation for this hearing will be posted to the Court's website at www.washoecourts.com under the banner "online hearings" approximately 48 hours prior to the hearing.

AFFIRMATION: This document does not contain the social security number of any person.

DATED this 1st day of June, 2021.

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509

By: _____
MARK G. SIMONS
ANTHONY L. HALL
Attorneys for Defendants

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **NOTICE OF HEARING** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☑ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Stefanie T. Sharp
Clayton P. Brust
Hannah Winston
Attorneys for Defendants

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 1 day of June, 2021.

Employee of Simons Hall Johnston PC

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

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Alicia L. Lerud
Clerk of the Court
Transaction # 8484718

CASE NO. CV21-00246 KARI A. JOHNSON vs. MICHAEL E. HATCH et al.

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
03/22/2021 HONORABLE EGAN WALKER DEPT. NO. 7 G. Dawson K. Oates (Clerks) S. Koetting (Reporter)	MOTION HEARING Hearing conducted via Zoom Video conferencing. Clay Brust, Esq., Stephanie Sharp, Esq., and Hannah Winston, Esq., were present in Court on behalf of Plaintiff Kari Johnson, who was not present. Mark Simons, Esq. was present in Court on behalf of Defendants Michael and Alisha Hatch, who were not present. This hearing was held remotely because of the closure of the courthouse at 75 Court Street in Reno, Washoe County, Nevada due to the National and Local emergency caused by COVID-19. The Court and all the participants appeared via simultaneous audiovisual transmission. The Court was physically located in Reno, Washoe County, Nevada which was the site of the court session. Counsel acknowledged Notice that the hearing was taking place pursuant to Nevada Supreme Court Rules – Part 9 relating to simultaneous audiovisual transmissions and counsel stated they had no objection to going forward in this manner. 1:28 p.m. – Court convened with Court and counsel present. The Court recited a procedural history of this case to include the Motion to Dismiss being rendered moot by the filing of the Amended Complaint. Counsel Simons, on behalf of the Plaintiff, addressed the Court and concurred with the Court as to the Motion to Dismiss. The Court next addressed the Motion to Expunge Lis Pendens. Counsel Simons argued in support of the Motion to Expunge Lis Pendens. Counsel Winston, on behalf of Defendants, addressed the Court and argued in opposition to the Motion to Expunge Lis Pendens, to include the elements for the lis pendens have been satisfied. The Court noted counsel Brust requested to be heard with the Court informing Plaintiff's counsel that only one attorney per side would be allowed to present argument. Counsel Winston presented additional argument. Counsel Simons presented further argument. **COURT ORDERED:** The Court outlined the applicable findings in this matter to include the Plaintiff is unlikely to prevail under NRS 14.015(3) and therefore, Defendants' Motion to Expunge Lis Pendens is hereby GRANTED. Further, counsel Simons will prepare and submit the proposed order. 2:05 p.m. – Court stood in recess.	

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IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive, Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7** **OPPOSITION TO MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF ORDER TO SET, OR ALTERNATIVELY, REQUEST FOR CLARIFICATION TO SET**

Defendants Michael Edward Hatch and Alisha Suzanne Hatch (the "Hatches"), by and through their attorney Mark G. Simons of SIMONS HALL JOHNSTON PC, hereby Oppose the Motion for Leave to File Motion for Reconsideration of Order to Set, Or Alternatively, Request for Clarification to ("Motion") filed by Kari Anne Johnson ("Johnson").

I. THE MOTION MUST BE DENIED.

Johnson's Motion is procedurally and substantively improper.

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A. PROCEDURAL IMPROPRIETY.

Washoe District Court Rule ("WDCR") 12 states that "rehearings of motions must be done in conformance with D.C.R., Section 7 . . . ." District Court Rule ("DCR") 13.7 states:

> **No motion once heard and disposed of** shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.

Id. (emphasis added). The Court's Order to Set, dated May 21, 2021 (the "Order") states the Court is setting oral argument on the Motion to Dismiss Verified First Amended Complaint filed by the Hatches (the "MTD") and the Motion for Leave to File Second Amended Complaint filed by Johnson (the "Motion for Leave").

The Order expressly states it is "setting" a hearing for resolution of the MTD and Motion for Leave. The Motion is procedurally inapplicable because the Court can only "reconsider" an order after actually ruling on a motion. The MTD and Motion for Leave have not yet been "heard and disposed of" so this Motion is facially improper and must be denied.

B. SUBSTANTIVE IMPROPRIETY.

The Motion wrongfully asserts that the Court has set an "evidentiary hearing". Mot., p.1:26. This statement is again facially false. The Court's Order states that a hearing would be beneficial to resolution of the pending motions. The Court's Order specifically cites WDCR 12(5) as the authority for the Court to set the hearing for oral argument. WDCR 12(5) states: "Decision shall be rendered without oral argument unless oral argument is ordered by the court, in which event the individual court department shall set a date and time for hearing." Accordingly, the Court's Order specifically set an "oral argument" and not an evidentiary hearing.

The Court's Order even highlighted that during oral argument, the parties should

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emphasize or highlight the reference to any evidence "which support or contradict the assertions in their motion work." Order, p. 2:6. Again, the Court's Order emphasizes the "oral argument" component of the hearing. The Motion must be denied because it is again substantively improper and misstates the content of the Court's Order. Further, the Court does not need to explain to Johnson's attorneys the legal infirmities of their motion practice.

II. CONCLUSION.

The Hatches are ready to proceed with the hearing scheduled on the MTD and the Motion for Leave to take place on July 8, 2021 at 1:30 p.m. The Hatches' counsel does not need clarification of the Court's Order and understands fully the issues the Court desires the parties to focus upon.

AFFIRMATION: This document does not contain the social security number of any person.

DATED this 8th day of June, 2021.

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509

By: _____
MARK G. SIMONS
ANTHONY L. HALL
Attorneys for Defendants

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **OPPOSITION TO MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF ORDER TO SET, OR ALTERNATIVELY, REQUEST FOR CLARIFICATION TO SET** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Stefanie T. Sharp
Clayton P. Brust
Hannah Winston
Attorneys for Defendants

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 8th day of June, 2021.

Employee of Simons Hall Johnston PC

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Attorneys for Plaintiff Kari Anne Johnson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual, Plaintiff, vs. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I THROUGH X, inclusive; Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF ORDER TO SET, OR, ALTERNATIVELY, REQUEST FOR CLARIFICATION OF ORDER TO SET

Plaintiff Kari Anne Johnson ("Plaintiff") replies in support of her Motion for Leave to File Motion for Reconsideration of Order to Set, Or, Alternatively, Request for Clarification of Order to Set (the "Motion") as follows.

Plaintiff moved this Court seeking clarification of this Court's reference to "evidence" in regard to the oral argument on the pending motions. Defendants have opposed Plaintiff's request, even though this Court's clarification could benefit both parties.[1] Defendants do not interpret this

[1] Defendants criticize the procedural mechanism with which Plaintiff seeks clarification of this Court's Order. Plaintiff understands that this Court's Order to Set is not a final order adjudicating the merits of a motion, which is why Plaintiff styled the Motion seeking alternative forms of requested relief. The Rules do not provide a direct method to seek clarification of an order setting hearing. Moreover, because Plaintiff finds it unclear whether this Court intends to hold an evidentiary hearing, Plaintiff felt it necessary to seek this clarification prior to the hearing date. As noted herein, this clarification can only benefit the parties so it is unclear why Defendants would oppose this request.

Court's Order to Set as contemplating the presentation of evidence, which would be contrary to Nevada law that requires the Court to accept all allegations set forth in the complaint as true as discussed in Plaintiff's opening papers. Plaintiff believes such an interpretation would be correct, but simply seeks clarification given this Court's direction that:

> The parties shall be prepared to *offer any evidence*, or *highlight any undisputed evidence*, which support or contradict the assertions in their motion work. A particular example involves the allegations of "fraud" and/or "forgery" related to the Plaintiff's signature on a disputed document as it relates to her constructive notice for purposes of measuring any relevant statutes of limitation.

Order to Set, p. 2 (emphasis added).

Plaintiff understands that this Court cited Washoe District Court Rule 12(5) in its Order to set, which generally pertains to oral argument. However, this Court's Order suggests that the parties be prepared to offer evidence in support of assertions made in the parties' respective motions. Accordingly, Plaintiff respectfully requests that this Court provide clarification that the Court is not seeking the presentation of evidence at the hearing, but is seeking oral argument based on the allegations in the complaint and exhibits attached thereto.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 10th day of June 2021.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: /s/ Stefanie T. Sharp
STEFANIE T. SHARP
CLAYTON P. BRUST
HANNAH E. WINSTON
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of the **REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF ORDER TO SET, OR, ALTERNATIVELY, REQUEST FOR CLARIFICATION OF ORDER TO SET** on all parties to this action by the method(s) indicated below:

____ by placing true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

__x_ by using the Court's CM/ECF Electronic Notification System addressed to:

Mark G. Simons, Esq.
Anthony L. Hall, Esq.
SIMONS HALL JOHNSTON PC
Email: MSimons@SHJNevada.com
AHall@SHJNevada.com
Attorneys for Defendants

_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 10th day of June 2021.

/s/ Leslie M. Lucero
An Employee of Robison, Sharp, Sullivan & Brust

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Attorneys for Plaintiff Kari Anne Johnson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual, Plaintiff, vs. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I THROUGH X, inclusive; Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7**

REQUEST FOR SUBMISSION OF PLAINTIFF'S MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF ORDER TO SET, OR, ALTERNATIVELY, REQUEST FOR CLARIFICATION OF ORDER TO SET

Plaintiff Kari Anne Johnson ("Plaintiff") by and through her counsel, respectfully requests that Plaintiff's MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF ORDER TO SET, OR, ALTERNATIVELY, REQUEST FOR CLARIFICATION OF ORDER TO SET filed with this Court on May 25, 2021, be submitted to the Court for decision.

./.../

./.../

./.../

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 10th day of June 2021.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503

By: *__/s/ Stefanie T. Sharp__*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of **REQUEST FOR SUBMISSION OF PLAINTIFF'S MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF ORDER TO SET, OR, ALTERNATIVELY, REQUEST FOR CLARIFICATION OF ORDER TO SET** on all parties to this action by the method(s) indicated below:

____ by placing true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

__x_ by using the Court's CM/ECF Electronic Notification System addressed to:

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Attorneys for Defendants

_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 10th day of June 2021.

/s/ Leslie M. Lucero
An Employee of Robison, Sharp, Sullivan & Brust

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Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KARI ANNE JOHNSON, an individual; Plaintiffs, v. MICHAEL EDWARD HATCH, an individual; ALISHA SUZANNE HATCH, an individual; and DOES I to X, inclusive Defendants.	**CASE NO.: CV21-00246** **DEPT. NO.: 7** **REQUEST FOR JUDICIAL NOTICE**

Defendants Michael Edward Hatch and Alisha Suzanne Hatch (the "Hatches"), by and through their attorney Mark G. Simons of SIMONS HALL JOHNSTON PC, hereby submit this Request for Judicial Notice.

I. BASIS FOR REQUEST FOR JUDICIAL NOTICE.

This basic facts of this case as alleged by Plaintiff Kari Anne Johnson ("Johnson") is that she only recently discovered she was not included on the Hatches' Deed for the property commonly known as 9845 Firefoot Lane, Reno, Nevada (the "Hatch Property"). The Hatches' Deed was recorded with the Washoe County Recorder's Office as

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Document Number 4500519 on **August 6, 2015**. This case presents the application of Nevada's constructive notice rule of law which bar Plaintiff's claims as more fully discussed in the Hatches' Motion to Dismiss the Amended Complaint on file herein. *Bemis v. Bemis*, 114 Nev. 1021, 1026, fn.2, 967 P.2d 437, 441 fn. 2 (1998) the Nevada Supreme Court reiterated the "**well-known principal that the public recording of real estate deeds constitutes constructive notice of the transaction**" (emphasis added)).[1]

Attached hereto are an extensive itemization of additional public records and/or recorded deeds relating to the significant volume of real estate transactions Johnson has been involved in both prior to the recordation of the Hatches' Deed, during and recently. In addition, at the time the Hatches were purchasing the Hatch Property from Toll Brothers, Johnson was concurrently buying a home on a nearby street from Toll Brothers as well at 2710 Alastor Way, Reno, Nevada ("Johnson Home"). Johnson received and executed multiple deeds for the Johnson Home around the identical time as the Hatch Deed was recorded. See documents referenced below at V.A.

In addition, numerous additional deeds and Washoe County Assessor printouts are provided to demonstrate Johnson's history and familiarity with the recordation of deeds,

[1] This well-known bright line rule of law that the recording of a real estate deed constitutes constructive notice of the transaction was previously articulated in *Allen v. Webb*, 87 Nev. 261, 270, 485 P.2d 677, 682 (1971); see also *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 519, 286 P.3d 249, 259 (2012) ("In Nevada, the purpose of recording a beneficial interest under a deed of trust is to provide 'constructive notice . . . to all persons.'" (citation omitted)). This rule of law has been "well-known" in Nevada jurisprudence for at least fifty years.

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real property transactions, tax instructions for tax bills contained in deeds, and online real property data that is accessible from the Washoe County Assessor's Office.

II. STANDARDS FOR APPLICATION OF JUDICIAL NOTICE.

NRS 47.170 provides that the Court can take judicial notice of any fact or law "at any stage of the proceedings prior to submission to the court" for decision. When requested by a party, the Court is obligated to take judicial notice when supplied with the necessary information. NRS 47.150(2) ("A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.").

The documents submitted by the Hatches include deeds recorded with the Washoe County Recorder's Office, Property Data printouts from the Washoe County Assessor's website and "Entity Information" printouts from the Nevada Secretary of State's website. These documents are all public records of which the Court can take judicial notice. Fierle v. Perez, 125 Nev. 728, 219 P.3d 906, 912 fn.6 (2009) ("[court] may take judicial notice of . . . public records." (overruled on other grounds in Egan v. Chambers, 129 Nev. 239, 299 P.3d 364 (2013)); Barron v. Reich, 13 F.3d 1370, 1377 (9th Cir.1994) (holding documents obtained from administrative agencies are subject to judicial notice as public records).

III. REAL PROPERTY DOCUMENTS – HATCH.

9845 Firefoot Lane, Reno, Nevada.
APN 141-254-09
Owner: Michael & Alisha Hatch

Exhibit 1: Washoe County Assessor Data Sheet
H_0001-3

RELEVANCE: This Data Sheet demonstrates that the Hatches' ownership of Firefoot Lane is a matter of public record freely accessible from the Washoe County Assessor's office. Further, the Data Sheet identifies the deeds transferring ownership of the property with a hyperlink to the

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relevant deeds. The Hatches' Deed is accessible by a simple click on the hyperlink. Accordingly, this document demonstrates that at any period of time, Johnson was able to freely access public records (1) identifying the ownership of the Hatches' Property and (2) would have been able to immediately view and/or print out a copy of the Hatches' Deed, which deed shows that Johnson has no property interest in the Hatches' Property.

Exhibit 2: Hatches' Deed, Document No. 4500519, for the Hatches' Property. Attached to the Amended Complaint as Exhibit 4 but included herein for easy reference. H_0004-10

RELEVANCE: The Hatches' Deed establishes the Hatches' ownership of Firefoot Lane is a matter of public record. Further, the Court can take judicial notice that the Hatches' Deed is freely accessible from the Washoe County Assessor's website and the Hatches' Deed can be downloaded by clicking on a single hyperlink.

IV. JOHNSON'S ALASTOR WAY PROPERTY—2015 TO CURRENT.

2710 Alastor Way, Reno, Nevada
"Johnson's Alastor Way Property"
APN 141-261-12
Owner: Johnson
$791,439

Exhibit 3: 8/18/15 Grant, Bargain, Sale Deed, Document No. 4503959 ("Johnson's Alastor Way Deed"). H_0011-16

RELEVANCE: This property was purchased and conveyed to Johnson from Toll Brothers 12 days after the Hatches' Deed was recorded. Johnson's Alastor Way Deed included portions of the Toll Brother's purchase contract. Johnson was delivered this Deed upon recordation establishing knowledge of recordation procedures. *Of note, this deed identifies Johnson's Alastor Way Property as the address to send a copy of the recorded deed and all tax notices.*

Exhibit 4: 9/14/15 Quitclaim Deed, Document No. 4512870. H_0017-22

RELEVANCE: 4 weeks after recordation of the Johnson's Alastor Way Deed and 5 weeks after recordation of the Hatch Deed Johnson caused this deed to be prepared and executed

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transferring the Johnson's Alastor Way Property from Johnson herself to her business entity Kari Anne Johnson, LLC II. *Johnson's preparation and execution of this deed establishes Johnson's knowledge of recordation procedures. Of note, this deed identifies Johnson's Alastor Way Property as the address to send all tax notices.*

Exhibit 5: 10/30/19 Quitclaim Deed, Document No. 4967808. H_0023-28

RELEVANCE: In 2019, Johnson caused this quit claim deed to be prepared and executed again transferring the Johnson's Alastor Way Property from Kari Anne Johnson, LLC II to Johnson's other business entity Kari Anne Johnson LLC. *Johnson's preparation and execution of this deed establishes Johnson's knowledge of recordation procedures. Of note, this deed identifies Johnson's Alastor Way Property as the address to send all tax notices.*

Exhibit 6: Washoe County Assessor Data Sheet for Alastor Way. H_0029-31

RELEVANCE: This public record shows recordation of Johnson's purchase of the Johnson's Alastor Way Property on August 18, 2015 for the original purchase price of $791,439. It also shows each of the foregoing deeds with hyperlinks to each deed. This document demonstrates that at any period of time, Johnson was able to freely access public records (1) identifying the Hatches' ownership of the Hatches' Property (2) was instantaneously viewable online, (3) had a hyperlink to the Hatches' Deed, (4) had instantaneous access to view and/or print out the Hatch Deed clearly identifying Johnson has no property interest in the Hatches' Property.

V. JOHNSON'S LAST CHANCE COURT PROPERTY—2009 TO CURRENT.

2720 Last Chance Court
Washoe County, Nevada,
APN 040-930-05
Owner: Kari Anne Johnson LLC
$770,000

Exhibit 7: 3/9/09 Grant, Bargain, Sale Deed, Document No. 3737282. H_0032-33

RELEVANCE: In 2009, Johnson acquired this property via her entity Kari Anne Johnson LLC II, LLC. Johnson used her

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then home address to receive a recorded copy of the deed and all tax notices.

Exhibit 8: 11/22/11 Quitclaim Deed, Document No. 4061026. H_0034-35

RELEVANCE: In 2011, Johnson signed this deed transferring ownership of this property from Kari Anne Johnson II, LLC to Kari Anne Johnson, LLC. Johnson used her then home address to receive a recorded copy of the deed and all tax notices.

Exhibit 9: Washoe County Assessor Data Sheet. H_0036-39

RELEVANCE: This public record shows recordation of Johnson's purchase of this property for the original purchase price of $770,000. It also shows each of the foregoing deeds with hyperlinks to the deeds. This document demonstrates at any period of time, Johnson was able to freely access public records (1) identifying the Hatches' ownership of the Hatches' Property (2) was instantaneously viewable online, (3) had a hyperlink to the Hatches' Deed, (4) had instantaneous access to view and/or print out the Hatch Deed clearly identifying Johnson has no property interest in the Hatches' Property.

VI. JOHNSON'S STATE ROUTE 28 PROPERTY—2017 TO CURRENT.

120 State Route 28,
Crystal Bay, Nevada, APN 123-272-03
Owner: Kari Anne Johnson LLC
$3,250,000

Exhibit 10: 8/24/17 Grant, Bargain, Sale Deed, Document No. 4737426. H_0040-42

RELEVANCE: Johnson acquired this property through her entity Kari Anne Johnson LLC. *Of note, this deed identifies Johnson's Alastor Way Property as the address to send a copy of the recorded deed and all tax notices.*

Exhibit 11: Washoe County Assessor Data Sheet. H_0043-46

RELEVANCE: This public record shows recordation of Johnson's purchase of this property for the original purchase price of $3,325,000. It also shows the foregoing deed with a hyperlinks to the deed. This document demonstrates

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That at any period of time, Johnson was able to freely access public records (1) identifying the Hatches' ownership of the Hatches' Property (2) was instantaneously viewable online, (3) had a hyperlink to the Hatches' Deed, (4) had instantaneous access to view and/or print out the Hatch Deed clearly identifying Johnson has no property interest in the Hatches' Property.

VII. JOHNSON ENTITY DOCUMENTS.

In addition to real property records above, Johnson holds membership interests and managerial responsibilities for an extensive number of real property development companies. These companies below all evidence Johnson's ownership/management in these companies. As detailed in Section VIII below, these companies also own extensive real property holdings.

Exhibit 12: **Kari Anne Johnson LLC**
H_0047-49

RELEVANCE: This entity was formed on August 9, 2002 and remains active with the Nevada Secretary of State. Johnson is listed as its Manager.

Exhibit 13: **KAJ Properties II, LLC**
H_0050-51

RELEVANCE: This entity was formed on November 30, 2005 with the Nevada Secretary of State and has since been dissolved. Johnson was the sole Managing Member.

Exhibit 14: **Johnson Investments Management LLC.**
H_0052-54

RELEVANCE: This entity was formed on February 10, 2004 and remains active with the Nevada Secretary of State. Johnson is listed as a Manager.

Exhibit 15: **Washoe Zephyr Investments, LLC**
H_0055-57

RELEVANCE: This entity was formed on April 10, 2019 and remains active with the Nevada Secretary of State. Johnson is listed as a Manager.

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Exhibit 16: **Sierra Investments I, LLC**
H_0058-60

RELEVANCE: This entity was formed on November 6, 2002 and remains active with the Nevada Secretary of State. Johnson is listed as a Managing Member, along with Sierra Investments I, LLC.

Exhibit 17: **Seaside Investments, LLC.**
H_0061-63

RELEVANCE: This entity was formed on September 3, 2015 with the Nevada Secretary of State and has since been dissolved. Johnson was the sole Manager.

VIII. OTHER REAL PROPERTY TRANSACTIONS BY JOHNSON ENTITIES.

The Washoe County Assessors' website allows a person to locate real property under the current ownership in Washoe County. At all times the Hatches owned the Hatch Property and the Hatch Deed was always accessible via this website. Johnson's business entities own the following parcels of real property valued at over $4.2 million dollars. Of note, these are only the currently owned properties as previously "sold" properties do not appear to be searchable on the Washoe County Assessor's website.

This extensive list of current properties owned and controlled by Johnson, through her various entities (valued at over $4.2 million at the time of these transactions in addition to the $4.7 million of properties held in in Johnson's Kari Anne Johnson, LLC), demonstrates Johnson business acumen and familiarity with the preparation of, signing of, and recordation of real property deeds and the ease in which these deeds are accessible through the Washoe County Assessor's free website.

Exhibit 18: Washoe County Assessor Data Sheet.
705 Pleasant Oak Trail,
Reno, Nevada, APN 226-071-18
Owner: Sierra Investments I LLC
$914,204
H_0064-66

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

RELEVANCE: Sierra Investments I LLC, an entity in which Johnson is the Managing Member, purchased this property for $914,204 on February 26, 2020.

Exhibit 19: Washoe County Assessor Data Sheet.
680 E. Glendale Ave,
Sparks Nevada, APN 034-510-08
Owner: Washoe Zephyr Properties LLC
$1,500,000
H_0067-69

RELEVANCE: Washoe Zephyr Properties LLC, an entity for which Johnson is the Manager, purchased this property for $1,500,000 on June 27, 2019.

Exhibit 20: Washoe County Assessor Data Sheet.
24525 US Highway 395 S,
Washoe County, Nevada, APN 046-060-01
Owner: Washoe Zephyr Properties LLC
$399,000
H_0070-73

RELEVANCE: Washoe Zephyr Properties LLC, an entity for which Johnson is the Manager, purchased this property for $399,000 on June 27, 2019.

Exhibit 21: Washoe County Assessor Data Sheet.
929 Northwood Blvd.,
Incline Village, Nevada, APN 132-063-17
Owner: Washoe Zephyr Properties LLC
$869,000
H_0074-77

RELEVANCE: Washoe Zephyr Properties LLC, an entity for which Johnson is the Manager, purchased this property for $869,000 on September 3, 2020.

Exhibit 22: Washoe County Assessor Data Sheet.
16945 Salut Ct.,
Washoe County, Nevada, APN 148-361-13
Owner: Washoe Zephyr Properties LLC
$359,000
H_0078-81

RELEVANCE: Washoe Zephyr Properties LLC, an entity for which Johnson is the Manager, purchased this property for $359,000 on June 3, 2020.

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

Exhibit 23: Washoe County Assessor Data Sheet.
6360 De Chardin Lane,
Washoe County, Nevada, APN 148-372-02
Owner: Washoe Zephyr Properties LLC
$182,500
H_0082-84

RELEVANCE: Washoe Zephyr Properties LLC, an entity for which Johnson is the Manager, purchased this property for $182,500 on June 26, 2020.

AFFIRMATION: This document does not contain the social security number of any person.

DATED this 23rd day of June, 2021.

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509

By: _____
MARK G. SIMONS
ANTHONY L. HALL
Attorneys for Defendants

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **REQUEST FOR JUDICIAL NOTICE** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Stefanie T. Sharp
Clayton P. Brust
Hannah Winston
Attorneys for Defendants

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 23 day of June, 2021.

Jodi Atherson
Employee of Simons Hall Johnston PC

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Firefoot Lane Assessor Printout	3
2	8/6/15 Firefoot Lane Deed	7
3	8/18/15 Alastor Way Deed	6
4	9/14/15 Alastor Way Deed	6
5	10/30/19 Alastor Way Deed	6
6	Alastor Way Assessor Printout	3
7	3/9/09 Last Chance Ct. Deed	2
8	11/22/11 Last Chance Ct. Deed	2
9	Last Chance Ct. Assessor Printout	4
10	8/25/17 State Route 28 Deed	3
11	State Route 28 Assessor Printout	4
12	Kari Anne Johnson L.L.C. Entity Info.	3
13	KAJ Properties II, LLC Entity Info.	3
14	Johnson Investments Management LLC Entity Info.	3
15	Washoe Zephyr Investments, LLC Entity Info.	3
16	Sierra Investments I, LLC Entity Info.	3
17	Seaside Investments, LLC Entity Info.	3
18	W. Pleasant Oak Trail Assessor Printout	3
19	680 E. Glendale Ave. Assessor Printout	3
20	24525 US Highway 395 S. Assessor Printout	4
21	929 Northwood Blvd. Assessor Printout	4
22	16945 Salut Ct. Assessor Printout	4
23	6360 De Chardin Lane Assessor Printout	3

F I L E D
Electronically
CV21-00246
2021-06-23 12:38:54 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8509309 : sacordag

EXHIBIT 1

EXHIBIT 1

Home » Assessor » Real Property Assessment Data

WASHOE COUNTY ASSESSOR PROPERTY DATA 6/8/2021

Owner Information

APN	141-254-09	Card 1 of 1
Situs 1	9845 FIREFOOT LN RENO NV 89521	Bld # 1
Owner 1	HATCH, MICHAEL & ALISHA	
Mail Address	9845 FIREFOOT LN RENO NV 89521	

Parcel Information

Keyline Desc	DAMONTE RANCH VILLAGE 11D LOT 55		
Subdivision	DAMONTE RANCH VILLAGE 11D		
	Section 11 **Township** 18 **Range** 20		
Record of Survey Map : **Parcel Map#** : **Sub Map#** 5071			
	Special Property Code		
2021 Tax District	1000	**Prior APN**	141-030-06
2020 Tax District	1000	**Tax Cap Status**	Low Cap Qualified Primary Residence
PERMITS	drstafford 04/16/2015		

Building Information

XFOB SUBAREA

Bld #1 Situs	9845 FIREFOOT LN	**Property Name**	
Quality	R35 Average-Good	**Building Type**	Single Family Residence
Stories	1 Story	**2nd Occupancy**	
Year Built	2015	**WAY**	2015
Bedrooms	4	**Square Feet**	3606
Full Baths	3	**Finished Bsmt**	0
Half Baths	0	**Unfin Bsmt**	0
Fixtures	16	**Basement Type**	
Fireplaces	1	**Gar Conv Sq Feet**	0
Heat Type	FA/AC	**Total Garage Area**	722
2nd Heat Type		**Garage Type**	ATTACHED
Exterior Walls	STUCCO ON FRAME	**Detached Garage**	0
2nd Ext Walls		**Basement Gar Door**	0
Roof Cover	CONCRETE TILE	**Sub Floor**	SLAB
% Complete	100	**Frame**	FRAME
Obso/Bldg Adj	0	**Units/Bldg**	1
Construction Modifier		**Units/Parcel**	1

Land Information

LAND DETAILS

Land Use	200	**DOR Code**	200	**Sewer**	Municipal	**Neighborhood**	EDHD	ED Neighborhood Map
Size	13,735 SqFt	**Size**	0.315 Acres	**Street**	Paved	**Zoning Code**	PD	
				Water	Muni			

Sales and Transfer Records

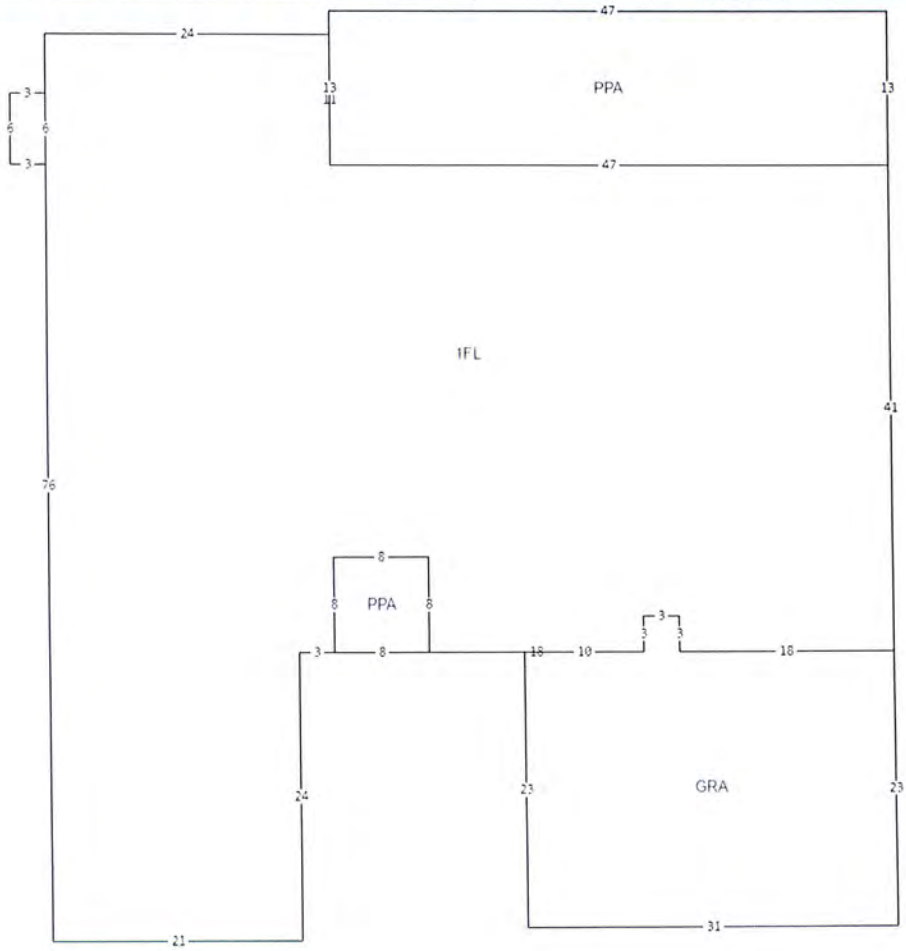
RECORDER SEARCH

Grantor	Grantee	Doc #	Doc Type	Doc Date	DOR Code	Value/Sale Price	Sale Code	Note
TOLL SOUTH RENO LLC	HATCH, MICHAEL & ALISHA	4500519	DEED	08-06-2015	200	639,108	2D	
TOLL SOUTH RENO LLC	TOLL SOUTH RENO LLC	4341181	SUB	04-03-2014	110	0	3NTT	

Valuation Information

The 2021/2022 values are preliminary values and subject to change.

	Taxable Land	New Value	Taxable Imps	OBSO	Tax Cap Value	Taxable Total	Land Assessed	Imps Assessed	Total Assessed	Exemption Value
2021/22 NR	153,000	0	459,950	0		612,950	53,550	160,982	214,532	0
2021/22 VN	153,000	0	459,950	0		612,950	53,550	160,982	214,532	0
2020/21 FV	151,400	0	458,794	0	562,621	610,194	52,990	160,577	213,568	0



141-254-09 05/23/2016

All parcel data on this page is for use by the Washoe County Assessor for assessment purposes only. The summary data on this page may not be a complete representation of the parcel or of the improvements thereon. Building information, including unit counts and number of permitted units, should be verified with the appropriate building and planning agencies. Zoning information should be verified with the appropriate planning agency. All parcels are reappraised each year. This is a true and accurate copy of the records of the Washoe County Assessor's Office as of 06-07-2021

If you have questions or corrections about our property data you can call us at 775-328-2277 or email us at exemptions@washoecounty.us

F I L E D
Electronically
CV21-00246
2021-06-23 12:38:54 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8509309 : sacordag

EXHIBIT 2

EXHIBIT 2

DOC #4500519
08/06/2015 03:43:59 PM
Electronic Recording Requested By
TICOR TITLE - RENO (MAIN)
Washoe County Recorder
Lawrence R. Burtness
Fee: $23.00 RPTT: $2621.95
Page 1 of 7

WHEN RECORDED MAIL TO:
Michael Hatch and Alisha Hatch
9845 Firefoot Lane
Reno, NV 89521

MAIL TAX STATEMENTS TO:
Same As Above

Escrow No. 1404892-LMZ

The undersigned hereby affirms that this document submitted for recording does not contain the social security number of any person or persons. (Pursuant to NRS 239b.030)

APN No.: 141-254-09
R.P.T.T. $2,621.95

SPACE ABOVE FOR RECORDER'S USE ONLY

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Toll South Reno, LLC , a Nevada Limited Liability Company

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do/does hereby Grant, Bargain, Sell and Convey to Michael Hatch and Alisha Hatch , husband and wife as joint tenants with right of survivorship

all that real property situated in the County of Washoe, State of Nevada, described as follows:

SEE EXHIBIT "A&B" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Signature and notary acknowledgement on page two.

THIS DOCUMENT IS BEING RECORDED
AS AN ACCOMODATION ONLY. NO
LIABILITY IS ASSUMED HEREBY.

Toll South Reno, LLC, a Nevada limited liability company

By: ~~Gary M. Mayo, President~~ DAVID STRAUS, VICE PRESIDENT

STATE OF NEVADA
COUNTY OF WASHOE } ss:

This instrument was acknowledged before me on August 3rd, 2015
by ~~Gary M. Mayo.~~ DAVID STRAUS.

JAME SERRANO
Notary Public, State of Nevada
Appointment No. 14-15412-1
My Appt. Expires Oct 22, 2018

NOTARY PUBLIC

This Notary Acknowledgement is attached to that certain Grant, Bargain, Sale Deed dated date of document under escrow No. 01404892.

Exhibit "A"

The land referred to in this Policy is described as follows:

Lot 55 of DAMONTE RANCH VILLAGE 11D, according to the map thereof, filed in the Office of the County Recorder of Washoe County, State of Nevada, on April 3, 2014, as File No. 4341181, Official Records, Tract Map No. 5071.

More Commonly Known as: 9845 Firefoot Lane, Reno, Nevada
Assessor's Parcel No.: 141-254-09

Copy

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AMERICAN LAND TITLE ASSOCIATION

Exhibit "B"

ADDENDUM TO AGREEMENT FOR PURCHASE AND SALE
BUYER'S USE OF PROPERTY

ADDENDUM TO AGREEMENT FOR PURCHASE AND SALE between Toll South Reno LLC ("Seller") and Michael and Alisha Hatch and Kari Johnson ("Buyer"), Lot No. 0055 (the "Property") in the community of Estates at Saddle Ridge.

1. OWNER OCCUPANY: Seller desires to sell only to buyers who will occupy the home as their primary residence or a secondary residence, *i.e.*, vacation or seasonal home (their **"Residence"**), to create an established community of owner-occupied homes. Seller and Buyer agree that homebuyers prefer owner-occupied communities and, as such, owner-occupied communities proved a better environment to sell homes and in which to reside. Therefore, Seller chooses to only sell homes to buyers who intend to occupy the home as their Residence for a minimum of one (1) year after the closing. To induce Seller to agree to sell the Property to Buyer, Buyer represents warrants and agrees as follows:

1.1 Use of Principal Residence for One (1) Year. Buyer represents and warrants to Seller that (a) Buyer is purchasing the Property for use as Buyer's Residence: (b) Buyer will occupy the Property within thirty (30) calendar days after the Closing: and (c) Buyer will not attempt to transfer Buyer's rights under the Agreement or enter into any agreement for the lease, sale or other transfer of the Property that would result in Buyer's failure to occupy the Property as Buyer's Residence and hold title thereto in fee simple for a period of one (1) year after the Settlement of Buyer's purchase of the Property (the **"Occupancy Period"**). The provisions of this **Section** and the accuracy of the above representations warranties constitute a personal covenant of Buyer and a condition precedent to Seller's performance under the Agreement.

MH AH KH **Initials**

1.2 Transfer before Closing. Except for Hardship Situations, as described in **Section 1.5** or Unrestricted Transfers as described in **Section 1.6**, any attempt by Buyer to assign Buyer's rights under this Agreement or to lease, sell or otherwise transfer the Property before the Closing will constitute both (a) a breach of the Agreement, entitling Seller, at its sole election, to immediately terminate this Agreement and retain Buyer's deposit as liquidated damages and (b) the failure of a condition precedent to Seller's obligation to sell the Property to Buyer. However, if Buyer's breach does not become known to Seller or Seller fails to terminate this Agreement until after Closing, then Seller will be limited solely to the remedy of Liquidated Damages described in **Sections 1.3 and 1.4.**

MH AH KH **Initials**

1.3 Transfer after closing. Except for Hardship Situations as described in **Section 1.5** or Unrestricted Transfers as described in **Section 1.6**, Buyer's transfer of title to the Property prior to or during the Occupancy Period constitutes a breach of this Agreement. Buyer and Seller agree that such a breach will entitle the Seller to liquidated damages to be promptly paid by Buyer to Seller in the amount of one-half of the difference between the sales price on resale and the purchase price hereunder. **Seller and Buyer that the amount of liquidated damages is a reasonable measurement of Seller's damages in the case of such a breach given that Seller's actual damages would be extremely difficult and impractical to determine.**

MGH ASH KG Initials

1.4 Lease of Property After Closing. Except for Hardship Situations as described in **Section 1.5** or Unrestricted Transfers as described in **Section 1.6**, Buyer's failure to make the Property Buyer's Residence during the Occupancy Period or Buyer's lease of the property during the Occupancy Period constitutes a breach of this Agreement, entitling Seller to liquidate damages. Buyer and Seller agree that such a breach will entitle Seller to liquidated damages to be promptly paid by Buyer to Seller in the amount of one-half of the total payments received from the tenant for the first 12 months of the rental period. **Seller and Buyer agree that the liquidated damages amount is a reasonable measurement of Seller's damages in the case of such a breach given that Seller's actual damages would be extremely difficult and impractical to determine.**

MGH ASH KG Initials

1.5 Hardship Situations. The following events will be deemed to constitute "Hardship Situations" under which Buyer will be relieved of the obligations of this **Section** concerning limitations on the sale or lease of the Property.

1.5.1.1 The death of the Buyer (or any person who is co-buyer if more than one):
1.5.1.2 The dissolution of Buyer's marriage or legal separation of married Buyers;
1.5.1.3 A Mandatory job transfer required by Buyer's employer (not including Buyer if buyer is self employed);
1.5.1.4 A medical or financial emergency, proof of which Seller has approved within its sole discretion, and
1.5.1.5 A situation which, in the sole judgment of Seller, constitutes a hardship consistent with the purpose of this **Section.**

1.6 Unrestricted Transfers. The following transfers are not in violation of the stated purpose of this **Section** and are not subject to the provisions of **Sections 1.3 and 1.4.**

1.6.1.1 A transfer between spouses or between parent and child (but subsequent transfers within the Occupancy Period would be subject to this Endorsement);

MGH ASH KG

1.6.1.2 A transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incident to such a decree;

1.6.1.3 A transfer into a revocable *inter vivos* trust in which Buyer is the beneficiary; and

1.6.1.4 A transfer, conveyance, pledge, or assignment of the Property (such as a Mortgage) to secure the performance of an obligation, which will be released or reconveyed upon the completion of the performance; and

1.6.1.5 A transfer resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the beneficiary of a first mortgage or a transfer in lieu thereof.

1.7 FHA/VA Loans. Notwithstanding anything to the contrary contained herein, in the event the mortgage or deed of trust on the Property is insured by FHA or guaranteed by VA any occupancy requirements of FHA and/or VA, as applicable, shall apply and the provisions of this endorsement shall be of no further force and effect as to the Property.

1.8 No Unreasonable Restraint. The purpose of this **Section** is to comply with Seller's intention to sell homes only to persons who intend to occupy them as their Residences; to obtain a stabilized community of owner-occupied homes; and to provide the type of community in which prospective buyers are most interested in living. Buyer agrees that the provisions and restrictions set forth in this **Section** do not constitute an unreasonable restraint upon alienation of the Property, and that the liquidated damages provisions in **Sections 1.3 and 1.4** are not a penalty or a forfeiture.

MH AH **Initials**

1.9 Survival. The rights and duties pursuant to this Section shall survive Closing and remain in full force and effect in accordance with its terms.

THIS ENDORSEMENT TO AGREEMENT OF SALE is intended to be incorporated into and made a part of the Agreement and all other terms and conditions contained in the Agreement, unless expressly modified herein, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have hereunto set their hands and seals the day and year written.

Alisha Hatch 12/13/14

BUYER: Alisha Hatch **DATE** 12/13/14

Mitch Hatch

BUYER: Mitch Hatch **DATE** 12/13/14

SELLER: Jake Lucero **DATE** 12/13/14

Addendum-SA (Buyer Use)
3.7.14

WASHOE COUNTY
RECORDER

OFFICE OF THE COUNTY RECORDER
LAWRENCE R. BURTNESS, RECORDER

1001 E. NINTH STREET
POST OFFICE BOX 11130
RENO, NEVADA 89520-0027
PHONE (775) 328-3661
FAX (775) 325-8010

LEGIBILITY NOTICE

The Washoe County Recorder's Office has determined that the attached document may not be suitable for recording by the method used by the Recorder to preserve the Recorder's records. The customer was advised that copies reproduced from the recorded document would not be legible. However, the customer demanded that the document be recorded without delay as the parties rights may be adversely affected because of a delay in recording. Therefore, pursuant to NRS 247.120 (3), the County Recorder accepted the document conditionally, based on the undersigned's representation (1) that a suitable copy will be submitted at a later date (2) it is impossible or impracticable to submit a more suitable copy.

By my signing below, I acknowledge that I have been advised that once the document has been microfilmed it may not reproduce a legible copy.

Signature

8-6-15
Date

T. S. Parks
Printed Name

F I L E D
Electronically
CV21-00246
2021-06-23 12:38:54 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8509309 : sacordag

EXHIBIT 3

EXHIBIT 3

DOC #4503959
08/18/2015 01:07:56 PM
Electronic Recording Requested By
TICOR TITLE - RENO (MAIN)
Washoe County Recorder
Lawrence R. Burtness
Fee: $47.00 RPTT: $3245.15
Page 1 of 6

WHEN RECORDED MAIL TO:
Kari Johnson
2710 Alastor Way
Reno, NV 89521

MAIL TAX STATEMENTS TO:
Same As Above

Escrow No. 1404891-LMZ

The undersigned hereby affirms that this document submitted for recording does not contain the social security number of any person or persons. (Pursuant to NRS 239b.030)

APN No.: 141-261-12
R.P.T.T. $3,245.15

SPACE ABOVE FOR RECORDER'S USE ONLY

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Toll South Reno, LLC , a Nevada Limited Liability Company

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do/does hereby Grant, Bargain, Sell and Convey to Kari Johnson , an unmarried woman

all that real property situated in the County of Washoe, State of Nevada, described as follows:

SEE EXHIBIT "A & B" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Signature and notary acknowledgement on page two.

THIS DOCUMENT IS BEING RECORDED
AS AN ACCOMODATION ONLY. NO
LIABILITY IS ASSUMED HEREBY.

Toll South Reno, LLC, a Nevada limited liability company

By: Gary M. Mayo, President

STATE OF NEVADA
COUNTY OF WASHOE } ss:

This instrument was acknowledged before me on, 8-17-15
by Gary M. Mayo.

LITISHA M. ZINN
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 13-11144-2 - Expires June 18, 2017

NOTARY PUBLIC

This Notary Acknowledgement is attached to that certain Grant, Bargain, Sale Deed dated date of document under escrow No. 01404891.

Exhibit "A"

The land referred to in this Policy is described as follows:

Lot 20 of DAMONTE RANCH VILLAGE 11D, according to the map thereof, filed in the Office of the County Recorder of Washoe County, State of Nevada, on April 3, 2014, as File No. 4341181, Official Records, Tract Map No. 5071.

More Commonly Known as: 2710 Alastor Way, Reno, Nevada
Assessor's Parcel No.: 141-261-12

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AMERICAN LAND TITLE ASSOCIATION

Exhibit "B"

ADDENDUM TO AGREEMENT FOR PURCHASE AND SALE
BUYER'S USE OF PROPERTY

ADDENDUM TO AGREEMENT FOR PURCHASE AND SALE between Toll South Reno LLC ("Seller") and Kari Johnson ("Buyer"), Lot No. 0020 (the "Property") in the community of Estates at Saddle Ridge.

1. **OWNER OCCUPANY**: Seller desires to sell only to buyers who will occupy the home as their primary residence or a secondary residence, *i.e.*, vacation or seasonal home (their **"Residence")**, to create an established community of owner-occupied homes. Seller and Buyer agree that homebuyers prefer owner-occupied communities and, as such, owner-occupied communities proved a better environment to sell homes and in which to reside. Therefore, Seller chooses to only sell homes to buyers who intend to occupy the home as their Residence for a minimum of one (1) year after the closing. To induce Seller to agree to sell the Property to Buyer, Buyer represents warrants and agrees as follows:

1.1 Use of Principal Residence for One (1) Year. Buyer represents and warrants to Seller that (a) Buyer is purchasing the Property for use as Buyer's Residence: (b) Buyer will occupy the Property within thirty (30) calendar days after the Closing: and (c) Buyer will not attempt to transfer Buyer's rights under the Agreement or enter into any agreement for the lease, sale or other transfer of the Property that would result in Buyer's failure to occupy the Property as Buyer's Residence and hold title thereto in fee simple for a period of one (1) year after the Settlement of Buyer's purchase of the Property (the **"Occupancy Period"**). The provisions of this **Section** and the accuracy of the above representations warranties constitute a personal covenant of Buyer and a condition precedent to Seller's performance under the Agreement.

_____ **Initials**

1.2 Transfer before Closing. Except for Hardship Situations, as described in **Section 1.5** or Unrestricted Transfers as described in **Section 1.6**, any attempt by Buyer to assign Buyer's rights under this Agreement or to lease, sell or otherwise transfer the Property before the Closing will constitute both (a) a breach of the Agreement, entitling Seller, at its sole election, to immediately terminate this Agreement and retain Buyer's deposit as liquidated damages and (b) the failure of a condition precedent to Seller's obligation to sell the Property to Buyer. However, if Buyer's breach does not become known to Seller or Seller fails to terminate this Agreement until after Closing, then Seller will be limited solely to the remedy of Liquidated Damages described in **Sections 1.3 and 1.4.**

_____ **Initials**

1.3 Transfer after closing. Except for Hardship Situations as described in **Section 1.5** or Unrestricted Transfers as described in **Section 1.6**, Buyer's transfer of title to the Property prior to or during the Occupancy Period constitutes a breach of this Agreement. Buyer and Seller agree that such a breach will entitle the Seller to liquidated damages to be promptly paid by Buyer to Seller in the amount of one-half of the difference between the sales price on resale and the purchase price hereunder. **Seller and Buyer that the amount of liquidated damages is a reasonable measurement of Seller's damages in the case of such a breach given that Seller's actual damages would be extremely difficult and impractical to determine.**

_____ **Initials**

1.4 Lease of Property After Closing. Except for Hardship Situations as described in **Section 1.5** or Unrestricted Transfers as described in **Section 1.6**, Buyer's failure to make the Property Buyer's Residence during the Occupancy Period or Buyer's lease of the property during the Occupancy Period constitutes a breach of this Agreement, entitling Seller to liquidate damages. Buyer and Seller agree that such a breach will entitle Seller to liquidated damages to be promptly paid by Buyer to Seller in the amount of one-half of the total payments received from the tenant for the first 12 months of the rental period. **Seller and Buyer agree that the liquidated damages amount is a reasonable measurement of Seller's damages in the case of such a breach given that Seller's actual damages would be extremely difficult and impractical to determine.**

_____ **Initials**

1.5 Hardship Situations. The following events will be deemed to constitute "Hardship Situations" under which Buyer will be relieved of the obligations of this **Section** concerning limitations on the sale or lease of the Property.

1.5.1.1 The death of the Buyer (or any person who is co-buyer if more than one):
1.5.1.2 The dissolution of Buyer's marriage or legal separation of married Buyers;
1.5.1.3 A Mandatory job transfer required by Buyer's employer (not including Buyer if buyer is self employed);
1.5.1.4 A medical or financial emergency, proof of which Seller has approved within its sole discretion, and
1.5.1.5 A situation which, in the sole judgment of Seller, constitutes a hardship consistent with the purpose of this **Section.**

1.6 Unrestricted Transfers. The following transfers are not in violation of the stated purpose of this **Section** and are not subject to the provisions of **Sections 1.3 and 1.4.**

1.6.1.1 A transfer between spouses or between parent and child (but subsequent transfers within the Occupancy Period would be subject to this Endorsement);

1.6.1.2 A transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incident to such a decree;

1.6.1.3 A transfer into a revocable *inter vivos* trust in which Buyer is the beneficiary; and

1.6.1.4 A transfer, conveyance, pledge, or assignment of the Property (such as a Mortgage) to secure the performance of an obligation, which will be released or reconveyed upon the completion of the performance; and

1.6.1.5 A transfer resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the beneficiary of a first mortgage or a transfer in lieu thereof.

1.7 FHA/VA Loans. Notwithstanding anything to the contrary contained herein, in the event the mortgage or deed of trust on the Property is insured by FHA or guaranteed by VA any occupancy requirements of FHA and/or VA, as applicable, shall apply and the provisions of this endorsement shall be of no further force and effect as to the Property.

1.8 No Unreasonable Restraint. The purpose of this **Section** is to comply with Seller's intention to sell homes only to persons who intend to occupy them as their Residences; to obtain a stabilized community of owner-occupied homes; and to provide the type of community in which prospective buyers are most interested in living. Buyer agrees that the provisions and restrictions set forth in this **Section** do not constitute an unreasonable restraint upon alienation of the Property, and that the liquidated damages provisions in **Sections 1.3 and 1.4** are not a penalty or a forfeiture.

_____ **Initials**

1.9 Survival. The rights and duties pursuant to this Section shall survive Closing and remain in full force and effect in accordance with its terms.

THIS ENDORSEMENT TO AGREEMENT OF SALE is intended to be incorporated into and made a part of the Agreement and all other terms and conditions contained in the Agreement, unless expressly modified herein, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have hereunto set their hands and seals the day and year written.

BUYER: Kari D Johnson Kari Johnson **DATE** 12/13/14

BUYER: _____ **DATE** _____

SELLER: Jake Lucero **DATE** 12/18/14

F I L E D
Electronically
CV21-00246
2021-06-23 12:38:54 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8509309 : sacordag

EXHIBIT 4

EXHIBIT 4

DOC #4512870
09/14/2015 02:54:43 PM
Electronic Recording Requested By
MCDONALD CARANO WILSON LLP
Washoe County Recorder
Lawrence R. Burtness
Fee: $22.00 RPTT: $0
Page 1 of 6

APN: 141-261-12

AFTER RECORDING RETURN TO:
John B. Mulligan, Esq.
McDONALD CARANO WILSON LLP
100 W. Liberty St., 10th Floor
Reno, Nevada 89501

GRANTEE'S ADDRESS IS &
MAIL TAX STATEMENTS TO:
Kari Anne Johnson, LLC II
2710 Alastor Way
Reno NV 89521

The undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030).

QUITCLAIM DEED

THIS DEED is entered into this 11th day of September 2015, between KARI JOHNSON, an unmarried woman, Grantor, and KARI ANNE JOHNSON, LLC II, a Nevada Limited Liability Company, Grantee.

Grantor, without consideration, quitclaims and conveys to the Grantee, and to its successors and assigns, her interest in and to all that certain real property situate in the County of Washoe, State of Nevada, and more particularly described as follows:

SEE EXHIBITS "A & B" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF

BEING the same premises conveyed to Grantor herein by Grant, Bargain, Sale Deed recorded in the Washoe County Recorder's Office on August 18, 2015 as Document No. 4503959.

TOGETHER WITH the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD with all the appurtenances, unto the Grantee, and to its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set her hand the day and year first above written.

Kari Johnson

STATE OF NEVADA)
)ss:
COUNTY OF WASHOE)

This instrument was acknowledged before me on 9/11, 2015 by Kari Johnson.

Cassandra France
Notary Public

CASSANDRA FRANCE
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 15-1309-2 - Expires April 7, 2019

Exhibit "A"

The land referred to in this Policy is described as follows:

Lot 20 of DAMONTE RANCH VILLAGE 11D, according to the map thereof, filed in the Office of the County Recorder of Washoe County, State of Nevada, on April 3, 2014, as File No. 4341181, Official Records, Tract Map No. 5071.

More Commonly Known as: 2710 Alastor Way, Reno, Nevada
Assessor's Parcel No.: 141-261-12

ADDENDUM TO AGREEMENT FOR PURCHASE AND SALE
BUYER'S USE OF PROPERTY

ADDENDUM TO AGREEMENT FOR PURCHASE AND SALE between Toll South Reno LLC ("Seller") and Kari Johnson ("Buyer"), Lot No. 0020 (the "Property") in the community of Estates at Saddle Ridge.

1. **OWNER OCCUPANY**: Seller desires to sell only to buyers who will occupy the home as their primary residence or a secondary residence, *i.e.*, vacation or seasonal home (their **"Residence"**), to create an established community of owner-occupied homes. Seller and Buyer agree that homebuyers prefer owner-occupied communities and, as such, owner-occupied communities proved a better environment to sell homes and in which to reside. Therefore, Seller chooses to only sell homes to buyers who intend to occupy the home as their Residence for a minimum of one (1) year after the closing. To induce Seller to agree to sell the Property to Buyer, Buyer represents warrants and agrees as follows:

1.1 Use of Principal Residence for One (1) Year. Buyer represents and warrants to Seller that (a) Buyer is purchasing the Property for use as Buyer's Residence: (b) Buyer will occupy the Property within thirty (30) calendar days after the Closing: and (c) Buyer will not attempt to transfer Buyer's rights under the Agreement or enter into any agreement for the lease, sale or other transfer of the Property that would result in Buyer's failure to occupy the Property as Buyer's Residence and hold title thereto in fee simple for a period of one (1) year after the Settlement of Buyer's purchase of the Property (the "**Occupancy Period**"). The provisions of this **Section** and the accuracy of the above representations warranties constitute a personal covenant of Buyer and a condition precedent to Seller's performance under the Agreement.

_____ _____ **Initials**

1.2 Transfer before Closing. Except for Hardship Situations, as described in **Section 1.5** or Unrestricted Transfers as described in **Section 1.6**, any attempt by Buyer to assign Buyer's rights under this Agreement or to lease, sell or otherwise transfer the Property before the Closing will constitute both (a) a breach of the Agreement, entitling Seller, at its sole election, to immediately terminate this Agreement and retain Buyer's deposit as liquidated damages and (b) the failure of a condition precedent to Seller's obligation to sell the Property to Buyer. However, if Buyer's breach does not become known to Seller or Seller fails to terminate this Agreement until after Closing, then Seller will be limited solely to the remedy of Liquidated Damages described in **Sections 1.3 and 1.4.**

_____ _____ **Initials**

1.3 Transfer after closing. Except for Hardship Situations as described in **Section 1.5** or Unrestricted Transfers as described in **Section 1.6**, Buyer's transfer of title to the Property prior to or during the Occupancy Period constitutes a breach of this Agreement. Buyer and Seller agree that such a breach will entitle the Seller to liquidated damages to be promptly paid by Buyer to Seller in the amount of one-half of the difference between the sales price on resale and the purchase price hereunder. **Seller and Buyer that the amount of liquidated damages is a reasonable measurement of Seller's damages in the case of such a breach given that Seller's actual damages would be extremely difficult and impractical to determine.**

_____ **Initials**

1.4 Lease of Property After Closing. Except for Hardship Situations as described in **Section 1.5** or Unrestricted Transfers as described in **Section 1.6**, Buyer's failure to make the Property Buyer's Residence during the Occupancy Period or Buyer's lease of the property during the Occupancy Period constitutes a breach of this Agreement, entitling Seller to liquidate damages. Buyer and Seller agree that such a breach will entitle Seller to liquidated damages to be promptly paid by Buyer to Seller in the amount of one-half of the total payments received from the tenant for the first 12 months of the rental period. **Seller and Buyer agree that the liquidated damages amount is a reasonable measurement of Seller's damages in the case of such a breach given that Seller's actual damages would be extremely difficult and impractical to determine.**

_____ **Initials**

1.5 Hardship Situations. The following events will be deemed to constitute "Hardship Situations" under which Buyer will be relieved of the obligations of this **Section** concerning limitations on the sale or lease of the Property.

1.5.1.1 The death of the Buyer (or any person who is co-buyer if more than one):
1.5.1.2 The dissolution of Buyer's marriage or legal separation of married Buyers;
1.5.1.3 A Mandatory job transfer required by Buyer's employer (not including Buyer if buyer is self employed);
1.5.1.4 A medical or financial emergency, proof of which Seller has approved within its sole discretion, and
1.5.1.5 A situation which, in the sole judgment of Seller, constitutes a hardship consistent with the purpose of this **Section.**

1.6 Unrestricted Transfers. The following transfers are not in violation of the stated purpose of this **Section** and are not subject to the provisions of **Sections 1.3 and 1.4.**

1.6.1.1 A transfer between spouses or between parent and child (but subsequent transfers within the Occupancy Period would be subject to this Endorsement);

1.6.1.2 A transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incident to such a decree;

1.6.1.3 A transfer into a revocable *inter vivos* trust in which Buyer is the beneficiary; and

1.6.1.4 A transfer, conveyance, pledge, or assignment of the Property (such as a Mortgage) to secure the performance of an obligation, which will be released or reconveyed upon the completion of the performance; and

1.6.1.5 A transfer resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the beneficiary of a first mortgage or a transfer in lieu thereof.

1.7 FHA/VA Loans. Notwithstanding anything to the contrary contained herein, in the event the mortgage or deed of trust on the Property is insured by FHA or guaranteed by VA any occupancy requirements of FHA and/or VA, as applicable, shall apply and the provisions of this endorsement shall be of no further force and effect as to the Property.

1.8 No Unreasonable Restraint. The purpose of this **Section** is to comply with Seller's intention to sell homes only to persons who intend to occupy them as their Residences; to obtain a stabilized community of owner-occupied homes; and to provide the type of community in which prospective buyers are most interested in living. Buyer agrees that the provisions and restrictions set forth in this **Section** do not constitute an unreasonable restraint upon alienation of the Property, and that the liquidated damages provisions in **Sections 1.3 and 1.4** are not a penalty or a forfeiture.

_____ **Initials**

1.9 Survival. The rights and duties pursuant to this Section shall survive Closing and remain in full force and effect in accordance with its terms.

THIS ENDORSEMENT TO AGREEMENT OF SALE is intended to be incorporated into and made a part of the Agreement and all other terms and conditions contained in the Agreement, unless expressly modified herein, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have hereunto set their hands and seals the day and year written.

BUYER:_____ **DATE**_____

BUYER:_____ **DATE**_____

SELLER:_____ **DATE** 12/18/15

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Electronically
CV21-00246
2021-06-23 12:38:54 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8509309 : sacordag

EXHIBIT 5

EXHIBIT 5

DOC #4967808
10/30/2019 01:33:28 PM
Electronic Recording Requested By
MCDONALD CARANO LLP
Washoe County Recorder
Kalie M. Work
Fee: $41.00 RPTT: $0
Page 1 of 6

APN: 141-261-12

AFTER RECORDING RETURN TO:
John B. Mulligan, Esq.
McDONALD CARANO LLP
100 W. Liberty St., 10th Floor
Reno, Nevada 89501

GRANTEE'S ADDRESS IS &
MAIL TAX STATEMENTS TO:
Kari Anne Johnson
2710 Alastor Way
Reno, NV 89521

The undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030).

QUITCLAIM DEED

THIS DEED is entered into this 30th day of October, 2019, between KARI ANNE JOHNSON, LLC II, a Nevada Limited Liability Company, Grantor, and KARI ANNE JOHNSON L.L.C., a Nevada Limited Liability Company, Grantee.

Grantor, without consideration, quitclaims and conveys to the Grantee, and to its successors and assigns, all its interest in and to that certain real property situate in the County of Washoe, State of Nevada, and more particularly described as follows:

SEE EXHIBITS "A" & "B" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF

BEING the same premises conveyed to Grantor herein by Quitclaim Deed recorded in the Washoe County Recorder's Office on September 14, 2015 as Document No. 4512870.

4838-1293-8577.1

TOGETHER WITH the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD with all the appurtenances, unto the Grantee, and to its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand the day and year first above written.

KARI ANNE JOHNSON, LLC II

By _____
Kari Anne Johnson
Its: Managing Member

ALISHA S. HATCH
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 02-09-2020
Certificate No: 16-1643-2

STATE OF NEVADA)
)ss:
COUNTY OF WASHOE)

This instrument was acknowledged before me on October 30th, 2019 by Kari Anne Johnson, as Managing Member of KARI ANNE JOHNSON, LLC II.

_____
Notary Public

4838-1293-8577.1

Exhibit "A"

The land referred to in this Policy is described as follows:

Lot 20 of DAMONTE RANCH VILLAGE 11D, according to the map thereof, filed in the Office of the County Recorder of Washoe County, State of Nevada, on April 3, 2014, as File No. 4341181, Official Records, Tract Map No. 5071.

More Commonly Known as: 2710 Alastor Way, Reno, Nevada
Assessor's Parcel No.: 141-261-12

Exhibit "B"

ADDENDUM TO AGREEMENT FOR PURCHASE AND SALE
BUYER'S USE OF PROPERTY

ADDENDUM TO AGREEMENT FOR PURCHASE AND SALE between Toll South Reno LLC ("Seller") and Kari Johnson ("Buyer"), Lot No. 0020 (the "Property") in the community of Estates at Saddle Ridge.

1. **OWNER OCCUPANY:** Seller desires to sell only to buyers who will occupy the home as their primary residence or a secondary residence, *i.e.*, vacation or seasonal home (their **"Residence"**), to create an established community of owner-occupied homes. Seller and Buyer agree that homebuyers prefer owner-occupied communities and, as such, owner-occupied communities proved a better environment to sell homes and in which to reside. Therefore, Seller chooses to only sell homes to buyers who intend to occupy the home as their Residence for a minimum of one (1) year after the closing. To induce Seller to agree to sell the Property to Buyer, Buyer represents warrants and agrees as follows:

1.1 Use of Principal Residence for One (1) Year. Buyer represents and warrants to Seller that (a) Buyer is purchasing the Property for use as Buyer's Residence: (b) Buyer will occupy the Property within thirty (30) calendar days after the Closing: and (c) Buyer will not attempt to transfer Buyer's rights under the Agreement or enter into any agreement for the lease, sale or other transfer of the Property that would result in Buyer's failure to occupy the Property as Buyer's Residence and hold title thereto in fee simple for a period of one (1) year after the Settlement of Buyer's purchase of the Property (the **"Occupancy Period"**). The provisions of this **Section** and the accuracy of the above representations warranties constitute a personal covenant of Buyer and a condition precedent to Seller's performance under the Agreement.

_____ KJ **Initials**

1.2 Transfer before Closing. Except for Hardship Situations, as described in **Section 1.5** or Unrestricted Transfers as described in **Section 1.6**, any attempt by Buyer to assign Buyer's rights under this Agreement or to lease, sell or otherwise transfer the Property before the Closing will constitute both (a) a breach of the Agreement, entitling Seller, at its sole election, to immediately terminate this Agreement and retain Buyer's deposit as liquidated damages and (b) the failure of a condition precedent to Seller's obligation to sell the Property to Buyer. However, if Buyer's breach does not become known to Seller or Seller fails to terminate this Agreement until after Closing, then Seller will be limited solely to the remedy of Liquidated Damages described in **Sections 1.3 and 1.4.**

_____ KJ **Initials**

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_____ **Initials**

1.4 Lease of Property After Closing. Except for Hardship Situations as described in **Section 1.5** or Unrestricted Transfers as described in **Section 1.6**, Buyer's failure to make the Property Buyer's Residence during the Occupancy Period or Buyer's lease of the property during the Occupancy Period constitutes a breach of this Agreement, entitling Seller to liquidate damages. Buyer and Seller agree that such a breach will entitle Seller to liquidated damages to be promptly paid by Buyer to Seller in the amount of one-half of the total payments received from the tenant for the first 12 months of the rental period. **Seller and Buyer agree that the liquidated damages amount is a reasonable measurement of Seller's damages in the case of such a breach given that Seller's actual damages would be extremely difficult and impractical to determine.**

_____ **Initials**

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1.6.1.4 A transfer, conveyance, pledge, or assignment of the Property (such as a Mortgage) to secure the performance of an obligation, which will be released or reconveyed upon the completion of the performance; and

1.6.1.5 A transfer resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the beneficiary of a first mortgage or a transfer in lieu thereof.

1.7 FHA/VA Loans. Notwithstanding anything to the contrary contained herein, in the event the mortgage or deed of trust on the Property is insured by FHA or guaranteed by VA any occupancy requirements of FHA and/or VA, as applicable, shall apply and the provisions of this endorsement shall be of no further force and effect as to the Property.

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_____ **Initials**

1.9 Survival. The rights and duties pursuant to this Section shall survive Closing and remain in full force and effect in accordance with its terms.

THIS ENDORSEMENT TO AGREEMENT OF SALE is intended to be incorporated into and made a part of the Agreement and all other terms and conditions contained in the Agreement, unless expressly modified herein, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have hereunto set their hands and seals the day and year written.

BUYER: _____ **DATE** 12/12/17

BUYER: _____ **DATE** _____

SELLER: _____ **DATE** 12/18/17

Addendum-NV (Buyer Use)
3.7.14

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2021-06-23 12:38:54 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8509309 : sacordag

EXHIBIT 6

EXHIBIT 6

791,000

Owner Information

APN	**141-261-12**	Card 1 of 1
Situs 1	2710 ALASTOR WAY RENO NV 89521	Bld # 1
Owner 1	KARI ANNE JOHNSON LLC	
Mail Address	2710 ALASTOR WAY RENO NV 89521	

Parcel Information

Keyline Desc	DAMONTE RANCH VILLAGE 11D LOT 20		
Subdivision	DAMONTE RANCH VILLAGE 11D		
	Section 11 **Township** 18 **Range** 20		
Record of Survey Map	**: Parcel Map#** **: Sub Map#** 5071		
	Special Property Code		
2021 Tax District	1000	**Prior APN**	141-030-06
2020 Tax District	1000	**Tax Cap Status**	2018 Change Form Mailed, High Cap Applied
PERMITS	drstafford 04/16/2015		

Building Information

XFOB SUBAREA

Bld #1 Situs	2710 ALASTOR WAY	**Property Name**	
Quality	R35 Average-Good	**Building Type**	Single Family Residence
Stories	1 Story	**2nd Occupancy**	
Year Built	2015	WAY	2015
Bedrooms	4	Square Feet	3606
Full Baths	3	**Finished Bsmt**	0
Half Baths	0	**Unfin Bsmt**	0
Fixtures	16	**Basement Type**	
Fireplaces	1	**Gar Conv Sq Feet**	0
Heat Type	FA/AC	**Total Garage Area**	722
2nd Heat Type		**Garage Type**	ATTACHED
Exterior Walls	STUCCO ON FRAME	**Detached Garage**	0
2nd Ext Walls	STONE VENEER ON FRAME	**Basement Gar Door**	0
Roof Cover	CONCRETE TILE	**Sub Floor**	SLAB
% Complete	100	**Frame**	FRAME
Obso/Bldg Adj	0	Units/Bldg	1
Construction Modifier		Units/Parcel	1

Land Information

LAND DETAILS

Land Use	200	DOR Code	200	**Sewer**	Municipal	**Neighborhood**	EDHD	ED Neighborhood Map
Size	12,918 SqFt	**Size**	0.297 Acres	**Street**	Paved	**Zoning Code**	PD	
				Water	Muni			

Sales and Transfer Records

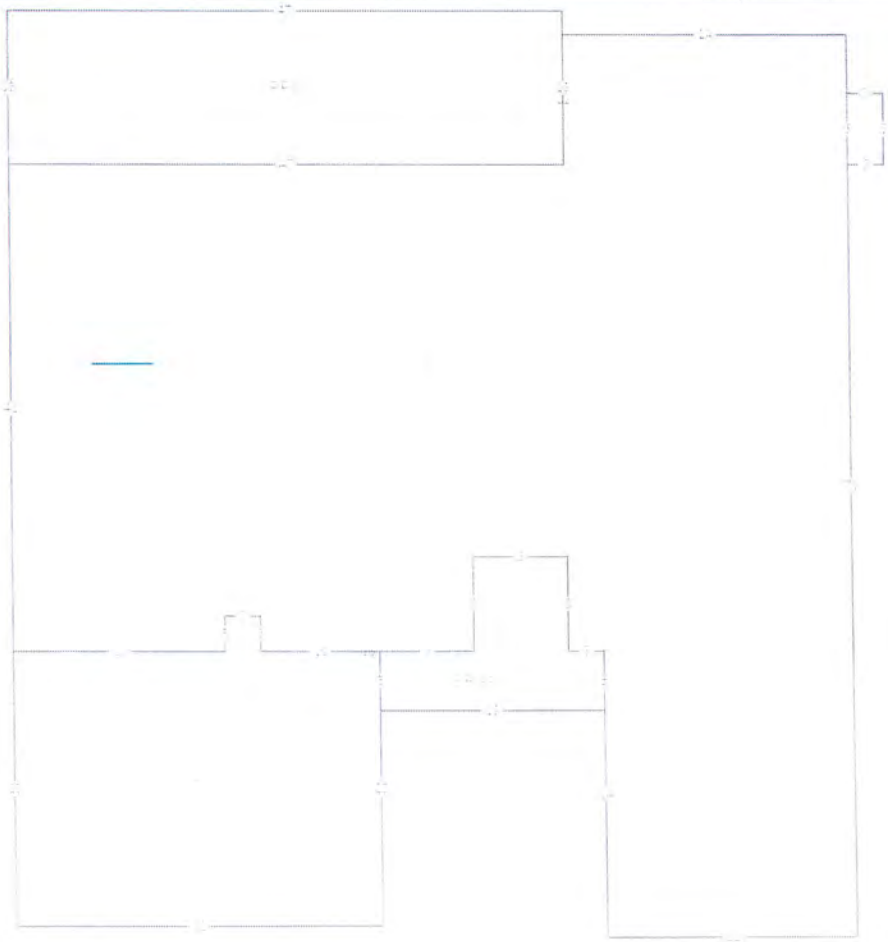
RECORDER SEARCH

Grantor	Grantee	Doc #	Doc Type	Doc Date	DOR Code	Value/Sale Price	Sale Code	Note
KARI ANNE JOHNSON LLC II	KARI ANNE JOHNSON LLC	4967808	QC	10-30-2019	200	0	3BGG	
JOHNSON, KARI	KARI ANNE JOHNSON LLC II	4512870	QC	09-14-2015	200	0	3BGG	
TOLL SOUTH RENO LLC	JOHNSON, KARI	4503959	DEED	08-18-2015	200	791,439	2D	
TOLL SOUTH RENO LLC	TOLL SOUTH RENO LLC	4341181	SUB	04-03-2014	110	0	3NTT	

Valuation Information

The 2021/2022 values are preliminary values and subject to change.

	Taxable Land	New Value	Taxable Imps	OBSO	Tax Cap Value	Taxable Total	Land Assessed	Imps Assessed	Total Assessed	Exemption Value
2021/22 NR	153,000	0	464,848	0		617,848	53,550	162,696	216,247	0
2021/22 VN	153,000	0	464,848	0		617,848	53,550	162,696	216,247	0
2020/21 FV	151,400	0	463,696	0	594,895	615,096	52,990	162,293	215,284	0



141-261-12 05/23/2016

All parcel data on this page is for use by the Washoe County Assessor for assessment purposes only. The summary data on this page may not be a complete representation of the parcel or of the improvements thereon. Building information, including unit counts and number of permitted units, should be verified with the appropriate building and planning agencies. Zoning information should be verified with the appropriate planning agency. All parcels are reappraised each year. This is a true and accurate copy of the records of the Washoe County Assessor's Office as of 06-01-2021

If you have questions or corrections about our property data you can call us at 775-328-2277 or email us at exemptions@washoecounty.us

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CV21-00246
2021-06-23 12:38:54 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8509309 : sacordag

EXHIBIT 7

EXHIBIT 7