

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

MMV INVESTMENTS LLC, a Delaware
limited liability company,

Appellant,

vs.

DRIBBLE DUNK, LLC, a Nevada limited-
liability company;

No. 85337

Electronically Filed
Nov 18 2022 04:00 PM
Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

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 XVI
County Clark Judge Timothy Williams
District Ct. Case No. A-21-844680-B

2. Attorney filing this docketing statement:

Attorney Matthew Pruitt, Esq. Telephone 385-501-5026
Firm Kirton McConkie
Address 301 N 200 E #3A, St. George, UT 84770

Client(s) MMV Investments, Inc.

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

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

Attorney Renee M. Finch, Esq. Telephone (702) 363-5100
Firm MESSNER REEVES, LLP
Address 8945 West Russell Road, Suite 300
Las Vegas, Nevada 89148

Client(s) DRIBBLE DUNK, LLC, a Nevada limited-liability company; ALL NET, LLC, a Nev

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

N/A

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:

N/A

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

This action stems from events starting around May of 2010, wherein Respondents approached MMV and provided MMV with their plan to raise funds for building a proposed \$1.4 billion-dollar professional basketball arena in hopes to attract an NBA team to Las Vegas, Nevada. MMV ultimately lent money multiple times to Defendants through various loan agreements and promissory notes as part of a down payment for other larger financing of Defendants' as well as other project aspects totaling millions of dollars. Defendants have defaulted on amounts owed under the Loans. Appellant filed a Complaint of which Respondents filed a Motion to Dismiss or in the Alternative Motion for a More Definite Statement based on NRCP 9, 12(b)(5), NRS 11.190(1)(b) NRS 11.200, and NRS 11.390.

As a result, the District Court granted the motion.

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

- (1) Whether the Court improperly set aside defaults against Dribble Dunk, LLC and All Net, LLC
- (2) Whether the Court accepted all factual allegations in the Complaint as true and construed the pleadings liberally, drawing every reasonable inference in favor of the Plaintiff.
- (3) Whether it appeared beyond a doubt that the Plaintiff could prove no set of facts that would entitle the Plaintiff to relief.
- (4) Whether the Court erred in granting a Motion to Dismiss filed by a party in Default.
- (5) Whether the Court erred in granting the Motion to Dismiss in favor of Robinson prior to a hearing on Plaintiff's Partial Motion for Summary Judgment against Robinson.
- (6) Whether the Court erred in dismissing Robinson despite Robinson's personal guarantee and waiver of statute of limitations.

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

N/A

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(9) as this case originated in business court. Additionally, one issue Appellant raises on appeal relates to the United State Constitution and thus is applicable to NRAP 17(a)(11).

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

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Aug 12, 2022

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

N/A

17. Date written notice of entry of judgment or order was served Aug 17, 2022

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

19. Date notice of appeal filed Sep 6, 2022

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)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
NRAP 3A(b)(1) allows for an appeal to occur based on a final judgment entered. Here, the District Court granted Respondents' Motion to Dismiss and entered an Order regarding the same. Such order is a final judgment and thus is appealable.

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

(a) Parties:

MMV INVESTMENTS LLC

DRIBBLE DUNK, LLC

ALL NET, LLC

JACKIE L. ROBINSON

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

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

Appellate: a complaint was filed on November 29, 2021 for breach of contract, breach of implied covenant of good faith and and fair dealing, unjust enrichment, enforcement of promissory notes under NRS 104 UCC, and fraud.

Respondents: N/A.

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

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

☐ Yes

☒ No

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

Order is independently appealable under NRAP 3A(b)(1).

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.

MMV INVESTMENTS LLC
Name of appellant

Matthew Pruitt
Name of counsel of record

November 18, 2022
Date

/s/ Matthew Pruitt
Signature of counsel of record

Washington, Utah
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 18th day of November, 2022, 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.)

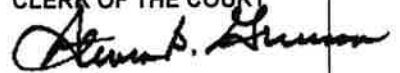
Messner Reeves LLP
Nick Nelson
8945 W. Russell Road, Suite 300
Las Vegas, NV 89148

Dated this 18th day of November, 2022

/s/ Carrie Tripp
Signature

Addendum to Civil Docketing Statement Section 9: Issues on Appeal

- 7) Whether the Court's findings of fact and conclusions of law support dismissal of all of Plaintiff's claims against all parties.
- 8) Whether Defendants reaffirmed the debts providing an exception to the statute of limitations
- 9) Whether the Court had sufficient evidence to find that debts were not properly reaffirmed
- 10) Whether the Court should have followed the discovery rule with regard to the statute of limitations, or at least permitted discovery with regard to the application of the discovery rule
- 11) Whether Plaintiff's properly averred fraud claims with particularity
- 12) Whether the Court erred in considering documents not included in the Plaintiff's Complaint.
- 13) Whether the Court erred in applying Nevada cases regarding tolling of the statute of limitations.
- 14) Whether the Court erred in following 9th Circuit case law regarding the consideration of documents outside the Complaint.
- 15) Whether Defendants' communications were a sufficient acknowledgement of the debt.
- 16)
- 17) Whether Defendants' conduct tolled the statute of limitations, or fraudulently induced Plaintiff to withhold its Complaint.
- 18) Whether the Court erred in determining that the Robinson guarantee is void under Nevada law because the obligations it guaranteed are time-barred by the statute of limitations.
- 19) Whether Nevada law under the finding that the Robinson Guarantee is void violates Article I, Section 10, Clause 1 (the Contract Clause) of the United States Constitution.



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CASE NO: A-21-844680-B
Department 16

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

MMV INVESTMENTS LLC, a Delaware
limited liability company,

Plaintiff,

vs.

DRIBBLE DUNK, LLC, a Nevada limited-
liability company; ALL NET, LLC, a Nevada
limited-liability company; JACKIE L.
ROBINSON, an individual; DOES I through
X inclusive; and ROES I through X,
inclusive,

Defendant.

CASE NO.:
DEPT. NO.:

COMPLAINT

Arbitration Exempt

Business Court

COME NOW, Plaintiff, MMV INVESTMENTS LLC, ("Plaintiff" or "MMV"), by and
through its attorneys of record, ALVERSON TAYLOR & SANDERS, and hereby submits this
Complaint against Defendants DRIBBLE DUNK, LLC, ALL NET, LLC, and JACKIE L.
ROBINSON (collectively "Defendants"), and makes the following allegations:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff MMV INVESTMENTS LLC ("MMV") is, and at all relevant times was,

1 a limited liability company in the State of Delaware and is located at 1401 Quail Street, Suite
2 205, Newport Beach CA 92660.

3 2. Upon information and belief, Defendant DRIBBLE DUNK, LLC (hereinafter
4 “Dribble Dunk”), is, and at all relevant times was, a Nevada limited-liability company located at
5 2300 W. Sahara Avenue, Suite 800, Las Vegas, Nevada 89102.

6 3. Upon information and belief, Defendant All Net, LLC (hereinafter “All Net”), is,
7 and at all relevant times was, a Nevada limited-liability company located at 2300 W. Sahara
8 Avenue, Suite 800, Las Vegas, Nevada 89102.

9 4. Upon information and belief, Defendant Jackie L. Robinson (hereinafter
10 “Robinson”), is, and at all relevant times was, an individual living in Clark County, Nevada.

11 5. Robinson is, and at all relevant times was, the owner of Dribble Dunk and All
12 Net.

13 6. Personal jurisdiction is appropriate as Defendants are either citizens of Nevada or
14 have made minimum contacts with Nevada.

15 7. The underlying loan agreements and promissory notes—which are the subject
16 matter of this lawsuit—were executed in Clark County, Nevada, and are subject to the laws and
17 jurisdiction of Clark County, Nevada pursuant to choice of law provisions.

18 8. As the underlying incident took place in Clark County, Nevada, and the fact that
19 Defendants are either residents of Nevada or have made minimum contacts with Nevada, this
20 district is the proper Nevada venue.

21 FACTUAL ALLEGATIONS

22 9. MMV is venture capital business which provides financing for startup companies
23 and businesses.

24 10. Upon information and belief, Dribble Dunk changed its entity name and became
25
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27
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All Net in 2013.

11. In or around May 2010 Defendants approached MMV and provided MMV with their plan to raise funds for building a proposed \$1.4 billion-dollar professional basketball arena in hopes to attract an NBA team to Las Vegas, Nevada.

12. MMV ultimately lent money multiple times to Defendants through various loan agreements and promissory notes as part of a down payment and other financing for Defendants' larger financing of the arena project as well as other project aspects.

13. MMV and Defendants entered into the following loan agreements and promissory notes ("Loans") of which Robinson personally guaranteed:

DATE	LOAN/NOTE AMOUNT
May 21, 2010	\$4,500,000.00
June 29, 2010	\$100,000.00
July 7, 2010	\$2,000,000.00
August 21, 2010	\$5,000,000.00
May 27, 2011	\$30,000.00
July 28, 2011	\$135,000.00
January 23, 2012	\$250,000.00
July 30, 2012	\$100,000.00
	\$12,115,000.00

14. The Loans at issue further allowed for accrual of interest and provided penalties in case of default of the same of which are not included and/or calculated in the above referenced amounts.

15. Defendants further promised MMV a 1% ownership interest in the arena's revenue in exchange for MMV to continue with its business relationship with Defendants.

16. Defendants have defaulted on amounts owed under the Loans.

17. Over the course of the business relationship between MMV and Defendants,

1 Defendants made representations that the project would take time due to other financing, permits,
2 and other approvals wherein MMV was understanding of the same but continuously requested
3 statuses of the project as well as documents containing investment information to ensure the
4 parties maintained the same loan amounts outstanding and owed.

5 18. MMV and Defendants continued communications with one another till the
6 summer of 2021 wherein on June 8, 2021, in writing, Robinson reaffirmed all of the debts and
7 recommitted to pay off the same within a new time frame.

8 19. Defendants have also reaffirmed the debts on other various occasions and times.

9 20. Defendants, however, remain in default on the Loans and communications have
10 broken down between the parties.

11 **FIRST CLAIM FOR RELIEF**

12 **(Breach of Contract—Defendants)**

13 21. MMV repeats and incorporates each and every preceding paragraph as though
14 fully set forth herein.

15 22. The Loans constituted valid and binding contracts.

16 23. Defendants' failure to pay the Loans and personal guarantees constitute defaults
17 under the same.

18 24. Pursuant to the Loans, Defendants owe MMV the principal amounts, plus interest
19 and any default penalties.

20 25. As a direct and proximate result of Defendants' acts and/or omissions, MMV has
21 been damaged in an amount in excess of \$15,000.00.

22 26. MMV was required to retain services of an attorney to commence this action and
23 are entitled to attorney's fees and costs under the provisions set forth within the Loans.

24 ///

SECOND CLAIM FOR RELIEF

(Breach of Implied Covenant of Good Faith and Fair Dealing—Defendants)

27. MMV repeats and incorporates each and every preceding paragraph as though fully set forth herein.

28. The covenant of good faith and fair dealing is implied into every contract entered into in Nevada.

29. MMV entered into valid and binding contracts with Defendants.

30. Defendants breached their covenant of good faith and fair dealing because of their failure to pay the amounts due under the Loans constituting conduct unfaithful to the purpose of the same.

31. Defendants' unfaithful conduct of defaulting on the Loans denied MMV its justified expectations of being repaid which is in contravention of Nevada's established public policy.

32. As a direct and proximate result of Defendants' acts and/or omissions, MMV has damages in excess of \$15,000.00.

33. MMV was required to retain services of an attorney to commence this action and are entitled to attorney's fees and costs under the provisions set forth within the Loans.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment— Defendants)

34. MMV repeats and incorporates each and every preceding paragraph as though fully set forth herein.

35. MMV agreed to provide millions of dollars in financing to Defendants which constituted a benefit conferred on Defendants.

36. Defendants did not produce a reciprocal benefit to MMV. Instead, Defendants

1 defaulted on their Loans and obligations.

2 37. Due to Defendants' default, Defendants received an inequitable benefit.

3 38. As a direct and proximate result of Defendants' acts and/or omissions, MMV has
4 damages in excess of \$15,000.00.

5 39. MMV was required to retain services of an attorney to commence this action and
6 are entitled to attorney's fees and costs under the provisions set forth within the Loans.

7 **FOURTH CLAIM FOR RELIEF**

8
9 **(Enforcement of Promissory Notes Under NRS 104 Uniform Commercial Code—
Defendants)**

10 40. MMV repeats and incorporates each and every preceding paragraph as though
11 fully set forth herein.

12 41. Valid and enforceable promissory notes existed between MMV and Defendants.

13 42. MMV is the holder of said promissory notes and is entitled to enforce the same
14 against Defendants.

15 43. Pursuant to the terms of the promissory notes, Defendants are overdue on the
16 same as Defendants have defaulted on the outstanding amounts due and owed.

17 44. As a direct and proximate result of Defendants' acts and/or omissions, MMV has
18 damages in excess of \$15,000.00.

19 45. MMV was required to retain services of an attorney to commence this action and
20 are entitled to attorney's fees and costs under the provisions set forth within the Loans.

21 **FIFTH CLAIM FOR RELIEF**

22 **(Fraud)**

23 46. MMV repeats and incorporates each and every preceding paragraph as though
24 fully set forth herein.

25 47. Defendants represented to Plaintiff during negotiations with Plaintiff that they
26
27
28

1 would repay the loans and promissory notes referred to herein, but knew and intended not to
2 repay such loans and promissory notes.

3 48. Defendants made fraudulent representations regarding the existence and/or value
4 of security for the loans and notes.

5 49. As a direct and proximate result of Defendants' acts and/or omissions, MMV has
6 damages in excess of \$15,000.00.

7 50. MMV was required to retain services of an attorney to commence this action and
8 are entitled to attorney's fees and costs under the provisions set forth within the Loans.
9

10 **WHEREFORE**, MMV requests judgment as set forth below:

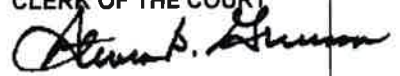
- 11 1. An award of compensatory, general, consequential and special damages in excess of
12 \$15,000.00;
13 2. For exemplary or punitive damages in excess of \$15,000.00;
14 3. Reasonable attorney's fees and costs incurred herein;
15 4. For interest at the statutory rate;
16 5. For such other and further relief as deemed proper by this Court.
17

18 Dated this 29th day of November, 2021.

19 **ALVERSON TAYLOR & SANDERS**

20 

21 MATTHEW PRUITT, ESQ.
22 Nevada Bar #12474
23 D. ANDREW LAJOIE, ESQ.
24 Nevada Bar #14901
25 6605 GRAND MONTECITO PARKWAY
26 SUITE 200
27 LAS VEGAS, NEVADA 89149
28 *Attorneys for Plaintiff*



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16 *Attorneys for Defendants*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

14 MMV INVESTMENTS LLC, a Delaware
15 limited liability company,
16 Plaintiff,

17 vs.

18 DRIBBLE DUNK, LLC, a Nevada limited
19 liability company; ALL NET, LLC, a
20 Nevada limited liability company; JACKIE
21 L. ROBINSON, an individual; DOES I
22 through X, inclusive; ROES I through IX,
23 inclusive,

24 Defendants.

Case No. A-21-844680-B

Dept. No. 16

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that on August 12, 2022, an Order Granting Defendants' Motion
25 to Dismiss in the above-captioned matter was entered on the Court Docket.
26

27 ///

1 A copy of the Order Granting Defendants' Motion to Dismiss in the above-captioned matter
2 is attached hereto.
3

4 DATED this 17th day of August, 2022.
5

6 MESSNER REEVES LLP

7 /s/ David M. Gould

8 M. Caleb Meyer, Esq.
9 Nevada Bar No. 13379
10 Renee M. Finch, Esq.
11 Nevada Bar No. 13118
12 David M. Gould, Esq.
13 Nevada Bar No. 11143
14 8945 W. Russell Road Ste 300
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17 Facsimile: (702) 363-5101
18 *Attorneys for Defendants*
19
20
21
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24
25
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27
28

1 **CERTIFICATE OF SERVICE**

2 On this 17th day of August, 2022, pursuant to Administrative Order 14-2 and Rule 9 of the
3 NEFCR, I caused the foregoing **NOTICE OF ENTRY OF ORDER** to be transmitted to the
4 person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the
5 Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report
6 reported service as complete and a copy of the service transmission report will be maintained with
7 the document(s) in this office.

8
9
10 Matthew M. Pruitt, Esq.
11 KIRTON MCCONKIE
12 50 East South Temple, Suite 400
13 Salt Lake City, Utah 84111
14 *Attorneys for Plaintiff*

15 /s/ Susan Ramirez

16 Employee of MESSNER REEVES LLP
17
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19
20
21
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ORDG

THE ALLISON LAW FIRM CHTD.

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heather@allisonnevada.com

Attorneys for Defendants

Dribble Dunk, LLC, All Net, LLC, and Jackie L. Robinson

DISTRICT COURT

CLARK COUNTY, NEVADA

MMV INVESTMENTS LLC, a Delaware
limited liability company,

Plaintiff,

vs.

DRIBBLE DUNK, LLC, a Nevada limited-
liability company; ALL NET, LLC, a Nevada
limited-liability company; JACKIE L.
ROBINSON, an individual DOES I through
X, inclusive; and ROES I through X,
inclusive,

Defendants.

Case No.: A-21-844680-B

Dept.: XVI

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS OR IN THE
ALTERNATIVE MOTION FOR A MORE
DEFINITE STATEMENT**

Defendant's Motion to Dismiss or in the Alternative Motion for a More Definite Statement came before this Court on July 13, 2022. The Court, having reviewed the pleadings and papers on file, being fully advised on the premises and having heard the arguments of counsel, for reasons stated on the record and good cause appearing therefore, rules as follows:

FINDINGS OF FACT

1. Plaintiff filed suit on November 29, 2021. The complaint included causes of action for breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, enforcement of promissory notes under NRS 104 Uniform Commercial Code, and fraud.

///

2. Plaintiff's complaint alleged that, as a fundraising venture for a basketball arena in Las Vegas, Defendants approached Plaintiff for funding in May 2010.

3. Plaintiff's complaint further alleged it entered into multiple loan agreements and promissory notes with Defendants between May 21, 2010(?) and July 2012.

4. Plaintiff also alleged that Defendant Jackie Robinson ("Robinson") signed an individual continuing guaranty for the liabilities.

5. The loan agreements and promissory notes were for the following amounts and included the following due dates:

Alleged Document Date	Alleged Amount	Repayment Date on Found Agreements
May 21, 2010	\$4,500,000.00	Within 90 days
June 29, 2010	\$100,000.00	Within 30 days
July 7, 2010	\$2,000,000.00	Within 60 days
August 21, 2010	\$5,000,000.00	Within 20 days
May 27, 2011	\$30,000.00	Within 30 days
July 28, 2011	\$135,000.00	Within 120 days
January 23, 2012	\$250,000.00	Within 90 days
July 30, 2012	\$100,000.00	Within 90 days

6. Plaintiff filed its complaint on November 29, 2021, 3,319 days (9 years, 1 month and 1 day) after the repayment date on the July 30, 2012 promissory note.

7. Plaintiff claimed it was never paid anything toward these alleged debts.

8. On June 8, 2021, Robinson emailed Mark and Medi Vakili, Plaintiff's owners, and said that he anticipated additional funding for the project, and intended to pay his investors. This email did not contain new terms of repayment, a new payment schedule, acknowledge the amount due, and was not signed by Robinson.

CONCLUSIONS OF LAW

9. Defendants are entitled to dismissal of Plaintiff's claims pursuant to NRCP 12(b)(5) if the Plaintiff fails to allege any set of facts for which relief could not be granted. *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993).

10. The test for determining whether the allegations are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested. *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984); *Western States Constr. v. Michoff*, 108 Nev. 931, 840 P.2d 1220, 1223 (1992).

11. The Court may consider documents mentioned in the pleading when determining a motion to dismiss. “A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.” NRCp 10(c). Defendants may rely on a document referred to in the complaint as part of a motion to dismiss, even if the document is not attached to the complaint. *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), overruled on other grounds by *Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002). “When the plaintiff fails to introduce a pertinent document as part of his pleading, the defendant may introduce the exhibit as part of his motion attacking the pleading.” *Id.* (*internal quotations omitted*). The Nevada Supreme Court has also held that the court can consider documents not attached to the complaint when the complaint explicitly refers to said documents. *Converse Profl Group v. Eighth Judicial Dist. Group (In re CityCenter Constr.)*, 129 Nev. 669, 676 fn 3, 310 P.3d 574, 579 (2013).

12. The statute of limitations for breach of contract is six years. NRS 11.190(1)(b). The six year clock begins to run when the cause of action accrues. A cause of action accrues when suit may be maintained thereon. *Clark v. Robinson*, 113 Nev. 949, 951, 944 P.2d 788, 790 (1997).

13. The statute of limitations for enforcement of promissory notes under NRS 104 is also six years. NRS 104.3118(1).

14. The statute of limitations on a contract is not tolled unless the debt accrued in the contract is reaffirmed. A contract is reaffirmed if it is “contained in some writing signed by the party to be charged thereby.” NRS 11.390; *see also Riff v. Kowall*, 76 Nev. 271, 273, 352 P.2d 819, 819 (1960) (holding that the statute of limitations is not tolled unless there is written acknowledgement of the debt); *Taylor v. Hendrie*, 8 Nev. 243, 245 (1873) (holding that a promissory note was unenforceable after the statute of limitations ran if there is insufficient “acknowledgement or promise to evidence a new or continuing contract.”).

15. Reaffirmation of a debt sufficient to toll a statute of limitations “must be clear, explicit and direct to the point that the debt is due.” *Wilcox v. Williams*, 5 Nev. 206, 209 (1869). Letters with vague future promises to pay are insufficient to toll a statute of limitations. *Id.*

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1 16. The cause of action begins to accrue when the breach occurs. *Mobile Discount Corp v. Price*, 99
2 Nev. 19, 21, 656 P.2d 851, 853 (1983). A tolling of the statute of limitations may only occur if the debtor
3 makes a payment **and** acknowledges the debt. *Id.* An acknowledgement of debt must be clear, distinct,
4 and unequivocal in order for the debt to be taken out of the statute of limitations. *Id.*

5 17. The statute of limitations for unjust enrichment is four years. NRS 11.490(3)(d).

6 18. The statute of limitations for breach of the implied covenant of good faith and fair dealing and for
7 fraud is three years. NRS 11.190(3)(d); *Kahn v. Dodds (In re AMERCO Derivative Litig.)*, 127 Nev. 196,
8 228, 252 P.3d 681, 703 (2011).

9 19. Allegations of fraud in a complaint must state with particularity the circumstances constituting
10 the fraud. NRCP 9(b). The circumstances that must be detailed include averments to the time, the place,
11 the identity of the parties involved, and the nature of the fraud. *Brown v. Kellar*, 97 Nev. 582, 584, 636
12 P.2d 874, 874 (1981). Bare allegations that fraud occurred are insufficient.

13 20. A plaintiff must bring forth a suit as soon as the plaintiff “*knows or should know* of facts
14 constituting a breach.” *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998) (*emphasis*
15 *in original*). The “plaintiff must use due diligence in determining the existence of a cause of action.” *Id.*

16 21. In this case, Plaintiff’s causes of action are time-barred. The causes of action for common law
17 breach of contract and for breach under NRS 104 should have been brought within 6 years of signing the
18 last promissory note. The cause of action for unjust enrichment should have been brought within 4 years
19 of signing the last promissory note. The causes of action for fraud and for the breach of the implied
20 covenant of good faith and fair dealing should have been brought within 3 years of signing the last
21 promissory note.

22 22. Plaintiff knew or should have known that it had potential causes of action against Defendants
23 before the statutes of limitations ran.

24 23. The email sent by Robinson on June 8, 2021 did not create a new or continuing contract for
25 indebtedness. Rather, it is a vague future promise to pay and is insufficient to toll or restart the statute of
26 limitations.

27 24. The guaranty Robinson signed is void under Nevada law because the obligations it guaranteed are
28 time-barred by the statute of limitations.



ORDER

Based on the foregoing; the Court, being fully advised on the matter and good cause appearing, orders as follows:

IT IS HEREBY ORDERED Defendants' Motion to Dismiss is **GRANTED** and the case is **DISMISSED**.

IT IS FURTHER ORDERED Defendants' request for relief in the form of a More Definite Statement is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that Plaintiff's Partial Motion for Summary Judgment, currently set for hearing on August 3, 2022, is **VACATED AS MOOT**.

IT IS SO ORDERED.

Dated this 12th day of August, 2022

District Court Judge

JM

14A 1F1 4560 42E0
Timothy C. Williams
District Court Judge

Submitted by:

THE ALLISON LAW FIRM CHTD.

By: /s/ Heather Caliguire Fleming

Noah G. Allison (Bar #6202)

Heather Caliguire Fleming (#14492)

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Attorneys for Defendants

Dribble Dunk, LLC, All Net, LLC, and Jackie L. Robinson

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **MMV Investments LLC,**
7 **Plaintiff(s)**

CASE NO: A-21-844680-B

8 **vs.**

DEPT. NO. Department 16

9 **Dribble Dunk, LLC,**
10 **Defendant(s)**

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting Motion 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: 8/12/2022**

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