

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 6387 HAMILTON GROVE, A NEVADA LIMITED LIABILITY COMPANY Appellant, v. SUNRISE RIDGE MASTER HOMEOWNERS ASSOCAITION, A NEVADA NON-PROFIT CORPORATION; AND NEVADA ASSOCIATION SERVICES, INC., A NEVADA CORPORATION, Respondents.	No.: 83669 DOCKETING STATEMENT CIVIL APPEALS <div style="text-align: right;">Electronically Filed Nov 15 2021 11:10 a.m. Elizabeth A. Brown Clerk of Supreme Court</div>
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GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department 17

County Clark Judge Honorable Michael Villani

District Ct. Case No. . A-19-0790247-C

2. Attorney filing this docketing statement:

Attorney Christopher L. Benner Telephone (702) 254-7775

Firm Roger P. Croteau & Associates

Address: 2810 W. Charleston Blvd, Suite 75, Las Vegas, Nevada 89102

Client(s) SATICOY BAY, LLC, SERIES 6387 HAMILTON GROVE

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

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

a. Attorney: J. William Ebert, Esq.

Telephone: (702) 382-1500

Firm: Lipson Nielson P.C.

Address: 9900 Covington Cross Drive, Suite 120, Las Vegas, NV 89144

Client(s): Sunrise Ridge Master Homeowners Association ("SUNRISE")

b. Attorney: Brandon E. Wood, Esq.

Telephone: (702) 804-8885

Address: 6625 Valley View Blvd, Suite 300, Las Vegas, NV 89118

Client: Nevada Association Services ("NAS")

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

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☒ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination

- ☐ Other disposition (specify): _____
- ☒ Dismissal
 - ☐ Lack of jurisdiction
 - ☐ Failure to state a claim
 - ☐ Failure to prosecute
- ☐ Other (specify): _____
- ☐ Divorce Decree:
 - ☐ Original ☐ Modification

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

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

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

None.

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

None

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

The instant action relates to real property that was the subject of a homeowners' association lien foreclosure sale pursuant to NRS Chapter 116, which occurred on July 11, 2014. The district court dismissed all claims against Defendants, with prejudice.

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

Pursuant to NRS Chapter 116 and NRS 116.1113, does the HOA by and through its agent, NAS, owe a duty of good faith and candor in its conducting of the NRS Chapter 116 foreclosure sale, especially if the bidders at the sale have inquired, or attempted to inquire, as to any payments to the underlying lien? Specifically, are the HOA and NAS required to disclosed to interested bidders, upon inquiry by a bidder prior to the sale, that a portion of the lien being foreclosed upon has been partially satisfied prior to the sale, with inquiry from the bidders? If they do have any obligation of good faith and candor in their dealings at the HOA Foreclosure Sale, does that obligation extend to NRS Chapter 116 foreclosure sale bidders and purchasers?

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

- a) DAISY TR. VS. GREEN VALLEY S. OWNERS ASS'N NO. 1, 83477
- b) DAISY TR. VS. EL CAPITAN RANCH LANDSCAPE MAINT. ASS'N, 83404
- c) OLIVER SAGEBRUSH DR. TR. VS. NEV. ASS'N SERVS., INC, 83238
- d) DAISY TR. VS. GREEN VALLEY S. OWNERS ASS'N NO. 1, 82611

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

- ☒ N/A
- ☐ Yes
- ☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues? No

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy

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

☐ A ballot question

Is so, explain

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

The matter does not fall into any of the categories in NRCP 17(a) or (b).

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

Was it a bench or jury trial? _____

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

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from: September 6, 2021

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

Date written notice of entry of judgment or order was served: September 16, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

(c) Date written notice of entry of order resolving tolling motion was served _____
Was Service by:

☐ Delivery

☐ Mail/Electronic/Fax

19. Date notice of appeal filed: October 14, 2021

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

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other: NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) ☐ NRS 703.376

☐ Other (specify) _____

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

Appellant is appealing from the granting of the Respondent's Motion for Summary Judgment.

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

(a) Parties:

Plaintiff/Appellant: SATICOY BAY LLC SERIES 6387 HAMILTON GROVE, A NEVADA LIMITED LIABILITY COMPANY

Defendant/Respondents: SUNRISE RIDGE MASTERHOMEOWNERS' ASSOCIATION, a Nevada non-profit corporation;

And

NEVADA ASSOCIATION SERVICES, INC., a Nevada corporation;

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

N/A

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

Appellant sought damages for (I) intentional and/or negligent misrepresentation, (II) breach of the duty of good faith under NRS 116.1113, and (III) civil conspiracy. All claims were dismissed by Order granting Sunrise's Motion to Dismiss Alternatively Motion for Summary Judgment, and NAS' Joinder thereto, on September 16, 2021. No other claims by any other party were made.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

N/A

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

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

VERIFICATION

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

SATICOY BAY LLC SERIES 6387

HAMILTON GROVE

Name of appellant

Christopher L. Benner

Name of counsel of record

November 15, 2021

Date

/s/Christopher L. Benner, Esq

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on November 15, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

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

J. William Ebert, Esq.
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**SUNRISE RIDGE MASTER HOMEOWNERS
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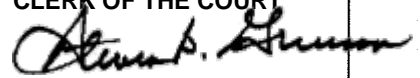
November 15, 2021,

/s/ Joe Koehle

An employee of Roger P. Croteau & Associates

EXHIBIT 1

EXHIBIT 1



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DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY, LLC, SERIES 6387
HAMILTON GROVE, a Nevada limited liability
company,

Plaintiff,

vs.

SURNRISE RIDGE MASTER ASSOCIATION,
a Nevada non-profit corporation; and NEVADA
ASSOCIATION SERVICES, INC., a Nevada
Corporation,

Defendants.

Case No.: A-19-790247-C

Dept. No.: 6

FIRST AMENDED COMPLAINT

Plaintiff, SATICOY BAY, LLC, SERIES 6387 HAMILTON GROVE, a Nevada limited liability company ("Plaintiff"), by and through its attorneys, Roger P. Croteau & Associates, Ltd., hereby complains and alleges as follows:

PARTIES AND JURISDICTION

1. At all times relevant to this matter, Plaintiff was and is a Nevada Limited Liability Company, licensed to do business and doing business in the County of Clark, State of Nevada.

2. Plaintiff is the current owner of real property located at 6387 Hamilton Grove Avenue, Las Vegas, Nevada 89122 (APN 161-15-711-008) (the "Property").

3. Plaintiff acquired title to the Property by and through a Trustee's Deed Upon Sale following a homeowners' association lien foreclosure sale conducted on July 11, 2014 (the "HOA Foreclosure Sale"), by Defendant Nevada Association Services, Inc. d/b/a Assessment Management Services, a Nevada non-profit corporation, authorized to do business and doing business in Clark County, State of Nevada (the "HOA Trustee"), on behalf of Defendant Sunrise Ridge Master Homeowners Association, a Nevada domestic non-profit corporation (the "HOA").

4. The Foreclosure Deed was recorded in the Clark County Recorder's Office on July 14, 2014 (the "HOA Foreclosure Deed").

5. Upon information and belief, HOA is a Nevada common interest community association or unit owners' association as defined in NRS 116.011, is organized and existing under the laws of the State of Nevada, and transacts business in the State of Nevada.

6. Upon information and belief, HOA Trustee is a debt collection agency doing business in the State of Nevada and is organized and existing under the laws of the State of Delaware.

7. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.

8. The exercise of jurisdiction by this Court over the parties in this civil action is proper pursuant to NRS 14.065.

GENERAL ALLEGATIONS

9. Under Nevada law, homeowners' associations have the right to charge property owners residing within the community assessments to cover association expenses for maintaining or improving the community, among other things.

1 10. When the assessments are not paid, a homeowners' association may impose a lien
2 against real property which it governs and thereafter foreclose on such lien.

3 11. NRS 116.3116 makes a homeowners' association's lien for assessments junior to a
4 first deed of trust beneficiary's secured interest in the property, with one limited exception; a
5 homeowners' association's lien is senior to a deed of trust beneficiary's secured interest "to the
6 extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the
7 extent of the assessments for common expenses based on the periodic budget adopted by the
8 association pursuant to NRS 116.3115 which would have become due in the absence of acceleration
9 during the 9 months immediately preceding institution of an action to enforce the lien." NRS
10 116.3116(2)(c).

11 12. In Nevada, when a homeowners' association properly forecloses upon a lien
12 containing a superpriority lien component, such foreclosure extinguishes a first deed of trust.
13

14 13. On or about September 9, 2009, Salvador Partida Castillo and Veronica Delgado
15 DePartida, husband and wife as joint tenants (the "Former Owners") purchased the Property.
16 Thereafter, the Former Owners obtained a loan for the Property from Venta Financial Group,
17 ("Lender"),¹ that was evidenced by a promissory note and secured by a deed of trust between the
18 Former Owners and Lender, recorded against the Property on September 18, 2009, for the loan
19 amount of \$130,001.00 (the "Deed of Trust").
20

21 14. The Deed of Trust indicated that Mortgage Electronic Registration Systems, Inc.
22 ("MERS") "is acting solely as a nominee for Lender and Lender's successors and assigns."
23

24 15. The Former Owners also executed a Planned Unit Development Rider along with the
25 Deed of Trust.
26

27
28

¹ This term applies to the Lender and any assignees of the Deed of Trust.

1 16. On April 8, 2014, MERS assigned the Deed of Trust to Bank of America, N.A.
2 ("BANA")² via Assignment of Deed of Trust, which was recorded against the Property on April 9,
3 2014.

4 17. Upon information and belief, the Former Owners of the Property failed to pay to the
5 HOA all amounts due pursuant to the HOA's governing documents.

6 18. On December 27, 2012, HOA Trustee, on behalf of HOA, recorded a Notice of Claim
7 of Delinquent Assessment Lien (the "NODAL"). The NODAL stated that the amount due to the
8 HOA was \$1,120.50, including late fees, collection fees and interest (the "HOA Lien").
9

10 19. On or about September 18, 2013, after the NOS was recorded, BANA, through
11 counsel Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer") contacted the HOA Trustee and
12 HOA via U.S. Mail and requested adequate proof of the super priority amount of assessments
13 ("Super-Priority Lien Amount") by providing a breakdown of nine (9) months of common HOA
14 assessments in order for Lender to calculate the Super Priority Lien Amount, in an ostensible attempt
15 to determine the amount the HOA Lien entitled to super-priority.
16

17 20. Upon information and belief, Miles Bauer requested the HOA arrears in an attempt
18 to pay the Super-Priority Lien Amount.
19

20 21. In an Affidavit of Adam Kendis of Miles Bauer, he provided that he could not locate
21 a response from the HOA and HOA Trustee to the September 18, 2013 Miles Bauer letter to the
22 HOA, care of the HOA Trustee.

23 22. The Affidavit states that Miles Bauer used a Statement of Account from Nevada
24 Association Services, Inc., for a different property in the same HOA to determine a good faith
25 payoff.
26

27
28 ² Upon information and belief, BANA was the servicer of the loan secured by the Deed of Trust.

1 23. On September 26, 2013, BANA, through Miles Bauer, provided a payment of
2 \$378.00 to the HOA Trustee, which included payment of up to nine months of delinquent
3 assessments (the "Attempted Payment").

4 24. HOA Trustee, on behalf of the HOA, rejected Lender's Attempted Payment of
5 \$378.00.
6

7 25. On January 9, 2014, HOA Trustee, on behalf of HOA, recorded a Notice of Default
8 and Election to Sell Under Homeowners Association Lien (the "NOD"). The NOD stated that the
9 HOA Lien amount was \$1,708.38.

10 26. On May 20, 2014, HOA Trustee, on behalf of the HOA, recorded a Notice of
11 Foreclosure Sale against the Property ("NOS"). The NOS stated that the total amount due the HOA
12 was \$2,415.24 and set a sale date for the Property of June 11, 2014 at 10:00 a.m., to be held at 6224
13 West Desert Inn Road, Las Vegas, Nevada.
14

15 27. Despite Lender's Attempted Payment, on, HOA Trustee then proceeded to conduct
16 the non-judicial foreclosure sale on the Property and recorded the HOA Foreclosure Deed, which
17 stated that the HOA Trustee sold the HOA's interest in the Property to Plaintiff at the HOA
18 Foreclosure Sale for the highest bid amount of \$22,100.00.
19

20 28. The Foreclosure Sale created excess proceeds.

21 29. The HOA Foreclosure Deed states that HOA Trustee "all requirement of law... have
22 been complied with."

23 30. In none of the recorded documents, nor in any other notice recorded with the Clark
24 County Recorder's Office, did HOA and/or HOA Trustee specify or disclose that any individual or
25 entity, including but not limited to the Lender, had attempted to pay any portion of the HOA Lien
26 in advance of the HOA Foreclosure Sale.
27
28

1 31. Neither HOA nor HOA Trustee informed or advised the bidders and potential bidders
2 at the HOA Foreclosure Sale, either orally or in writing, that any individual or entity had attempted
3 to pay the Super-Priority Lien Amount.

4 32. Upon information and belief, the debt owed to Lender by the Former Owners of the
5 Property pursuant to the loan secured by the Deed of Trust significantly exceeded the fair market
6 value of the Property at the time of the HOA Foreclosure Sale.

7 33. Upon information and belief, Lender alleges that the Attempted Payment of the
8 Super-Priority Lien Amount served to satisfy and discharge the Super-Priority Lien Amount,
9 thereby changing the priority of the HOA Lien vis a vis the Deed of Trust.

10 34. Upon information and belief, Lender alleges that as a result of the Attempted
11 Payment of the Super-Priority Lien Amount, the purchaser of the Property at the HOA Foreclosure
12 Sale acquired title to the Property subject to the Deed of Trust.

13 35. Upon information and belief, if the bidders and potential bidders at the HOA
14 Foreclosure Sale were aware that an individual or entity had attempted to pay the Super-Priority
15 Lien Amount and/or by means of the Attempted Payment prior to the HOA Foreclosure Sale and
16 that the Property was therefore ostensibly being sold subject to the Deed of Trust, the bidders and
17 potential bidders would not have bid on the Property.

18 36. Had the Property not been sold at the HOA Foreclosure Sale, HOA and HOA Trustee
19 would not have received payment, interest, fees, collection costs and assessments related to the
20 Property and these sums would have remained unpaid.

21 37. HOA Trustee acted as an agent of HOA.

22 38. HOA is responsible for the actions and inactions of HOA Trustee pursuant to the
23 doctrine of respondeat superior.
24
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1 39. HOA and HOA Trustee conspired together to hide material information related to
2 the Property: the HOA Lien; the Attempted Payment of the Super-Priority Lien Amount; the
3 rejection of such payment or Attempted Payment; and the priority of the HOA Lien vis a vis the
4 Deed of Trust, from the bidders and potential bidders at the HOA Foreclosure Sale.

5
6 40. The information related to any Attempted Payment or payments made by the Lender,
7 or others, to the Super-Priority Lien Amount, was not recorded and would only be known by the
8 Lender, the HOA, and HOA Trustee.

9 41. Upon information and belief, HOA and HOA Trustee conspired to withhold and hide
10 the aforementioned information for their own economic gain and to the detriment of the bidders and
11 potential bidders at the HOA Foreclosure Sale.

12
13 42. As part of Plaintiff's practice and procedure in both NRS Chapter 107 and NRS
14 Chapter 116 foreclosure sales, Plaintiff would call the foreclosing agent/HOA Trustee and confirm
15 whether the sale was going forward on the scheduled date; and in the context of an NRS Chapter
16 116 foreclosure sale, Plaintiff would ask if anyone had paid anything on the account.

17 43. At the time relevant to this matter, Plaintiff would call the number associated with
18 the HOA Trustee to make the inquiries which were part of Plaintiff's practice and procedure.

19
20 44. Plaintiff would contact the HOA Trustee prior to the HOA Foreclosure Sale to
21 determine if the Property would in fact be sold on the date stated in the NOS, obtain the opening
22 bid, so Plaintiff could determine the amount of funds necessary for the auction and inquire if any
23 payments had been made.

24
25 45. At all times relevant to this matter, if Plaintiff learned of a "tender" or payment either
26 having been attempted or made, Plaintiff would not purchase the Property offered in that HOA
27 Foreclosure Sale.

47. BANA first disclosed the Attempted Payment by BANA in BANA's Complaint filed against Plaintiff and the HOA on March 3, 2016 ("Discovery") in the United States District Court for the District of Nevada, Civil Action No. 2:16-cv-00467-MMD-CWH (the "Case").

(Intentional, or Alternatively Negligent, Misrepresentation)

49. At no point in time did Defendants disclose to the bidders and potential bidders at the HOA Foreclosure Sale the fact that any individual or entity had attempted to pay the Super-Priority Lien Amount or provided the Attempted Payment.

51. By rejecting the Attempted Payment of the Super-Priority Lien Amount from the Lender, HOA received funds in satisfaction of the entire HOA Lien, rather than only the Super-Priority Lien Amount.

8

1 53. Neither HOA nor HOA Trustee recorded any notice nor provided any written or oral
2 disclosure to the bidders and potential bidders at the HOA Foreclosure Sale regarding any Attempted
3 Payment of the Super-Priority Lien Amount by the Lender or any individual or entity.

4 54. HOA and HOA Trustee desired that the bidders and potential bidders at the HOA
5 Foreclosure Sale believe that the HOA Lien included amounts entitled to superpriority over the
6 Deed of Trust and that the Deed of Trust would thus be extinguished as a result of the HOA
7 Foreclosure Sale for their own economic gain.

8 55. As a result of their desire that the bidders and potential bidders at the HOA
9 Foreclosure Sale believed that the HOA Lien included amounts entitled to priority over the Deed of
10 Trust, and that the Deed of Trust would thus be extinguished as a result of the HOA Foreclosure
11 Sale, HOA and HOA Trustee intentionally failed to disclose material information related to the
12 Attempted Payment of the Super-Priority Lien Amount by the Lender and did so for their own
13 economic gain.

14 56. Alternatively, HOA and HOA Trustee were grossly negligent by failing to disclose
15 material information related to the Attempted Payment of the Super-Priority Lien Amount.

16 57. Upon information and belief, if HOA Trustee and/or HOA had disclosed the
17 Attempted Payment of the Super-Priority Lien Amount to the bidders and potential bidders at the
18 HOA Foreclosure Sale, such bidders and potential bidders would not have bid upon the Property at
19 the HOA Foreclosure Sale.

20 58. Given the facts of this case now known to Plaintiff, Plaintiff would not have bid on
21 the Property.

22 59. Upon information and belief, if the Property had not been sold at the HOA
23 Foreclosure Sale, the HOA would not have received funds in satisfaction of the HOA Lien.
24
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1 60. Upon information and belief, if the Property had not been sold at the HOA
2 Foreclosure Sale, the HOA Trustee would not have received payment for the work that it performed
3 on behalf of HOA in association with the HOA Foreclosure Sale and related proceedings.

4 61. Plaintiff attended the sale as a ready, willing, and able buyer without knowledge of
5 the Attempted Payment.
6

7 62. Plaintiff would not have purchased the Property if it had been informed that any
8 individual or entity had paid or attempted to pay the Super-Priority Lien Amount or any amount in
9 advance of the HOA Foreclosure Sale.

10 63. As a direct result of HOA and HOA Trustee's rejection of the Attempted Payment
11 of the Super-Priority Lien Amount, and their subsequent intentional or grossly negligent failure to
12 advise the bidders and potential bidders at the HOA Foreclosure Sale of the facts related thereto,
13 Plaintiff presented the prevailing bid at the HOA Foreclosure Sale and thereby purchased the
14 Property.
15

16 64. HOA and HOA Trustee each profited from their intentional and/or negligent
17 misrepresentations and material omissions at the time of the HOA Foreclosure Sale by failing and
18 refusing to disclose the Attempted Payment of the Super-Priority Lien Amount.
19

20 65. HOA and HOA Trustee materially misrepresented the facts by hiding and failing to
21 advise bidders and potential bidders at the HOA Foreclosure Sale of information known solely to
22 the HOA and/or HOA Trustee that was not publicly available which ostensibly changed the priority
23 of Deed of Trust vis a vis the HOA Lien.

24 66. HOA and HOA Trustee solely possessed information related to the Attempted
25 Payment of the Super-Priority Lien Amount prior to and at the time of the HOA Foreclosure Sale,
26 and they intentionally withheld such information for their own economic gain.
27
28

1 67. Alternatively, HOA and HOA Trustee were grossly negligent when they withheld
2 information from the bidders and purchaser at the HOA Foreclosure Sale related to the Attempted
3 Payment of the Super-Priority Lien Amount.

4 68. Plaintiff reasonably relied upon HOA and HOA Trustee's intentional or grossly
5 negligent failure to disclose the Attempted Payment of the Super-Priority Lien Amount.
6

7 69. HOA and HOA Trustee intended that the bidders and potential bidders at the HOA
8 Foreclosure Sale would rely on the lack of notice of the Attempted Payment of the Super-Priority
9 Lien Amount at the time of the HOA Sale and that their failure to disclose such information
10 promoted the sale of the Property.

11 70. HOA and HOA Trustee further intended that their failure of refusal to inform bidders
12 and potential bidders at the HOA Foreclosure Sale of the Attempted Payment of the Super-Priority
13 Lien Amount would lead such bidders and potential bidders to believe that the Deed of Trust was
14 subordinate to the HOA Lien and not being sold subject to the Deed of Trust.
15

16 71. The HOA and the HOA Trustee had a duty to disclose the Attempted Payment of the
17 Super-Priority Lien Amount.
18

19 72. The HOA and the HOA Trustee breached that duty to disclose the Attempted
20 Payment to Plaintiff.

21 73. As a result of the HOA and HOA Trustee's breach of their duties of care, honesty in
22 fact, good faith, and candor to bidders at the HOA Foreclosure Sale for their own economic gain,
23 Plaintiff has been economically damaged in many aspects.

24 74. If the Property is subject to the Deed of Trust, the funds paid by Plaintiff to purchase,
25 maintain, operate, and/or litigate various cases and generally manage the Property would be lost
26 along with the opportunity of purchasing other available property offered for sale where a
27
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1 superpriority payment had not been attempted, thereby allowing Plaintiff the opportunity to
2 purchase a property free and clear of the deed of trust and all other liens.

3 75. As a direct and proximate result of the actions of Defendants, it has become necessary
4 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.
5

6 76. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
7 Procedure as further facts become known.

8 **SECOND CLAIM FOR RELIEF**

9 (Breach of the Duty of Good Faith)

10 77. Plaintiff repeats and realleges each and every allegation contained above as if set
11 forth fully herein.

12 78. In the State of Nevada, every contract must be performed in good faith in its
13 performance or enforcement.
14

15 79. A duty of good faith includes within that term a duty of candor in its dealings.

16 80. Prior to the HOA Foreclosure Sale of the Property, the Lender paid the Super-Priority
17 Lien Amount to HOA or HOA Trustee by the Attempted Payment.

18 81. Upon information and belief, HOA Trustee, acting on behalf of HOA, rejected the
19 Attempted Payment.
20

21 82. HOA and HOA Trustee's rejection of the Attempted Payment and subsequent failure
22 and refusal to inform the bidders and potential bidders at the HOA Foreclosure Sale served to breach
23 their duty of good faith, fair dealings, honesty in fact, and candor.

24 83. HOA and the HOA Trustee owed a duty of good faith, fair dealings, honesty in fact,
25 and candor to Plaintiff.
26
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92. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

FOURTH CLAIM FOR RELIEF

(Violation of NRS Chapter 113)

93. Plaintiff repeats and realleges each and every allegation contained above as if set forth fully herein.

94. Pursuant to NRS Chapter 113, Defendants must disclose the Attempted Payment and/or any payments made or attempted to be made by Lender, the Former Owner, or any agents of any other party to the bidders and Plaintiff at the HOA Foreclosure Sale.

95. Defendants were required, but failed, to provide a Seller's Real Property Disclosure Form ("SRPDF") to the "Purchaser," as defined in NRS Chapter 116, at the time of the HOA Foreclosure Sale.

96. Defendants were a "seller" under NRS Chapter 113.

97. NRS Chapter 116 foreclosure sales are not exempt from the disclosure mandates of NRS Chapter 113.

98. Defendants were required, but failed, to complete and answer the questions posed in the SRPDF in its entirety, but specifically, Section 9, Common Interest Communities, disclosures (a) - (f), and Section 11, that provide as follows:

9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property?

(a) Common Interest Community Declaration and Bylaws available?

(b) Any periodic or recurring association fees?

(c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien?

- (d) Any litigation, arbitration, or mediation related to property or common areas?
- (e) Any assessments associated with the property (excluding property tax)?
- (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee?

...

11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? (Emphasis added)

See SRPDF, Form 547, attached hereto as Ex. 1.

99. Section 11 of the SRPDF relates directly to information known to Defendants that materially affects the value of the Property, and in this case, if the Super-Priority Lien Amount is paid, or if the Attempted Payment is rejected/accepted, it would have a material, adverse effect on the overall value of the Property, and therefore, must be disclosed to the Purchaser in the SRPDF by Defendants.

100. Defendants' response to Section 9(c) - (e) of the SRPDF would have provided notice to Plaintiff of any payments made by Lender, Former Owner, or others on the HOA Lien.

101. Defendants' response to Section 11 of the SRPDF generally deals with the disclosure of the condition of the title to the Property related to the status of the Deed of Trust and the Attempted Payment that would only be known by Defendants.

102. Nevada Real Estate Division's ("NRED"), Residential Disclosure Guide (the "Guide"), Ex. 2, provides at page 20 that Defendants shall provide, even in an NRS Chapter 107 foreclosure sale, the following to the purchaser/Plaintiff at the HOA Foreclosure Sale:

The content of the disclosure is based on what the seller is aware of at the time. If, after completion of the disclosure form, the seller discovers a new defect or notices that a previously disclosed condition has worsened, the seller must inform the

1 purchaser, in writing, as soon as practicable after discovery of the condition, or
2 before conveyance of the property.

3 The buyer may not waive, and the seller may not require a buyer to waive, any of the
4 requirements of the disclosure as a condition of sale or for any other purpose.

5 In a sale or intended sale by foreclosure, the trustee and the beneficiary of the deed
6 of trust shall provide, not later than the conveyance of the property to, or upon request
7 from, the buyer:

- written notice of any defects of which the trustee or beneficiary is aware

8 103. If Defendants fail to provide the SRPDF to the Plaintiff/purchaser at the time of the
9 HOA Foreclosure Sale, the Guide explains that:

10 A Buyer may rescind the contract without penalty if he does not receive a fully and
11 properly completed Seller's Real Property Disclosure form. If a Buyer closes a
12 transaction without a completed form or if a known defect is not disclosed to a Buyer,
13 the Buyer may be entitled to treble damages, unless the Buyer waives his rights under
14 NRS 113.150(6).

15 104. Pursuant to NRS 113.130, Defendants were required, but failed, to provide the
16 information set forth in the SRPDF to Plaintiff at the HOA Foreclosure Sale.

17 105. Defendants did not provide an SRPDF to Plaintiff prior to, or at, the HOA
18 Foreclosure Sale.

19 106. As a result of Defendants' failure to provide Plaintiff with the mandated SRPDF, and
20 disclosures required therein, that were known to Defendants, Plaintiff has been economically
21 damaged.

22 107. As a direct and proximate result of the actions of Defendants, it has become necessary
23 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

24 108. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
25 Procedure as further facts become known.

26 ///

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FIFTH CLAIM FOR RELIEF

(Unjust Enrichment)

109. Plaintiff repeats and realleges each and every allegation contained above as if set forth fully herein.

110. Plaintiff has conferred benefits on Defendants in the form of, but not limited to, the payment of the HOA Lien.

111. The HOA and HOA Trustee are believed to retain the payment of the HOA Lien, and any excess proceeds obtained from the HOA Sale, and have not distributed those proceeds to any Defendant or third party.

112. Defendants have appreciated the foregoing benefits and has retained those benefits under inequitable circumstances.

113. If Defendants retain the foregoing benefits, Plaintiff has been economically damaged.

114. As a direct and proximate result of the actions of Defendants, it has become necessary for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

115. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

WHEREFORE, Plaintiff prays for relief as follows:

1. For damages to be proven at trial in excess of \$15,000;
2. For punitive damages in an amount to be determined at trial;
3. For an award of reasonable attorneys' fees as special damages, and otherwise under Nevada law;
4. For pre-judgment and post-judgment interest at the statutory rate of interest; and

1 5. For such other and further relief that the Court deems just and proper.
2
3

4 Dated this 22nd day of June, 2021.

5 ROGER P. CROTEAU & ASSOCIATES, LTD.

6 /s/ Roger P. Croteau

7 Roger P. Croteau, Esq.
8 Nevada Bar No. 4958
9 Christopher L. Benner, Esq.
10 Nevada Bar No. 8963
11 2810 W. Charleston Blvd., Ste. 75
12 Las Vegas, Nevada 89102
13 Attorneys for Plaintiff
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DECLARATION OF IYAD HADDAD

IYAD “EDDIE” HADDAD, being first duly sworn, deposes and says:

I, Iyad Haddad, being first duly sworn, deposes and says as follows: I am a resident of the State of Nevada. I am the manager of Saticoy Bay, LLC, Series 6387 Hamilton Grove (“*Saticoy*”). Saticoy obtained its’ interest in the Property from the HOA Foreclosure Sale. In my capacity as set forth above, I have reviewed the foregoing Amended Complaint. Of the facts asserted therein, I know them to be true of my own knowledge or they are true to the best of my knowledge and recollection.

I further provide that it was my practice and procedure, as set forth herein, that prior to attending and/or at an HOA Foreclosure Sale pursuant to NRS 116 at all times relevant to this case, I would attempt to ascertain whether anyone had attempted to or did tender any payment regarding the homeowner association’s lien. If I learned that a tender had either been attempted or made, I would not purchase the property offered in that foreclosure sale.

I would, and did, rely on whatever recital and/or announcements that were made at the HOA Foreclosure Sale. I also relied on the HOA Foreclosure Deed that provided that the HOA and HOA Trustee complied with all requirements of law. I reasonably relied upon the HOA and/or the HOA Trustee’s material omission of the tender and/or Attempted Payment of the Super Priority Lien Amount and/or the Attempted Payment or any portion thereof upon prior inquiry when I purchased the Property on behalf of the Plaintiff.

As part of my practice and procedure in both NRS 107 and NRS 116 foreclosure sales, I would call the foreclosing agent/HOA Trustee and confirm whether the sale was going forward on the scheduled date; and in the context of an NRS 116 foreclosure sale, I would ask if anyone had paid anything on the account. I would contact the office of the foreclosing agent/HOA Trustee; I

1 would ask the relevant questions to the employee who answered the phone with the understanding
2 that an employee who answered for the foreclosing agent/HOA Trustee would be able to answer my
3 questions, or direct me to another, appropriate, employee.

4 I would contact the HOA Trustee prior to the HOA Foreclosure Sale to determine if the
5 Property would in fact be sold on the date stated in the Notice of Sale, obtain the opening bid, so I
6 could determine the amount of funds necessary for the auction and inquire if any payments had been
7 made; however, I never inquired if the "Super Priority Lien Amount" had been paid. I would
8 reasonably rely on the information provided by employee representatives of the foreclosing
9 agent/HOA Trustee who was charged with responding to my inquiries. I personally do all of the
10 research on any and all properties that I purchased at the HOA Foreclosure Sales.

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

12 Executed this 14 day of June, 2021.

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EDDIE HADDAD

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

CERTIFICATE OF SERVICE

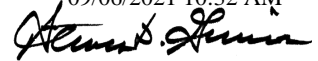
I hereby certify that on June 22, 2021, I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/Joe Koehle

An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD.

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JONATHAN K. WONG, ESQ.
Nevada Bar No. 13621
9900 Covington Cross Drive, Suite 120
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bebert@lipsonneilson.com
jwong@lipsonneilson.com

*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY, LLC, SERIES 6387
HAMILTON, a Nevada limited liability
company,

Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;

Defendants.

Case No.: A-19-790247-C
Dept.: VI

**ORDER GRANTING DEFENDANT
SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION'S
REPLY IN SUPPORT OF ITS MOTION
TO DISMISS, OR ALTERNATIVELY,
MOTION FOR SUMMARY JUDGMENT**

Hearing Date: August 10, 2021
Hearing Time: 9:30 a.m.

On August 10, 2021, Defendant Sunrise Ridge Master Homeowners Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment ("Motion") came before the Court for hearing. Roger P. Croteau, Esq., appeared on behalf of Plaintiff, and Jonathan K. Wong, Esq., appeared on behalf of defendant Sunrise Ridge Master Homeowners Association (the "HOA"). The Court, having reviewed all moving papers and pleadings, having heard oral argument of counsel, and for good cause appearing therefor, FINDS AND ORDERS as follows:

\\

FINDINGS OF FACT

1. On or about September 9, 2009, Salvador Partida Castillo and Veronica Delgado (the "Former Owners") obtained a loan to purchase real property located at 6387 Hamilton Grove Ave., Las Vegas, Nevada 89122 (APN 161-15-711-008) (the "Property").

2. The Property was subject to the HOA's Covenants, Conditions, and Restrictions ("CC&Rs").

3. Sometime after purchasing the Property, the Former Owners defaulted on their homeowners' assessments.

4. On December 27, 2012, Nevada Association Services ("NAS"), on behalf of Sunrise Ridge Master Homeowners Association ("Sunrise Ridge"), recorded a Notice of Claim of Delinquent Assessment Lien.

5. On January 9, 2014, NAS, on behalf of Sunrise Ridge, recorded a Notice of Default and Election to Sell.

6. At some point prior to the recordation of the Notice of Foreclosure Sale, Bank of America ("BANA"), through counsel Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer") contacted NAS and the HOA and requested a breakdown of nine (9) months of common HOA assessments in order to calculate the Super Priority Lien Amount.

7. On September 26, 2013, BANA, through Miles Bauer, provided a payment of \$378.00 to NAS (the "Attempted Payment"). NAS, on behalf of Sunrise Ridge, rejected BANA's attempted payment of \$378.00.

8. On May 20, 2014, NAS, on behalf of Sunrise Ridge, recorded a Notice of Foreclosure Sale against the Property.

9. On July 11, 2014, NAS conducted the non-judicial foreclosure sale on the Property (the "Foreclosure Sale") and recorded the Foreclosure Deed, which indicated that NAS sold the HOA's interest in the Property to Plaintiff for the highest bid amount of \$22,100.00.

10. On February 26, 2016, BANA filed a lawsuit against Sunrise Ridge, NAS, and Plaintiff in the United States District Court, District of Nevada, Case No. 2:16-cv-00408-RFB-PAL (the "Federal Action"). The complaint alleged causes of action for Quiet Title/Declaratory Judgment, Breach of NRS 116.1113, Wrongful Foreclosure, and Injunctive Relief.

11. On February 28, 2019, Saticoy Bay filed the instant lawsuit against Sunrise Ridge and NAS, alleging cause of action for Intentional/Negligent Misrepresentation, Breach of NRS 116, and Conspiracy.

12. On July 16, 2019, this matter was stayed for six months pending resolution of proceedings in the Federal Action.

13. On July 15, 2020, the stay was lifted. The parties in this matter stipulated to allow Plaintiff to file an amended complaint.

14. On June 22, 2021, Plaintiff filed its First Amended Complaint (the "FAC"), asserting claims for 1) Intentional/Negligent Misrepresentation; 2) Breach of NRS 116.1113; 3) Conspiracy; 4) Violation of NRS 113; and 5) Unjust Enrichment.

15. Any finding of fact that should be a conclusion of law shall be treated as such.

CONCLUSIONS OF LAW

1. The Court reviews Sunrise Ridge's Motion under Rule 12(b)(5) of the Nevada Rules of Civil Procedure ("NRCP"). NRCP 12(b)(5) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Nev. R. Civ. P. 12(b)(5). When ruling on such a motion, the factual allegations in the complaint are treated as true and all inferences are drawn in favor of the plaintiff. *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285 (2014). A complaint should be dismissed when the allegations are insufficient to entitle the plaintiff to relief. *Id.*

2. Nevada has adopted the Uniform Common Interest Owner Act through Nevada Revised Statutes ("NRS") Chapter 116.

\\

1 3. NRS 116 establishes that homeowners' associations ("HOA" or "HOAs")
2 may impose assessments. See NRS 116.3115.

3 4. NRS 116 establishes that HOAs have a lien against units for
4 assessments. See generally NRS 116.3116.

5 5. Sunrise Ridge foreclosed on the Property pursuant to NRS 116.

6 6. Under the version of NRS 116 in effect at the time of the Foreclosure Sale,
7 neither Sunrise Ridge nor NAS had an affirmative duty to disclose to potential bidders
8 the existence of payments or attempted payments on the HOA's lien.

9 7. Under Nevada law, intentional misrepresentation requires three elements:
10 "(1) a false representation that is made with either knowledge or belief that it is false or
11 without a sufficient foundation, (2) an intent to induce another's reliance, and (3)
12 damages that result from this reliance." *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d
13 420, 426 (2007) (citations omitted). As for negligent misrepresentation, Nevada law
14 requires a plaintiff to show that the defendant is "one who, without exercising
15 reasonable care or competence, 'supplies false information for the guidance of others in
16 their business transactions' is liable for 'pecuniary loss caused to them by their
17 justifiable reliance upon the information.'" *Barmettler v. Reno Air, Inc.*, 114 Nev. 441,
18 449, 956 P.2d 1382, 1387 (1998) (citations omitted).

19 8. Neither Sunrise Ridge nor NAS had an affirmative duty to disclose to
20 Plaintiff the existence of the Attempted Payment. See *Noonan v. Bayview Loan*
21 *Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (finding that summary judgment was
22 appropriate on the plaintiff's negligent misrepresentation claim because the HOA
23 "neither made an affirmative false statement nor omitted a material fact it was bound to
24 disclose.").

25 9. As such, the only way a misrepresentation could have been made would
26 be for Plaintiff to have specifically inquired about whether payment was made on the
27 HOA's lien, and in response be advised specifically that no such payments had been
28 made.

1 Here, Plaintiff does not allege that Defendants made any active
2 misrepresentation; rather, he alleges only that Defendants are guilty of a material
3 omission by failing to advise Plaintiff about BANA's Attempted Payment "upon inquiry."
4 This is insufficient to state a claim for relief for Intentional/Negligent Misrepresentation.

5 10. Because there was no misrepresentation – neither intentional nor
6 negligent – Plaintiff's remaining causes of action necessarily fail to state claims upon
7 which relief can be granted.

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ORDER

In light of the above findings of fact and conclusions of law:

IT IS HEREBY ORDERED that Sunrise Ridge's Motion is GRANTED pursuant to Nevada Rule of Civil Procedure ("NRCP") 12(b)(5), and that Plaintiff's Complaint is dismissed with prejudice and judgment entered thereon.

Dated this 6th day of September, 2021



NH

7E8 682 40D8 0DBB
Jacqueline M. Bluth
District Court Judge

Submitted by:

LIPSON NEILSON P.C.

/s/ Jonathan K. Wong

J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JONATHAN K. WONG, ESQ.
Nevada Bar No. 13621
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant

Approved as to form and content by:

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Christopher L. Benner

ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89148
Attorney for Plaintiff

Sydney Ochoa

From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, August 27, 2021 2:12 PM
To: Jonathan Wong; Roger Croteau
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

Okay, if there was no discussion of 56(d), I would infer it was moot. You can use my e-signature.

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
2810 Charleston Boulevard, No. H-75
Las Vegas, NV 89102
(702) 254-7775
chris@croteaulaw.com

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From: Jonathan Wong <JWong@lipsonneilson.com>
Sent: Friday, August 27, 2021 2:07 PM
To: Chris Benner <chris@croteaulaw.com>; Roger Croteau <rcroteau@croteaulaw.com>
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

Hi Chris –

The judge granted on the basis of Rule 12(b)(5) and not Rule 56, so the request for 56(d) relief never came into play. That's why it wasn't mentioned in my draft order.

That being the case, please let me know if you are OK with us submitting this order to the court without discussion of 56(d) relief. Thanks.

Jonathan K. Wong, Esq.
Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: jwong@lipsonneilson.com
Website: www.lipsonneilson.com

From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, August 27, 2021 10:48 AM
To: Jonathan Wong <JWong@lipsonneilson.com>; Roger Croteau <rcroteau@croteaulaw.com>
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Saticoy Bay, LLC, Series 6387
Hamilton Grove, Plaintiff(s)

CASE NO: A-19-790247-C

7 vs.

DEPT. NO. Department 17

8
9 Sunrise Ridge Master
Association, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

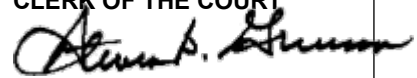
15 Service Date: 9/6/2021

16 J. William Ebert	bebert@lipsonneilson.com
17 Susana Nutt	snutt@lipsonneilson.com
18 Brandon Wood	brandon@nas-inc.com
19 Roger Croteau	croteaulaw@croteaulaw.com
20 Susan Moses	susanm@nas-inc.com
21 Croteau Admin	receptionist@croteaulaw.com
22 Sydney Ochoa	sochoa@lipsonneilson.com
23 Jonathan Wong	jwong@lipsonneilson.com
24 Juan Cerezo	jcerezo@lipsonneilson.com

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26
27
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EXHIBIT 3

EXHIBIT 3



LIPSON NEILSON P.C.
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JONATHAN K. WONG, ESQ.
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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY, LLC, SERIES 6387
HAMILTON, a Nevada limited liability
company,

Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;

Defendants.

Case No.: A-19-790247-C
Dept.: VI

**ERRATA TO ORDER GRANTING
DEFENDANT SUNRISE RIDGE
MASTER HOMEOWNERS'
ASSOCIATIONS' REPLY IN SUPPORT
OF ITS MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

COMES NOW Defendant SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION, by and through its counsel, LIPSON NEILSON P.C., hereby submits this Errata to correct the title of the ORDER GRANTING DEFENDANT SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATION'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT filed with this Court on the 6th day of September, 2021.

Defendants inadvertently titled the Order incorrectly. The title of the Order on the first page should read **Order Granting Defendant Sunrise Ridge Master Homeowners' Association's Motion To Dismiss, Or Alternatively, Motion For Summary Judgment.**

Attached hereto as **Exhibit "A"** is the first page of the Order with the correct title.
DATED this 13th day of September, 2021.

LIPSON NEILSON P.C.

/s/ Jonathan K. Wong

J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JONATHAN K. WONG, ESQ.
Nevada Bar No. 13621
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 13th day of September, 2021, I electronically served the foregoing **ERRATA TO ORDER GRANTING DEFENDANT SUNRISE RIDGE MASTER HOMEOWNERS' ASSOCIATIONS' REPLY IN SUPPORT OF ITS MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** to the following parties utilizing the Court's E-File/ServeNV System:

ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
ROGER P. CROTEAU &
ASSOCIATES, LTD.
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89148

Attorney for Plaintiff

/s/ Sydney Ochoa

An Employee of LIPSON NEILSON P.C.

EXHIBIT “A”

EXHIBIT “A”

LIPSON NEILSON P.C.
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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY, LLC, SERIES 6387
HAMILTON, a Nevada limited liability
company,

Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;

Defendants.

Case No.: A-19-790247-C
Dept.: VI

**ORDER GRANTING DEFENDANT
SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION'S
MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

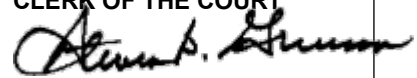
Hearing Date: August 10, 2021
Hearing Time: 9:30 a.m.

On August 10, 2021, Defendant Sunrise Ridge Master Homeowners Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment ("Motion") came before the Court for hearing. Roger P. Croteau, Esq., appeared on behalf of Plaintiff, and Jonathan K. Wong, Esq., appeared on behalf of defendant Sunrise Ridge Master Homeowners Association (the "HOA"). The Court, having reviewed all moving papers and pleadings, having heard oral argument of counsel, and for good cause appearing therefor, FINDS AND ORDERS as follows:

\\

EXHIBIT 4

EXHIBIT 4



LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
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JONATHAN K. WONG, ESQ.
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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
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SATICOY BAY, LLC, SERIES 6387
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Defendants.

Case No.: A-19-790247-C
Dept.: VI

NOTICE OF ENTRY OF ORDER

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1 PLEASE TAKE NOTICE that the **ORDER GRANTING DEFENDANT SUNRISE**
2 **RIDGE MASTER HOMEOWNERS' ASSOCIATION'S MOTION TO DISMISS, OR**
3 **ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** was filed with the court this 6th
4 day of September, 2021, a true and correct copy of which is attached hereto.

5 DATED this 16th day of September, 2021.

6 LIPSON NEILSON P.C.

7 */s/ Jonathan K. Wong*

8
9 J. WILLIAM EBERT, ESQ.
10 Nevada Bar No. 2697
11 JONATHAN K. WONG, ESQ.
12 Nevada Bar No. 13621
13 9900 Covington Cross Drive, Suite 120
14 Las Vegas, Nevada 89144
15 *Attorneys for Defendant*
16
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CERTIFICATE OF SERVICE

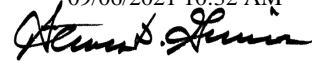
Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 16th day of September, 2021, I electronically served the foregoing **NOTICE OF ENTRY OF ORDER** to the following parties utilizing the Court's E-File/ServeNV System:

ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
ROGER P. CROTEAU &
ASSOCIATES, LTD.
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89148

Attorney for Plaintiff

/s/ Sydney Ochoa

An Employee of LIPSON NEILSON P.C.



CLERK OF THE COURT

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
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*Attorneys for Defendant,
Sunrise Ridge Master Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SATICOY BAY, LLC, SERIES 6387
HAMILTON, a Nevada limited liability
company,

Plaintiff,

vs.

SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION, a
Nevada non-profit corporation; and
NEVADA ASSOCIATION SERVICES,
INC., a Nevada corporation;

Defendants.

Case No.: A-19-790247-C
Dept.: VI

**ORDER GRANTING DEFENDANT
SUNRISE RIDGE MASTER
HOMEOWNERS' ASSOCIATION'S
REPLY IN SUPPORT OF ITS MOTION
TO DISMISS, OR ALTERNATIVELY,
MOTION FOR SUMMARY JUDGMENT**

Hearing Date: August 10, 2021
Hearing Time: 9:30 a.m.

On August 10, 2021, Defendant Sunrise Ridge Master Homeowners Association's Motion to Dismiss, or Alternatively, Motion for Summary Judgment ("Motion") came before the Court for hearing. Roger P. Croteau, Esq., appeared on behalf of Plaintiff, and Jonathan K. Wong, Esq., appeared on behalf of defendant Sunrise Ridge Master Homeowners Association (the "HOA"). The Court, having reviewed all moving papers and pleadings, having heard oral argument of counsel, and for good cause appearing therefor, FINDS AND ORDERS as follows:

\\

FINDINGS OF FACT

1
2 1. On or about September 9, 2009, Salvador Partida Castillo and Veronica
3 Delgado (the "Former Owners") obtained a loan to purchase real property located at
4 6387 Hamilton Grove Ave., Las Vegas, Nevada 89122 (APN 161-15-711-008) (the
5 "Property").

6 2. The Property was subject to the HOA's Covenants, Conditions, and
7 Restrictions ("CC&Rs").

8 3. Sometime after purchasing the Property, the Former Owners defaulted on
9 their homeowners' assessments.

10 4. On December 27, 2012, Nevada Association Services ("NAS"), on behalf
11 of Sunrise Ridge Master Homeowners Association ("Sunrise Ridge"), recorded a Notice
12 of Claim of Delinquent Assessment Lien.

13 5. On January 9, 2014, NAS, on behalf of Sunrise Ridge, recorded a Notice
14 of Default and Election to Sell.

15 6. At some point prior to the recordation of the Notice of Foreclosure Sale,
16 Bank of America ("BANA"), through counsel Miles, Bauer, Bergstrom & Winters, LLP
17 ("Miles Bauer") contacted NAS and the HOA and requested a breakdown of nine (9)
18 months of common HOA assessments in order to calculate the Super Priority Lien
19 Amount.

20 7. On September 26, 2013, BANA, through Miles Bauer, provided a payment
21 of \$378.00 to NAS (the "Attempted Payment"). NAS, on behalf of Sunrise Ridge,
22 rejected BANA's attempted payment of \$378.00.

23 8. On May 20, 2014, NAS, on behalf of Sunrise Ridge, recorded a Notice of
24 Foreclosure Sale against the Property.

25 9. On July 11, 2014, NAS conducted the non-judicial foreclosure sale on the
26 Property (the "Foreclosure Sale") and recorded the Foreclosure Deed, which indicated
27 that NAS sold the HOA's interest in the Property to Plaintiff for the highest bid amount of
28 \$22,100.00.

10. On February 26, 2016, BANA filed a lawsuit against Sunrise Ridge, NAS, and Plaintiff in the United States District Court, District of Nevada, Case No. 2:16-cv-00408-RFB-PAL (the "Federal Action"). The complaint alleged causes of action for Quiet Title/Declaratory Judgment, Breach of NRS 116.1113, Wrongful Foreclosure, and Injunctive Relief.

11. On February 28, 2019, Saticoy Bay filed the instant lawsuit against Sunrise Ridge and NAS, alleging cause of action for Intentional/Negligent Misrepresentation, Breach of NRS 116, and Conspiracy.

12. On July 16, 2019, this matter was stayed for six months pending resolution of proceedings in the Federal Action.

13. On July 15, 2020, the stay was lifted. The parties in this matter stipulated to allow Plaintiff to file an amended complaint.

14. On June 22, 2021, Plaintiff filed its First Amended Complaint (the "FAC"), asserting claims for 1) Intentional/Negligent Misrepresentation; 2) Breach of NRS 116.1113; 3) Conspiracy; 4) Violation of NRS 113; and 5) Unjust Enrichment.

15. Any finding of fact that should be a conclusion of law shall be treated as such.

CONCLUSIONS OF LAW

1. The Court reviews Sunrise Ridge's Motion under Rule 12(b)(5) of the Nevada Rules of Civil Procedure ("NRCP"). NRCP 12(b)(5) provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Nev. R. Civ. P. 12(b)(5). When ruling on such a motion, the factual allegations in the complaint are treated as true and all inferences are drawn in favor of the plaintiff. *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285 (2014). A complaint should be dismissed when the allegations are insufficient to entitle the plaintiff to relief. *Id.*

2. Nevada has adopted the Uniform Common Interest Owner Act through Nevada Revised Statutes ("NRS") Chapter 116.

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1 3. NRS 116 establishes that homeowners' associations ("HOA" or "HOAs")
2 may impose assessments. See NRS 116.3115.

3 4. NRS 116 establishes that HOAs have a lien against units for
4 assessments. See generally NRS 116.3116.

5 5. Sunrise Ridge foreclosed on the Property pursuant to NRS 116.

6 6. Under the version of NRS 116 in effect at the time of the Foreclosure Sale,
7 neither Sunrise Ridge nor NAS had an affirmative duty to disclose to potential bidders
8 the existence of payments or attempted payments on the HOA's lien.

9 7. Under Nevada law, intentional misrepresentation requires three elements:
10 "(1) a false representation that is made with either knowledge or belief that it is false or
11 without a sufficient foundation, (2) an intent to induce another's reliance, and (3)
12 damages that result from this reliance." *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d
13 420, 426 (2007) (citations omitted). As for negligent misrepresentation, Nevada law
14 requires a plaintiff to show that the defendant is "one who, without exercising
15 reasonable care or competence, 'supplies false information for the guidance of others in
16 their business transactions' is liable for 'pecuniary loss caused to them by their
17 justifiable reliance upon the information.'" *Barmettler v. Reno Air, Inc.*, 114 Nev. 441,
18 449, 956 P.2d 1382, 1387 (1998) (citations omitted).

19 8. Neither Sunrise Ridge nor NAS had an affirmative duty to disclose to
20 Plaintiff the existence of the Attempted Payment. See *Noonan v. Bayview Loan*
21 *Servicing, LLC*, 438 P.3d 335 (Nev. 2019) (finding that summary judgment was
22 appropriate on the plaintiff's negligent misrepresentation claim because the HOA
23 "neither made an affirmative false statement nor omitted a material fact it was bound to
24 disclose.").

25 9. As such, the only way a misrepresentation could have been made would
26 be for Plaintiff to have specifically inquired about whether payment was made on the
27 HOA's lien, and in response be advised specifically that no such payments had been
28 made.

1 Here, Plaintiff does not allege that Defendants made any active
2 misrepresentation; rather, he alleges only that Defendants are guilty of a material
3 omission by failing to advise Plaintiff about BANA's Attempted Payment "upon inquiry."
4 This is insufficient to state a claim for relief for Intentional/Negligent Misrepresentation.

5 10. Because there was no misrepresentation – neither intentional nor
6 negligent – Plaintiff's remaining causes of action necessarily fail to state claims upon
7 which relief can be granted.

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ORDER

In light of the above findings of fact and conclusions of law:

IT IS HEREBY ORDERED that Sunrise Ridge's Motion is GRANTED pursuant to Nevada Rule of Civil Procedure ("NRCP") 12(b)(5), and that Plaintiff's Complaint is dismissed with prejudice and judgment entered thereon.

Dated this 6th day of September, 2021



NH

7E8 682 40D8 0DBB
Jacqueline M. Bluth
District Court Judge

Submitted by:

LIPSON NEILSON P.C.

/s/ Jonathan K. Wong

J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JONATHAN K. WONG, ESQ.
Nevada Bar No. 13621
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Las Vegas, Nevada 89144
Attorneys for Defendant

Approved as to form and content by:

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Christopher L. Benner

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CHRISTOPHER L. BENNER, ESQ.
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Las Vegas, Nevada 89148
Attorney for Plaintiff

Sydney Ochoa

From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, August 27, 2021 2:12 PM
To: Jonathan Wong; Roger Croteau
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

Okay, if there was no discussion of 56(d), I would infer it was moot. You can use my e-signature.

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
2810 Charleston Boulevard, No. H-75
Las Vegas, NV 89102
(702) 254-7775
chris@croteaulaw.com

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From: Jonathan Wong <JWong@lipsonneilson.com>
Sent: Friday, August 27, 2021 2:07 PM
To: Chris Benner <chris@croteaulaw.com>; Roger Croteau <rcroteau@croteaulaw.com>
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

Hi Chris –

The judge granted on the basis of Rule 12(b)(5) and not Rule 56, so the request for 56(d) relief never came into play. That's why it wasn't mentioned in my draft order.

That being the case, please let me know if you are OK with us submitting this order to the court without discussion of 56(d) relief. Thanks.

Jonathan K. Wong, Esq.
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From: Chris Benner <chris@croteaulaw.com>
Sent: Friday, August 27, 2021 10:48 AM
To: Jonathan Wong <JWong@lipsonneilson.com>; Roger Croteau <rcroteau@croteaulaw.com>
Subject: RE: Saticoy Bay v. Sunrise Ridge HOA (6387 Hamilton Grove): proposed order

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Saticoy Bay, LLC, Series 6387
Hamilton Grove, Plaintiff(s)

CASE NO: A-19-790247-C

7 vs.

DEPT. NO. Department 17

8
9 Sunrise Ridge Master
Association, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 9/6/2021

16 J. William Ebert	bebert@lipsonneilson.com
17 Susana Nutt	snutt@lipsonneilson.com
18 Brandon Wood	brandon@nas-inc.com
19 Roger Croteau	croteaulaw@croteaulaw.com
20 Susan Moses	susanm@nas-inc.com
21 Croteau Admin	receptionist@croteaulaw.com
22 Sydney Ochoa	sochoa@lipsonneilson.com
23 Jonathan Wong	jwong@lipsonneilson.com
24 Juan Cerezo	jcerezo@lipsonneilson.com

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26
27
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