

In the Supreme Court of Nevada

TRUDI LEE LYTLE; and JOHN ALLEN LYTLE, as
trustees of THE LYTLE TRUST,

Appellants,

vs.

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

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable TIMOTHY C. WILLIAMS, District Judge
District Court Case Nos. A-16-747800-C,
consolidated with A-17-765372-C

APPELLANTS' APPENDIX

VOLUME 3

PAGES 501-750

DANIEL F. POLSENBERG (SBN 2376)

DAN R. WAITE (SBN 4078)

ABRAHAM G. SMITH (SBN 13,250)

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Attorneys for Appellants

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CERTIFICATE OF SERVICE

I certify that on April 8, 2024, I submitted the foregoing
“Appellants’ Appendix” for filing *via* the Court’s eFlex electronic filing
system. Electronic notification will be sent to the following:

Kevin B. Christensen
Wesley J. Smith
Laura J. Wolff
CHRISTENSEN JAMES & MARTIN
7740 W. Sahara Avenue
Las Vegas, Nevada 89117

Attorneys for Respondents

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

04/21/2020	Initial receipt and review of the Lytle Trust's exhibits for hearing on the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders. Initial receipt, review and respond to correspondence from attorney W. Smith re hearing. Telephone conference with Mr. Smith re same.	1.60	\$320.00
04/22/2020	Prepare for and attend hearing on the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders and our joinder to the motion. Exchange multiple correspondences with attorneys W. Smith and D. Foley re same.	4.30	\$860.00
04/23/2020	Initial receipt and review of multiple correspondences from attorneys W. Smith and D. Foley re notice to receiver court of Judge Williams' decision finding the Lytle Trust in contempt for violation of court orders. Prepare status update in Legal Files. Prepare status update correspondence to claims counsel D. Chien. Initial receipt, review and respond to multiple correspondences from Ms. Chien re same.	1.20	\$240.00
04/27/2020	Initial receipt, review and respond to multiple correspondences from attorneys W. Smith and D. Foley re proposed order granting the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders and our joinder thereto. Prepare revisions to proposed order. Prepare correspondence to claims counsel D. Chien re same. Prepare correspondence to Mr. Smith and Mr. Foley re same. Initial receipt, review and respond to multiple correspondences from Mr. Smith re same. Initial receipt and review of correspondence from Ms. Chien re same.	3.80	\$760.00
05/01/2020	Initial receipt and review of multiple correspondences from attorneys D. Waite and W. Smith re revisions to proposed order granting the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders.	0.30	\$60.00
05/04/2020	Initial receipt, review and respond to correspondence from attorney W. Smith re revisions to proposed order granting the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders.	0.30	\$60.00
05/05/2020	Initial receipt, review and respond to correspondence from attorney W. Smith re additional revisions to proposed order granting the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders and our joinder thereto. Review revisions. Prepare correspondence to claims counsel D. Chien re same.	0.90	\$180.00
05/07/2020	Initial receipt and review of correspondence from attorney W. Smith re proposed order granting the September Trust	3.20	\$640.00

	Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders and our joinder thereto. Telephone conference with Mr. Smith re same. Exchange multiple correspondences with Mr. Smith re same. Exchange multiple correspondences with claims counsel D. Chien re same. Telephone conference with Ms. Chien re same. Exchange multiple correspondences with Ms. Chien re same.		
05/08/2020	Initial receipt and review of correspondence from opposing counsel D. Waite re proposed order granting the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court order and our joinder thereto.	0.10	\$20.00
05/14/2020	Initial receipt and review of the Boulden and Lamothe Trusts' satisfaction of judgment and withdrawal of joinder to the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders.	0.20	\$40.00
05/15/2020	Initial receipt and review of correspondence from attorney W. Smith re revised stipulation and order granting the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders and our joinder thereto. Review and further revise same. Exchange multiple correspondences with Mr. Smith re same.	0.50	\$100.00
05/18/2020	Initial receipt and review of correspondence from attorney W. Smith re additional revisions to proposed order granting the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders. Telephone conference with Mr. Smith re same. Exchange multiple correspondences with Mr. Smith re same.	1.10	\$220.00
05/19/2020	Initial receipt, review and detailed legal analysis of the Lytle Trust's objection to proposed order granting the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders, motion for clarification of the court's order and notice of hearing of same. Prepare status update in Legal Files.	0.70	\$140.00
05/20/2020	Initial receipt, review and respond to correspondence from attorney W. Smith re the Lytle Trust's objection and motion for clarification re proposed order granting the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders.	0.40	\$80.00
05/21/2020	Initial receipt and review of correspondence from opposing counsel D. Waite to the Court re scheduling of hearing on his objection and motion for clarification re proposed order granting the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders.	0.20	\$40.00

05/22/2020	Initial receipt and review of multiple correspondences from court judicial executive assistant K. Jacobs and opposing counsel D. Waite re hearing on his motion to clarify order granting the September Trust Plaintiffs' motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders and our joinder thereto. Initial receipt and review of court-executed order. Exchange multiple correspondences with legal assistant L. Engelman re same. Initial receipt and review of notice of entry of same.	0.90	\$180.00
5/29/2020	Initial receipt, review and detailed legal analysis of the September Trust Plaintiffs' opposition to the Lytle Trust's motion for clarification re order granting motion for order to show cause why the Lytle Trust should not be held in contempt for violation of court orders and our joinder thereto.	0.30	\$60.00
06/09/2020	Prepare motion for attorney's fees and affidavit in support thereof.	6.80	\$1,360.00
TOTAL			\$7,920.00

EXHIBIT B

000504

000504

**AFFIDAVIT OF COUNSEL IN SUPPORT OF ROBERT Z. DISMAN AND YVONNE
A. DISMAN'S MOTION FOR ATTORNEY'S FEES**

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Christina H. Wang, Esq., being first duly sworn, deposes and says:

1. I am an attorney with the Fidelity National Law Group; I am licensed to practice law before all courts in the State of Nevada; I have personal knowledge of the facts set forth herein; and I make this Affidavit in support of Counter-Defendants/Cross-Claimants Robert Z. Disman and Yvonne A. Disman (collectively referred to herein as, the "Dismans")' Motion for Attorney's Fees against Defendants/Counter-Claimants Trudi Lee Lytle and John Allen Lytle, Trustees of The Lytle Trust (collectively referred to herein as, the "Lyttles").

2. This action was commenced on or about December 8, 2016, by Plaintiffs Marjorie B. Boulden, Trustee of The Marjorie B. Boulden Trust ("Boulden"), and Linda Lamothe and Jacques Lamothe, Trustees of The Jacques & Linda Lamothe Living Trust (collectively referred to herein as, "Lamothe").

3. Boulden and Lamothe (at times collectively referred to herein as, "Plaintiffs") commenced the action for slander of title, injunctive relief, quiet title, and declaratory relief following the Lyttles' recording of abstracts of judgment against Plaintiffs' properties in a residential subdivision located in Clark County, Nevada called Rosemere Court ("Rosemere" or "subdivision").

4. At the time, Boulden was the owner of the property identified as APN: 163-03-313-008, commonly known as 1960 Rosemere Court, Las Vegas, NV 89117 ("1960 Rosemere Court"). Lamothe was the owner of the property identified as APN: 163-03-313-002, commonly known as 1830 Rosemere Court, Las Vegas, NV 89117 ("1830 Rosemere Court").

5. The abstracts related to a judgment that the Lyttles had obtained against their property owners association, Rosemere Estates Property Owners Association ("Rosemere Association" or "Association") in Eighth Judicial District Court, Clark County, Nevada, Case No. A-09-593497-C (the "Rosemere Judgment I").

1 6. The Lytles sought to enforce the Rosemere Judgment I against the properties in
2 Rosemere under NRS 116.3117.

3 7. In an order entered on or about July 19, 2017, this Court granted summary
4 judgment in favor of Plaintiffs and made the following legal conclusions:

5 **CONCLUSIONS OF LAW**

6 1. The Association is a “limited purpose association” as referenced
7 in NRS 116.1201(2).

8 2. As a limited purpose association, NRS 116.3117 is not applicable
9 to the Association.

10 3. As a result of the Rosemere [] Litigation [I], the Amended
11 CC&Rs were judicially declared to have been improperly adopted and recorded,
12 the Amended CC&Rs are invalid and have no force and effect and were declared
13 void ab initio.

14 4. The Plaintiffs were not parties to the Rosemere [] Litigation [I].

15

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

18 *See* Exhibit H, at 4:12-23. The Court thus held that the Lytles improperly clouded title to
19 Boulden and Lamothe’s properties by recording abstracts of the Rosemere Judgment I against
20 them; that those abstracts of judgment should be released; and that the Lytles are permanently
21 enjoined from “recording and enforcing the [] Judgment from the Rosemere [] Litigation [I] or
22 any abstracts related thereto against the Boulden Property or the Lamothe Property” and from
23 “taking any action in the future against [Boulden and Lamothe] or their properties based upon
24 the Rosemere [] Litigation [I].” *See id.* at pp. 5-7.

25 8. On or about August 4, 2017, Boulden sold her Rosemere property – 1960
26 Rosemere Court, to the Dismans.

27 9. On August 11, 2017, the Lytles filed a Counterclaim against Lamothe and the
28 Dismans seeking a declaration that an abstract of a second judgment that the Lytles had obtained
against the Rosemere Association (the “Rosemere Judgment II”) can be recorded against
Lamothe and the Dismans’ properties. *See* Exhibit I.

10 10. I was retained to defend the Dismans in this action, which also included my

1 participation in the Lytles' appeal of the Court's order.

2 11. On or about December 4, 2018, the Nevada Supreme Court affirmed the order in
3 its entirety. *See* Exhibit L. As a result, the Lytles agreed to dismiss the Counterclaim against
4 the Dismans without prejudice.

5 12. On January 23, 2019, the Dismans filed a motion against the Lytles for attorney's
6 fees that the Dismans incurred through January 22, 2019.

7 13. This Court granted the Dismans' motion on or about September 4, 2019.

8 14. The Lytles appealed the attorney's fee award to the Nevada Supreme Court and I
9 continued my defense of the Lytles with respect to the appeal (the "Attorney's Fee Appeal").

10 15. On January 27, 2020, Robert Disman contacted me regarding correspondence
11 sent to the Dismans by receiver Kevin Singer in Eighth Judicial District Court, Clark County,
12 Nevada, Case No. A-18-775843-C. *See* Exhibit P.

13 16. The correspondence informed the Dismans of Mr. Singer's appointment and
14 attached an order regarding his appointment to, among other things, "[i]ssue and collect a
15 special assessment upon all owners within the Association to satisfy the Lytle[s'] ... judgments
16 against the Association." *See id.* at Exhibit 1, p. 2, ¶ 2.

17 17. Further, the correspondence invited the Dismans to meet with Mr. Singer to share
18 ideas regarding payment of the Lytles' judgments. *See id.*

19 18. The Lytles' attempt to use the receiver to collect on their judgments against the
20 Association from the Dismans violated this Court's order and the injunctions contained therein.

21 19. I immediately embarked on an investigation of the receiver action and efforts to
22 address the Lytles' violation.

23 20. From January 27, 2020, to date, the Dismans have incurred attorney's fees in the
24 amount of \$7,920.00 for my services associated with the Lytles' violation. *See* Exhibit A.

25 21. To be clear, the Dismans have incurred substantially more attorney's fees than
26 what they are currently requesting, including, but not limited to, fees associated with the
27 Attorney's Fee Appeal.

28 22. The Dismans, however, have settled that appeal with the Lytles and are,

1 therefore, not including any fees associated therewith in their request. Nor does the request
2 include other fees incurred but which were for tasks unrelated to the Lytles' violation of the
3 Court's order.

4 23. Rather, all attorney's fees requested were actually and necessarily incurred and
5 are directly attributable to addressing the Lytles' violation. They are also exceedingly
6 reasonable and justified in light of the following factors.

7 24. My standard hourly rate is \$200.00, which is substantially lower than the
8 standard hourly rate of other attorneys practicing in the Las Vegas, Nevada legal market with
9 similar education and experience.

10 25. My work associated with addressing the Lytles' violation commenced on January
11 27, 2020, and continues to date. *See* Exhibit A.

12 26. With respect to my experience, I obtained my Juris Doctorate degree from the
13 William S. Boyd School of Law in 2005, after which I clerked for the United States District
14 Court for the District of Nevada for one (1) year.

15 27. I have been a practicing attorney for over fourteen (14) years. In particular, I
16 have been with the Fidelity National Law Group for over eight (8) years.

17 28. I have been the primary handling attorney in hundreds of litigation cases, and my
18 primary focus for the past seven (8) years has been in real estate litigation. I have been involved
19 in every facet of litigation, from commencement to resolution through trial, motion practice,
20 settlement, and/or other means.

21 29. With respect to addressing the Lytles' violation, I expended considerable efforts
22 on behalf of the Dismans, including, but not limited to, performing an investigation of the
23 receiver action, conducting legal research, preparing pleadings, and making a court appearance.

24 30. As a result of my efforts, the Lytles were held in contempt for violation of this
25 Court's orders with respect to the Dismans.

26 31. My background, experience, work performed and ultimate result more than
27 justify the amount incurred in addressing the Lytles' violation. *See Brunzell v. Golden Gate*
28 *Nat'l Bank*, 85 Nev. 345 (1969).

000509

Christina H. Wang
CHRISTINA H. WANG, ESQ.

[Signature]
NOTARY PUBLIC

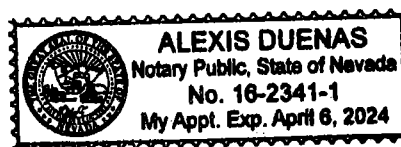


EXHIBIT C

000510

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(CC and R's)

This Declaration of Covenants, Conditions and Restrictions made this 4th Day of Jan, 1974 by Baughman & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

Lots 1 through 9 of Rosemere Court, a subdivision, recorded in Book 59 of Plats, Page 58, Clark County Records, Nevada.

WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land.

NOW, THEREFORE, Subdivider hereby declares that all of the land described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said land and are established and agreed upon for the attractiveness of said land and lots and every part thereof. All of such covenants, conditions and restrictions shall run with the land and shall be binding on the Subdivider and on all of its heirs, successors and assigns and on all other parties having or occupying any right, title, or interest in the described land or any part thereof, and on all of their heirs, successors and assigns.

A breach or violation of these CC & R's or any re-entry by reason of such breach or any liens established hereunder shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value as to said lots or PROPERTY or any part thereof; that these CC & R's shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee's sale or otherwise.

1. Lots shall be used for private one-family residential purposes exclusively. Customary out-buildings including guest house, hobby house, private garages or carports may be erected or maintained therein, consistent with City of Las Vegas Zoning Ordinances.

2. All lavatories and toilets shall be built indoors and be connected with the existing sewer system.

3. No antenna for the transmission or reception of television or any other form of electromagnetic radiation shall be erected, used or maintained on the roof of any structure within subdivision. In addition, no cooling or heating units shall be visible on the roof of any structure within subdivision.

9 4 0 1 0 1 2 4 1

4. No rubbish, brush, weeds, undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon said lots so as to render said premises a fire hazard, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity or the occupants thereof. Trash containers shall be visible on days of trash pick-up only. The Owner of the lot, for himself, his successors and assigns agrees to care for, cultivate, prune and maintain in good condition any and all trees, lawns and shrubs.

5. No odors shall be permitted to arise therefrom so as to render any such lot unsanitary, unsightly, offensive or detrimental to any other lot and no nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any other lot or to the occupants thereof; and without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices, except devices used exclusively for security purposes, shall be located, used or placed upon any lots. Stereo speakers may be used at reasonable volume levels.

No structure (including but not limited to dwelling units, garages, carports, walls and fences) shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Any and all repairs, redecorations, modifications or additions, interior and exterior, shall fully comply with all restrictions.

7. No owner shall permit any thing or condition to exist upon any lot which shall induce, breed or harbor infectious plant disease or noxious insects.

8. For continuity of the neighborhood appearance, every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar-style architecture, and shall have a tile roof, face into the cul-de-sac and contain not less than 3,000 square feet of floor space for one-story homes and 3,500 square feet of floor space for two-story homes, exclusive of basements, porches, patios, garages, carports, guest or hobby houses.

9. Driveways for Lots 1 and 9 must enter the cul-de-sac and not the entrance street.

10. Building plans of residences to be erected shall be approved by Subdivider prior to start of construction.

11. Easements for installation and maintenance of utilities and drainage facilities have been conveyed as shown on the recorded subdivision plat and otherwise of record.

12. No billboards, signs, or advertising of any kind excepting a conventional "for sale" or "for rent" sign not larger than two feet by two feet shall be erected or maintained upon any of said lots without the written consent of Subdivider.

13. No animals or fowl, other than household pets, shall be kept or maintained on said property or any portion thereof. At any one time the total number of household pets shall not exceed four. No horses shall be allowed within the subdivision at any time.

14. Each Owner of a lot agrees for himself and his successors and assigns that he will not in any way interfere with the natural or established drainage of water over his lot from adjoining or other lots in said subdivision, or that he will make adequate provisions for proper drainage in the event it is necessary to change the natural or established flow of water drainage over his lot. For the purpose hereof, natural drainage is defined as the drainage which occurred or which would occur at the time the overall grading of said subdivision, including the finish grading of each lot in said parcel was completed by the Subdivider.

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15. Landscaping in front of a residence shall be completed within three (3) months from completion of construction of that residence. Landscaping shall meet or surpass VA and FHA standards.

16. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any lot in a location visible from a public street.

16. No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.

17. No boat, trailer, mobile home, camper, or commercial vehicle may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.

18. No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.

19. Purchasers/Owners shall on an equal share basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider.

20. Purchasers/Owners or their successors in interest shall assume responsibility to maintain walls erected by Subdivider. Side and front walls shall be of the same type and color as presently installed and shall be erected within three months from completion of construction of house on said lot. Cost of side walls shall be agreed upon and equally shared by adjoining property owners. In the event side walls are already erected at time of purchase of lot, the Purchaser of that lot shall pay the adjoining lot owner who previously erected said wall one half (1/2) the cost as proven by his paid receipts. Payment shall be made within sixty (60) days from date of purchase of said lot.

21. A property owners committee shall be established by all owners of lots within the subdivision.

a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.

b. The exterior perimeter wall along the Oakey, Tenaya and El Parque frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 9 lot owners.

c. The Entrance Gate and it's related mechanical and electrical systems shall be maintained and/or repaired on an equal share basis by all lot owners.

d. The Private Drive (the interior street) used for ingress and egress purposes by all lots within the subdivision shall be maintained and/or repaired on an equal share basis by all owners of lots within the subdivision.

22. Construction trailers or mobile homes will not be permitted on any lot within the subdivision.

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23. Each of the provisions of these covenants, conditions and restrictions shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, shall not effect validity or enforceability of any other provision.

24. Except as otherwise provided herein, Subdivider or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any such lot owner or owners against any other owner or owners.

25. Attorney's Fees: In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

IN WITNESS WHEREOF, said Owner/Subdivider Baughman & Turner Pension Trust of Nevada, has hereunto affixed their signatures.

Date: 1/4/94 Stephen F. Turner
Owner/Subdivider/Trustee Stephen F. Turner

Date: 1-4-94 Richard J. Baughman
Owner/Subdivider/Trustee Richard J. Baughman

On this 4th day of JANUARY, 1994,
before me, the undersigned, a Notary Public in
and for said County and State, Personally appeared

Stephen F. Turner & Richard J. Baughman



Notary Public-State Of Nevada
COUNTY OF CLARK
DIANA LYN SCHULTZ
My Commission Expires
June 1, 1997

(this area for official seal)

Diana Lyn Schultz
Notary Public in and for said County and State

When Recorded Mail To:
Baughman & Turner, Inc.
1210 Hinson Street
Las Vegas, NV 89102

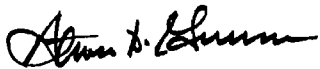
4 of 4

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
BAUGHMAN & TURNER, INC.
01-04-94 14:00 PDR 4
OFFICIAL RECORDS
BOOK: 940104 INST: 01241
FEE: 10.00 RPTT: .00

EXHIBIT D

000515

000515



CLERK OF THE COURT

OGSJ
Richard E. Haskin, Esq.
Nevada State Bar # 11592
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
(702) 836-9800

Attorneys for Plaintiff
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE
as Trustees of the Lytle Trust

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. A-09-593497-C
Dept.: XII

ORDER GRANTING PLAINTIFFS JOHN
ALLEN LYTLE AND TRUDI LEE
LYTLE'S MOTION FOR SUMMARY
JUDGMENT

PLEASE TAKE NOTICE that on April 1, 2013, the Court heard Plaintiffs JOHN ALLEN LYTLE and TRUDI LYTLE, as TRUSTEES OF THE LYTLE TRUST's ("Plaintiff"), Motion for Summary Judgment, and ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's (the "Association") Motion for Summary Judgment. After considering the motions, oppositions and replies thereto, the declarations, affidavits, and evidence submitted therewith, and hearing oral argument thereon, the Court grants Plaintiffs JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, as TRUSTEES OF THE LYTLE TRUST's Motion for Summary Judgment. The Court further denies ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's Motion for Summary Judgment.

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JUL 25 2013

1 Pursuant to NRCP 56(c), the Court's findings with respect to the undisputed material facts
2 and legal determinations on which the court granted summary judgment are set forth herein and as
3 follows:

4 **I. FINDINGS OF UNDISPUTED MATERIAL FACTS**

5 1. On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the
6 subdivider of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere
7 Court in Las Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of
8 Covenants, Conditions, and Restrictions ("Original CC&Rs.")

9 2. The Original CC&Rs consist of four (4) pages and 25 paragraphs, with no bylaws
10 annexed, no amendment provision, and no homeowners association, as defined by Chapter 116.

11 3. The Original CC&Rs create a "property owners' committee" with very limited
12 maintenance duties over specific common area items (exterior walls and planters, entrance way and
13 planters, entrance gate, and the private street), which are specifically set forth in Paragraph 21 of the
14 Original CC&Rs.

15 4. The Original CC&Rs then grant each homeowner, and not any homeowners'
16 association, the power to enforce the Original CC&Rs against one another.

17 5. Among other things, there are no rental or pet restrictions or construction deadline in
18 the Original CC&Rs.

19 6. The Developer then sold the nine (9) undeveloped lots between May 1994 and July
20 1996.

21 7. The first of the lots was conveyed by the Developer under the Original CC&Rs on
22 May 19, 1994.

23 8. Plaintiff's trustees, John Allen Lytle and Trudi Lee Lytle (the "Lyttles"), purchased a
24 Rosemere Estates property, assessor's parcel number ("APN") 163-03-313-009 ("Plaintiff's
25 Property"), on November 6, 1996, from the original buyer who first purchased it from the
26 Developer on August 25, 1995.

27 9. The Lyttles later transferred Plaintiff's Property to Plaintiff.

28 ///

1 10. The Lytles purchased the property with the sole purpose of building a custom home
2 thereon.

3 11. The primary reasons that the Lytles selected the property were the limited restrictions
4 contained in the Original CC&Rs and the lack of a "unit-owners association," as that term is legally
5 defined by Chapter 116 of the Nevada Revised Statutes ("NRS").

6 12. Further, the Lytles could not meet any restrictive deadline on construction, so
7 Plaintiff purposefully selected in a community with no construction deadline.

8 13. Plaintiff undertook the design of the new custom built home, and by 2006, Plaintiff
9 had developed preliminary plans that were approved by the Developer.

10 14. Sometime after Plaintiff purchased its property, a group of property owners formed
11 the Rosemere Estates Property Owners Association (the "Association"), with the sole purpose of
12 maintaining those common areas designated by Paragraph 21 of the Original CC&Rs.

13 15. In 1997, two owners, acting on behalf of all owners, filed Non-Profit Articles of
14 Incorporation (the "Articles") pursuant to NRS 82, which formalized the property owners'
15 committee and named it "Rosemere Estates Property Owners Association."

16 16. The property owners recognized that the Association did not have powers granted to
17 it other than those granted by the Original CC&Rs. For example, the Association had no power to
18 assess, fine, issue rules and regulations, or undertake other actions commonly reserved for
19 homeowners' associations.

20 17. In 1997, some of the property owners prepared and distributed a proposed set of
21 amended CC&Rs, which proposed to empower the Association and drastically increase the scope of
22 the Original CC&Rs.

23 18. The property owners determined that unanimous consent was required to amend the
24 Original CC&Rs. Due to a failure to obtain unanimous consent, as required, the proposed CC&Rs
25 were not adopted.

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1 19. At a February 23, 2004 Association meeting, two Board members presented a set of
2 proposed, amended CC&Rs. The newly proposed CC&Rs included various restrictions not within
3 the Original CC&Rs, including animal restrictions, exterior maintenance and repair obligations,
4 prohibitions against "unsightly articles," and other use restrictions and obligations.

5 20. The proposed amended CC&Rs were not unanimously approved at the February 23,
6 2004 meeting and, therefore, not adopted.

7 21. Without warning, consultation or advisement to the Rosemere property owners, on or
8 about July 2, 2007, Amended and Restated CC&Rs were again proposed to the property owners by
9 the Board.

10 22. This third set of proposed amended CC&Rs increased the complexity, scope, and size
11 of the CC&Rs, from 4 pages to 36 pages, and contained numerous additional restrictions upon the
12 property owners.

13 23. At the July 2, 2007 homeowners' meeting, the Association's Board presented the
14 property owners with a binder that contained the following: (1) new Articles of Incorporation, dated
15 June 6, 2007, which articles were never filed although represented to be as set forth herein; (2) a
16 letter from the Board to the Association members; (3) a Corporate Charter referencing the February
17 25, 1997 and June 6, 2007 Articles of Incorporation; (4) a section entitled "Governing Documents"
18 referencing the June 6, 2007 Articles of Incorporation; (5) the "First Statutorily Mandated
19 Amendment to the Bylaws of the Rosemere Estates Homeowners Association," containing the
20 recital "WHEREAS, the Declaration was recorded in the Office of Clark County Recorder on
21 January 4, 1994, which Declaration provides for a method to make amendments to the Declaration
22 and Bylaws...;" (6) the proposed Amended and Restated Covenants, Conditions and Restrictions
23 ("Amended CC&Rs"). Bylaws did not exist prior to 2007.

24 24. The binders containing all of the foregoing documents were presented to each
25 homeowner together with the following misrepresentations: (1) the June 6, 2007 Articles of
26 Incorporation were filed with the Secretary of State, (2) the original CC&Rs provided a method for
27 amendment, (3) the CC&Rs could be amended without unanimous consent, (4) the 1999 Nevada
28 Legislature, through adoption of Senate Bill 451, "mandated" that the original CC&Rs be changed

1 to conform to NRS Chapter 116 “without complying with the procedural requirements generally
2 applicable to the adoption of an amendment...,” and (5) all of the changes made were under NRS
3 116.2117.

4 25. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs
5 and changed the very nature of property ownership within Rosemere Estates. The Amended
6 CC&Rs contained numerous and onerous new use restrictions including the drastic expansion of the
7 powers, rights, and duties of the Association, a section entitled “Restrictions on Use, Alienation,
8 and Occupancy,” pet restrictions, parking restrictions, lease restrictions, the establishment of a
9 Design Review Committee with unfettered discretion, and a new and expansive definition of
10 “nuisance.”

11 26. The Amended CC&Rs also contained a morality clause, providing as follows:

12 No use that is reasonably deemed immoral, improper,
13 offensive, or unlawful by the Board of Directors may be
14 made of the Property or any portion thereof.

15 27. The Amended CC&Rs also contained a pet restriction that permits any animal found
16 off a leash to immediately be turned over to animal control, and any animal causing a “nuisance,” a
17 vague and undefined term, to be permanently removed from Rosemere Estates upon three days
18 written notice and hearing before the Board.

19 28. Finally, the proposed Amended CC&Rs contained a construction timeline that would
20 require Plaintiff to complete the construction of the custom home on the lot within a mere *60 days*
21 of receipt of approval from the proposed Design Review Committee—something never envisioned
22 in the Original CC&Rs and impossible to adhere to.

23 29. Plaintiff’s property is the only Property subject to this restriction as Plaintiff’s
24 Property was the only undeveloped lot at the time of amendment.

25 30. Further, the 60 day deadline is impossible to satisfy, and the homeowner is fined
26 \$50.00 per day for failure to comply with this impossible deadline.

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1 31. Pursuant to the Amended CC&Rs, approval for a home design was (1) entirely within
2 the Board's discretion, (2) based on Design Review Guidelines that have never been published, and
3 (3) not subject "to any objective standards of reasonableness."

4 32. After the Board presented the proposed Amended CC&Rs to the owners, together
5 with the written misrepresentations set forth above, the Board did not provide the owners with a
6 reasonable time to review or discuss the lengthy pack of legal documents, or to seek legal advice.
7 Rather, the Board insisted that the amendment was "a done deal."

8 33. Despite the misrepresentations introducing the governing documents, the vast
9 expansion of the Original CC&Rs, the lack of any review time or discussion, and the insistence that
10 the amendment was a "done deal," the Board asked the property owners to sign documents
11 acknowledging their approval, with a notary retained by the Board present to verify signatures.

12 34. The Amended CC&Rs were not agreed to by all property owners at the July 2, 2007
13 meeting. In fact, only five of the property owners approved, with three property owners who
14 refused to sign the amendment. A fourth homeowner submitted a disputed proxy that was not
15 counted by the Board.

16 35. Despite the failure to obtain the required unanimous approval for amending the
17 Original CC&Rs, the Association proceeded, on July 3, 2007, to record the Amended CC&Rs in the
18 office of the Recorder for Clark County, Nevada.

19 **II. LEGAL DETERMINATIONS**

20 **A. Summary Judgment Standard**

21 1. Summary judgment shall be rendered in favor of a moving party if the pleadings,
22 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
23 show that there is no genuine issue as to any material fact and that the moving party is entitled to
24 judgment as a matter of law. NRCP Rule 56(c).

25 2. "Summary Judgment is appropriate and shall be rendered forthwith when the
26 pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact
27 [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*,
28 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (*quoting* NRCP 56(c).)

3. The Nevada Supreme Court held that "Rule 56 should not be regarded as a disfavored procedural shortcut" but instead as an integral important procedure which is designed "to secure just, speedy and inexpensive determination in every action." *Wood*, 121 Nev. at 730, 121 P.3d at 1030 (internal citation omitted).

B. Plaintiff Is Entitled To Summary Judgment In Its Favor

4. A declaratory relief cause of action is proper where a conflict has arisen between the litigating parties, and the action is brought to establish the rights of the parties. 26 C.J.S. Declaratory Judgments § 1.

5. Plaintiff's Cause of Action for Declaratory Relief seeks (1) a declaration from the Court that the Amended CC&Rs were not properly adopted by the members of the Association and were improperly recorded against Plaintiff's Property, and (2) a permanent injunction against the Association from adopting further amendments without unanimous consent.

6. Summary judgment as to the Declaratory Relief Cause of Action is warranted based on the Court's finding that the Amended CC&Rs were not adopted with unanimous consent, as required, and were, therefore, improperly recorded against Plaintiff's Property.

C. Rosemere Is A Limited Purpose Association Under NRS 116.1201 And Not A Unit-Owners' Association Within The Meaning Of NRS, Chapter 116

7. In order to create a valid unit-owners' association, as defined by Chapter 116, certain formalities "must" be followed. NRS 116.3101 provides, in pertinent part,

Organization of unit-owners' association.

1. A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed. . .

8. The purpose of Section 3101 is to provide the purchaser record notice that he/she/it is purchasing a property that is governed by a homeowners association and will be bound by Chapter 116, *et seq.*

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1 9. There is a strong public policy in protecting property owners in common-interest
2 communities against any alteration of the burdens of character of the community. Rest. 3d,
3 Property – Servitudes, § 6.10, Comments.¹

4 10. A buyer is said to have “record notice” of the recorded covenants, conditions and
5 restrictions on the property, thus the mandate that the homeowners’ association be formed prior to
6 conveyance of the first unit in the community, together with the requirement that the CC&Rs be
7 recorded. NRS 116.3101.

8 11. Here, no Chapter 116 unit-owners’ association was formed because no association
9 was organized prior to the date the first unit was conveyed. The Association was not formed until
10 February 25, 1997, more than three years after Rosemere Estates was formed and the Original
11 CC&Rs were recorded.

12 12. Further, the Association did not have any powers beyond those of the “property
13 owners committee” designated in the Original CC&Rs—simply to care for the landscaping and
14 other common elements of Rosemere Estates as set forth in Paragraph 21 of the Original CC&Rs.

15 13. The Original CC&Rs provide for the creation of a “property owners’ committee,”
16 which is a “limited purpose association,” as defined by the 1994 version of NRS 116.1201, then in
17 effect. That provision provided that Chapter 116 did not apply to “Associations created for the
18 limited purpose of maintaining. . . “[t]he landscape of the common elements of a common interest
19 community. . . .”

20 14. In 1997, Rosemere Estates’ owners formed the Association for the express and
21 limited purpose of (1) tending to the limited matters set forth in Paragraph 21 of the Original
22 CC&Rs, (2) holding a bank account in which to deposit and withdraw funds for the payment of the
23 limited common area expenses assigned to the Owners Committee, and (3) purchasing liability
24 insurance. The intent was never to form a unit-owners’ association within the meaning of Chapter
25 116.

26 ///

27
28 ¹ “Property owners in common-interest communities are protected against amendments that unfairly
change the allocation of burdens in the community or change the character of the community.” Rest.
Law 3d, Property – Servitudes, § 6.10, Comments.

1 15. A limited purpose association cannot enforce “any restrictions concerning the use of
2 units by the units’ owners, unless the limited-purpose association is created for a rural agricultural
3 residential common-interest community.” NRS 116.1201(2)(a)(5). There is no question that
4 Rosemere Estates was not “created for a rural agricultural residential common-interest community,”
5 hence the Association cannot enforce “any restrictions concerning the use of units by the units’
6 owners....”

7 16. In reviewing the language of the Original CC&Rs, the Court must strictly construe
8 the covenants thereto and any “doubt will be resolved in favor of the unrestricted use of the
9 property....” *Dickstein v. Williams*, 93 Nev. 605, 608, 571 P.2d 1169 (1977); *see also, e.g., South*
10 *Shore Homes Ass’n v. Holland Holidays*, 549 P.2d 1035, 1043 (Kan. 1976); *Duffy v. Sunburst*
11 *Farms East Mutual Water & Agricultural Company, Inc.*, 604 P.2d 1124 (Ariz. 1980); *Bordleon v.*
12 *Homeowners Ass’n of Lake Ramsey*, 916 So.2d 179, 183 (La. Ct. App. 2005); *Cummings v. Dosam*,
13 159 S.E.2d 513, 517 (N.C. 1968); *Long v. Branham*, 156 S.E.2d 235, 236 (N.C. 1967).

14 17. In keeping with this well-settled and general principle, the Court construes the
15 Original CC&Rs pursuant to the plain meaning of the language therein. Nowhere is there reference
16 in the Original CC&Rs to a “unit-owners’ association” or “homeowners association.” Rather, the
17 Developer created a 116.1201 *limited purpose association* termed a “property owners’ committee,”
18 and the Developer provided that committee with limited, rather than comprehensive, duties and
19 powers.

20 18. Consistent with the absence of a governing body, *e.g.* unit-owners’ association,
21 delegated with the duty to enforce the Original CC&Rs, the Developer provided each homeowner
22 the right to independently enforce the Original CC&Rs against one another.

23 19. The Association is a limited purpose association under NRS 116.1201, is not a
24 Chapter 116 “unit-owners’ association,” and is relegated to only those specific duties and powers
25 set forth in Paragraph 21 of the Original CC&Rs and NRS 116.1201.

26 ///

27 ///

28 ///

D. The CC&Rs Can Only Be Amended By Unanimous Consent of All Property Owners

20. Because Rosemere Estates is a limited purpose association under NRS 116.1201, NRS 116.2117, the statutory provision typically governing amendments to the CC&R's, does not apply here.

21. The Original CC&Rs are mutual and reciprocal among all of the Rosemere Estates property owners. The Original CC&Rs "touch and concern" (and thus "run with") the land. Accordingly, under long-standing and well-established common law, the Original CC&Rs are binding, and not subject to amendment, absent a new conveyance properly executed by all Rosemere property owners and in conformance with all of the other legal requirements for a valid transfer of an interest in real property. In short, there can be no valid amendment of the Original CC&Rs absent, at a minimum, the unanimous consent of all Rosemere property owners.

22. There has never been unanimous consent to amend the Original CC&Rs and there has never been a valid conveyance of Plaintiff's interest in the Original CC&Rs. Specifically, unanimous consent was not received in 2007, when the invalid Amended CC&Rs were wrongfully recorded by the Association.

23. Even if the provisions related to amendment within Chapter 116 were to apply, the Amended CC&Rs would still be invalid, and wrongly recorded, because NRS 116.2117 required unanimous consent under these circumstances. NRS 116.2117 specifies the kinds of amendments that require unanimous unit owner approval (as opposed to majority or supermajority approval). In particular, a "change of use" always requires unanimous approval.

NRS 116.2117 provides, in pertinent part:

1. . . .the declaration, including any plats, may be amended only by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

* * *

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///

1 4. Except to the extent expressly permitted or required by other provisions of this
2 chapter, no amendment may change the boundaries of any unit, change the allocated
3 interests of a unit **or change the uses to which any unit is restricted, in the absence of**
4 **unanimous consent of only those units' owners whose units are affected and the**
5 **consent of a majority of the owners of the remaining units.**

6 (Emphasis added.)

7 24. For the reasons set forth above, the Association's counter-motion for summary
8 judgment is without merit.

9 **III. JUDGMENT**

10 IT IS HEREBY ADJUDGED AND DECREED:

11 **A. Declaration**

12 25. Pursuant to the foregoing, this Court declares and orders that the Amended CC&Rs
13 were not properly adopted or recorded, that the Amended CC&Rs are invalid, and that the Amended
14 CC&Rs have no force and effect. This Order, may be recorded in the Office of the Clark County
15 Recorder's Office by any party and, once recorded, shall be sufficient notice of same.

16 **B. Injunctive Relief**

17 26. The Association is permanently enjoined from recording and enforcing the Amended
18 CC&Rs. The Association is hereby ordered to release the Amended CC&Rs, Document Number
19 20070703-0001934, recorded with the Clark County Recorder on July 3, 2007, within ten (10) court
20 days after the date of Notice of Entry of this Order.

21 **C. Plaintiff's Monetary Damages**

22 27. Plaintiff's monetary damages are subject to a prove-up hearing, and Plaintiff is to
23 submit a separate motion regarding the same.

24 **D. The Association's Motion For Summary Judgment**

25 28. The Association's Motion for Summary Judgment is denied.

26 **E. Costs**

27 29. Plaintiff is deemed the prevailing party in this action. Plaintiff is directed to prepare,
28 file and serve a Memorandum of Costs.

///

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT

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Dated this 29 day of July, 2013.


MICHELLE LEAVITT, DISTRICT COURT JUDGE

Richard E. Haskin, Esq.
Gibbs, Giden, Locher, Turner, Senet & Wittbrodt LLP
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113
Attorney for Plaintiff
JOHN ALLEN LYTLE and TRUDI LEE LYTLE
as Trustees of the Lytle Trust

EXHIBIT E

000528

000528


CLERK OF THE COURT

1 Richard E. Haskin, Esq.
Nevada State Bar # 11592
2 Timothy P. Elson, Esq.
Nevada State Bar # 11559
3 **GIBBS GIDEN LOCHER TURNER**
SENET & WITTBRODT LLP
4 7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
5 (702) 836-9800

6 Attorneys for Plaintiff
JOHN ALLEN LYTLE and
7 TRUDI LEE LYTLE

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

10 JOHN ALLEN LYTLE and TRUDI LEE LYTLE,
11 as Trustees of the Lytle Trust,

CASE NO. A-09-593497-C
Dept.: XII

12 Plaintiff,

ABSTRACT OF JUDGMENT

13 v.

14 ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; and DOES 1 through 10,
15 inclusive,

16 Defendants.

17
18 In the District Court of Clark County, State of Nevada, on July 29, 2013, a Judgment was
19 entered in favor of Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the
20 Lytle Trust ("Plaintiffs") and against Defendant ROSEMERE ESTATES PROPERTY OWNERS'
21 ASSOCIATION ("Defendant").

22 On May 25, 2016, the District Court entered an Order Awarding Attorneys' Fees in the
23 amount of \$297,072.66 in favor of Plaintiff and against Defendant.

24 On June 17, 2016, the District Court entered an Order Awarding Plaintiffs' Damages
25 Following Prove-Up Hearing against Defendant in the amount of \$63,566.93.

26 Finally, on July 22, 2016, the District Court entered and Order Awarding Plaintiffs' Costs
27 against Defendant in the amount of \$599.00.

28 ///

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1 Pursuant to the foregoing, the total amount of the Judgment, plus attorneys' fees and costs is
2 \$361,238.59. In addition, Plaintiff is due post-judgment interest at the Nevada legal rate annually
3 until the Judgment is satisfied.

4 I certify that the foregoing is a correct abstract of the judgment rendered in the above action
5 in my Court.

6
7 DATED: 8/15/16


DISTRICT COURT JUDGE
P.L.

8
9
10
11 Respectfully requested by:

12 GIBBS GIDEN LOCHER TURNER
13 SENET & WITTBRODT LLP

14
15 By: 

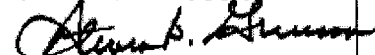
16 Richard E. Haskin, Esq.
17 Nevada State Bar # 11592
18 Timothy P. Elson, Esq.
19 Nevada State Bar # 11559
20 7450 Arroyo Crossing Parkway, Suite 270
21 Las Vegas, Nevada 89113-4059
22 Attorneys for Plaintiff
23 JOHN ALLEN LYTTLE and TRUDI LEE
24 LYTTLE
25
26
27
28

EXHIBIT F

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7/25/2017 8:31 AM
Steven D. Grierson
CLERK OF THE COURT



1 Richard E. Haskin, Esq.
2 Nevada State Bar # 11592
3 **GIBBS GIDEN LOCHER TURNER**
4 **SENET & WITTBRODT LLP**
5 1140 N. Town Center Drive, Suite 300
6 Las Vegas, Nevada 89144-0596
7 Telephone: (702) 836-9800
8 E-mail: rhaskin@gibbsgiden.com

9 Attorneys for Plaintiffs
10 JOHN ALLEN LYTLE and
11 TRUDI LEE LYTLE

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

14 JOHN ALLEN LYTLE and TRUDI LYTLE, as
15 Trustees of the Lytle Trust,

16 Plaintiffs,

17 v.

18 ROSEMERE ESTATES PROPERTY OWNERS
19 ASSOCIATION, a Nevada non-profit corporation;
20 and DOES I through X, inclusive,

21 Defendants.

22 CASE NO. A-10-631355-C
23 Dept.: XXXII

24 **ABSTRACT OF JUDGMENT**

25 ROSEMERE ESTATES PROPERTY OWNERS
26 ASSOCIATION, a Nevada non-profit corporation;
27 and DOES I through X, inclusive,

28 Counterclaimants,

v.

JOHN ALLEN LYTLE and TRUDI LYTLE, as
Trustees of the Lytle Trust,

Counterdefendants.

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///

JUL 12 2017

1 In the District Court of Clark County, State of Nevada, on November 14, 2016, an Order
 2 Granting Summary Judgment was entered in favor of Plaintiffs JOHN ALLEN LYTLE and TRUDI
 3 LEE LYTLE, as Trustees of the Lytle Trust ("Plaintiffs") and against Defendant ROSEMERE
 4 ESTATES PROPERTY OWNERS' ASSOCIATION ("Defendant").

5 On April 14, 2017, the District Court entered an Order Awarding Attorneys' Fees in the
 6 amount of \$274,608.28, and \$4,725.00 in costs, all in favor of Plaintiff and against Defendant.

7 On May 11, 2017, the District Court entered an Order Awarding Plaintiffs' Punitive
 8 Damages Following Prove-Up Hearing against Defendant in the amount of \$823,824.84, pursuant to
 9 NRS 42.005.

10 Pursuant to the foregoing, the total amount of the Judgment, including attorneys' fees and
 11 costs, is \$1,103,158.12.

12 In addition, Plaintiffs are due post-judgment interest at the Nevada legal rate annually until
 13 the Judgment is satisfied.

14 I certify that the foregoing is a correct abstract of the judgment rendered in the above action
 15 in my Court.

16
 17 DATED: July 20, 2017

[Signature]
 DISTRICT COURT JUDGE

ROB BARE
 JUDGE, DISTRICT COURT, DEPARTMENT 32

18
 19
 20 Respectfully requested by:

21 GIBBS GIDEN LOCHER TURNER
 22 SENET & WITTBRODT LLP

23 By: [Signature]

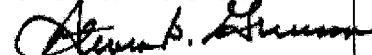
24 Richard E. Haskin, Esq.
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 25 Timothy P. Elson, Esq.
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 26 7450 Arroyo Crossing Parkway, Suite 270
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 JOHN ALLEN LYTLE and TRUDI LEE
 28 LYTLE

EXHIBIT G

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11/8/2017 2:25 PM
Steven D. Grierson
CLERK OF THE COURT



1 **ORD**

2 Richard E. Haskin, Esq.
3 Nevada State Bar # 11592

4 **GIBBS GIDEN LOCHER TURNER**
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8 (702) 836-9800

9 Attorneys for Plaintiff
10 JOHN ALLEN LYTLE AND TRUDI LEE
11 LYTLE

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 JOHN ALLEN LYTLE and TRUDI LEE LYTLE,
15 as Trustees of the Lytle Trust,

16 Plaintiff,

17 v.

18 ROSEMERE ESTATES PROPERTY OWNERS'
19 ASSOCIATION; SHERMAN L. KEARL, an
20 individual; GERRY G. ZOBRIST, an individual;
21 and DOES 1 through 10, inclusive,

22 Defendants.

CASE NO.: A-15-716420-C
Dept.: XXX

**ORDER GRANTING PLAINTIFF JOHN
ALLEN LYTLE AND TRUDI LEE
LYTLE'S, AS TRUSTEES OF THE LYTLE
TRUST, MOTION FOR ATTORNEYS'
FEES**

23 On November 2, 2017, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion
24 for Attorneys' Fees and Costs came on regularly for hearing, the Honorable Jerry A. Wiese
25 presiding. Plaintiffs appeared through counsel, Richard E. Haskin, Esq. of Gibbs Giden Locher
26 Turner, Senet & Wittbrodt, LLP. There was no appearance for Defendant Rosemere Estates
27 Property Owners' Association ("Defendant"). Defendant did not file an opposition to the Motion
28 and did not make an appearance at the hearing. Having considered the Motion, the arguments of
counsel, the pleadings and papers on file herein, and good cause appearing therefore, the Court finds:

1. As the prevailing parties, Plaintiffs are entitled to an award of attorney fees under the
Original CC&Rs and NRS § 116.4117.

///

///

2. The plain terms of the Original CC&Rs authorize an award of fees in favor of Plaintiffs. As the Original CC&Rs provide, in pertinent part:

24. Except as otherwise provided herein, Subdivider or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions, and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any lot owners or owners against any other owner or owners.

25. Attorney's Fees: In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

See Original CC&Rs, ¶¶ 24, 25.

3. Plaintiffs prevailed in this action, and the Court granted Plaintiffs' motion for summary judgment, in its entirety. Accordingly, Plaintiffs are entitled to an award of attorney fees, pursuant to the terms of the Original CC&Rs.

4. Further, Plaintiffs are also entitled to an award of attorney fees pursuant to NRS 116.4117. NRS 116.4117 provides as follows:

1. Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief. . .

4. The court may award reasonable attorney's fees to the prevailing party.

5. The term "damages" in the phrase "suffering actual damages" refers to damages in the general sense of specifically provable injury, loss, or harm rather than the specific sense of economic damages. Whether quantifiable as a monetary loss or not, Plaintiffs suffered an injury, loss or harm as a result of the Association's actions. Accordingly, under the statute they had the right to bring a civil action for damages or other appropriate relief and, having, prevailed thereon may be awarded their reasonable attorney fees as the prevailing party.

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DE

1 Submitted by:

2 GIBBS GIDEN LOCHER TURNER, SENET
3 & WITTBRODT LLP

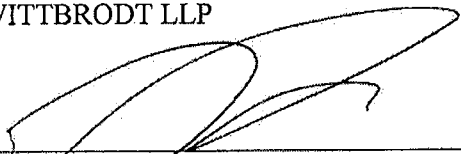
4 
5 _____
6 Richard E. Haskin, Esq.
7 Nevada State Bar # 11592
8 1140 N. Town Center Drive, Suite 300
9 Las Vegas, Nevada 89144
10 Attorneys for Plaintiffs
11 JOHN ALLEN LYTLE and
12 TRUDI LEE LYTLE
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EXHIBIT H

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Steven D. Grierson

CLERK OF THE COURT

**ORDR**

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy P. Elson, Esq.
Nevada State Bar # 11559

GIBBS GIDEN LOCHER TURNER**SENET & WITTBRODT LLP**

1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144-0596
(702) 836-9800

Attorneys for Defendants

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

DISTRICT COURT**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

Case No.: A-16-747800-C

Dept.: XVI

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

Hearing: June 29, 2017

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

///

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

///

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

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

CONCLUSIONS OF LAW

1. The Association is a “limited purpose association” as referenced in NRS 116.1201(2).

2. As a limited purpose association, NRS 116.3117 is not applicable to the Association.

3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and have no force and effect and were declared void ab initio.

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

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

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

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

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

///

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

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

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

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

ORDER

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

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

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

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

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

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

///

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

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

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GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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

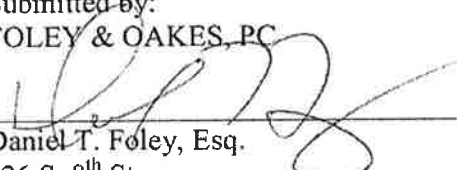
5 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the
6 Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or
7 their properties based upon the Rosemere LPA Litigation.

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

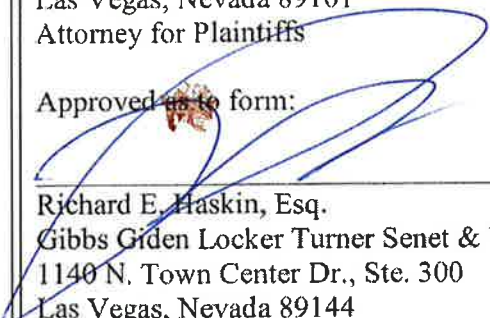
12
13 DATED this 19th day of July 2017

14
15
16 
DISTRICT COURT JUDGE
17 

18 Submitted by:
19 FOLEY & OAKES, PC

20 
21 Daniel T. Foley, Esq.
22 626 S. 8th St.
23 Las Vegas, Nevada 89101
24 Attorney for Plaintiffs

25 Approved as to form:

26 
27 Richard E. Haskin, Esq.
28 Gibbs Giden Locker Turner Senet & Wittbrodt LLP
1140 N. Town Center Dr., Ste. 300
Las Vegas, Nevada 89144
Attorney for Defendants

GIBBS GIDEN LOCKER TURNER SENET & WITTBRODT LLP

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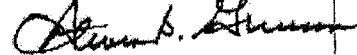
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EXHIBIT I

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Steven D. Grierson
CLERK OF THE COURT



1 **ANAC**
Richard E. Haskin, Esq.
2 Nevada State Bar # 11592
Timothy P. Elson, Esq.
3 Nevada State Bar # 11559
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6 Attorneys for Defendants
7 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST
8

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

14 Plaintiff,

15 v.

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

18 Defendants.
19

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

22 Counter-Claimants,

23 v.

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

26 Counter-Defendants.
27
28

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

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

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

000548

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

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

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

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

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

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

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

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

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1 8. As to Paragraph 15 of the Second Amended Complaint, Defendants admit that the
2 Bouldens and the Lamothes were not parties to the aforementioned lawsuit. However, Defendants
3 deny the allegation that the property of the Bouldens and Lamothes described in the Second
4 Amended Complaint is not subject to the judgment described in the Second Amended Complaint.
5 As to the remaining allegations, said Paragraph also contains legal conclusions rather than facts that
6 need to be admitted or denied. Defendants deny the same on that basis, as well as the content of
7 such allegation should such a denial be necessary.

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

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

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

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

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

21 **FIRST CAUSE OF ACTION**

22 **(Slander of Title, Mrs. Boulden)**

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

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

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

5 **SECOND CAUSE OF ACTION**

6 **(Injunction, All Plaintiffs)**

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

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

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

14 **THIRD CAUSE OF ACTION**

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

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

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

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

23 **FOURTH CAUSE OF ACTION**

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

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

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

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

3 **FIFTH CAUSE OF ACTION**

4 **(Injunction, Rosemere II Judgment)**

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

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

9 **SIXTH CAUSE OF ACTION**

10 **(Declaratory Relief)**

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

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

15 30. 27. As to Paragraphs 60 through 61 of the Second Amended Complaint,
16 Defendants deny that the allegations contained therein.

17 **AFFIRMATIVE DEFENSES**

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

21 **FIRST AFFIRMATIVE DEFENSE**

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

23 **SECOND AFFIRMATIVE DEFENSE**

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

1 **THIRD AFFIRMATIVE DEFENSE**

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

3 **FOURTH AFFIRMATIVE DEFENSE**

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

6 **FIFTH AFFIRMATIVE DEFENSE**

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

12 **SIXTH AFFIRMATIVE DEFENSE**

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

14 **SEVENTH AFFIRMATIVE DEFENSE**

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

18 **EIGHTH AFFIRMATIVE DEFENSE**

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

21 **NINTH AFFIRMATIVE DEFENSE**

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

24 **TENTH AFFIRMATIVE DEFENSE**

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

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ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

WHEREFORE, Defendants pray for relief as follows:

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

COUNTERCLAIM

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

I. THE PARTIES AND JURISDICTION

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

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

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

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

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

1 their property prior to their purchase of the property.

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

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

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

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

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

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

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

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

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

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

24 **III. THE UNDERLYING LITIGATION**

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

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

4 **A. NRED I LITIGATION**

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

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

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

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

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

21 **B. NRED II LITIGATION**

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

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

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

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

5 29. Specifically, the Lytles contend as follows:

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

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

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

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

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

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

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

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

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

25 5. For reasonable attorney's fees, and

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

2
3 DATED: August 11, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

4
5
6 By: 

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy P. Elson, Esq.
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Las Vegas, Nevada 89144
Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE
LYTLE TRUST

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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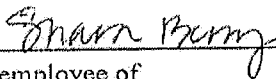
CERTIFICATE OF MAILING

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

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

Attorney for Plaintiffs

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 An employee of
 Gibbs Giden Locher Turner
 Senet & Wittbrodt LLP

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

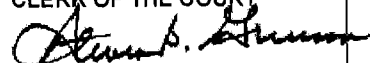
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EXHIBIT J

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Steven D. Grierson
CLERK OF THE COURT


OPPC

Richard E. Haskin, Esq.
Nevada State Bar # 11592

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Attorneys for Defendant
TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST

DISTRICT COURT**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

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

**DEFENDANTS TRUDI LEE LYTLE,
JOHN ALLEN LYTLE, THE LYTLE
TRUST OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT, OR, IN THE
ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS**

Date: July 31, 2018
Time: 9:00 a.m.

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

Counter-Claimants,

v.

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

Counter-Defendants.

COMES NOW Defendants TRUDI LEE LYTLE, JOHN ALLEN LYTLE, and THE LYTLE TRUST (the "Lyttles"), by and through their counsel of record, Richard E. Haskin, Esq., and Timothy Elson, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP, and hereby files the Lyttles' Opposition to ROBERT Z. DISMAN and YVONNE A. DISMAN's (the "Dismans") Motion for Summary Judgment, or, in the Alternative, Motion for Judgment on the Pleadings, and Countermotion for Summary Judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Dismans lack any standing to bring the instant Motion for Summary Judgment. There is but a single claim by and between the Lyttles and the Dismans, and that claim already was adjudicated by Judge Timothy Williams. The matter is now on appeal before the Nevada Supreme Court, and the matter has been fully briefed by the parties, including the Dismans.

The only cause of action between the Lyttles and Dismans is a single cause of action by the Lyttles for declaratory relief. Specifically, the Lyttles sought a declaration from the Court that the Lyttles could lawfully record an Abstract of Judgment recorded against the Dismans' property.¹ See Answer to Second Amended Complaint and Counterclaim, ¶¶ 30, 31, Exhibit W. The claim was fully adjudicated by Judge Williams in this very matter on July 25, 2017, when Judge Williams found that the Abstract of Judgment recorded on the Dismans' property clouded title. Judge Williams quieted title to the property, expunged the Abstract of Judgment, and issued an injunction preventing the Lyttles from further clouding title to the Dismans' property.²

The Lyttles then appealed that decision, and the appeal is fully briefed and awaiting disposition before the Nevada Supreme Court. The Dismans are parties to the appeal and submitted briefing on the issues. There is simply nothing for this Court now to consider as all claims between these parties already were adjudicated.

¹ The Dismans are the present owners of the property formerly belonging to Plaintiff MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST ("Boulden"). The Lyttles added the Dismans as a necessary party in this action once Boulden sold the property to the Dismans.

² In addition to the expungement, the Lyttles recorded a Release of Abstract of Judgment.

1 The Dismans liken their Motion for Summary Judgment to this Court's recent adjudication
 2 related to other parties in this consolidated case. However, those parties brought claims against the
 3 Lytles. The Dismans do not assert any claim against the Lytles. Once more, as set forth above, the
 4 only claim between the Lytles and the Dismans is pending determination on appeal. Thus, the
 5 instant Motion for Summary Judgment is misplaced.

6 Irrespective of the lack of standing, the Lytles continue to assert they rightfully recorded the
 7 Abstracts of Judgment, which have since been released. The Lytles specifically contend that the
 8 provisions of common law and Chapter 116 provide the Lytles with such rights, as fully set forth
 9 herein and in prior briefing.

10 **II. BRIEF STATEMENT OF MATERIAL AND UNDISPUTED FACTS**

11 **A. Rosemere Estates**

12 On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider
 13 of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las
 14 Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants,
 15 Conditions, and Restrictions ("Original CC&Rs"). Original CC&Rs, Request for Judicial Notice
 16 ("RJN"), Exhibit A. The Lytles purchased their property, Lot 163-03-313-009 (the "Lytle
 17 Property") on November 6, 1996, from the original buyer who first purchased it from the Developer
 18 on August 25, 1995.

19 **B. The Original CC&Rs and Formation of the Association**

20 Of note to the instant controversy, the Original CC&Rs, in the first paragraph, defines
 21 Rosemere Estates as "Lots 1 through 9 of Rosemere Court, a subdivision..." Original CC&Rs,
 22 Exhibit A. The document adds that "it is the desire and intention of the Subdivider to sell the land
 23 described above and to impose on it mutual, beneficial, covenants, conditions and restrictions under
 24 a general plan or scheme of improvement for the benefit of all of the land described above and the
 25 future owners of the lots comprising said land." *Id.* Thus, the Association includes each and every
 26 lot therein.

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1 Sometime after the Lytles purchased their property, a group of homeowners formed the
2 Association. In 1997, Linda Lamothe and Marge Boulden, two homeowners acting on behalf of all
3 owners, filed Non-Profit Articles of Incorporation (the "Articles") pursuant to Nevada Revised
4 Statutes ("NRS") 82, which formalized the property owners' committee and named it "Rosemere
5 Estates Property Owners Association." Articles of Incorporation, Exhibit B.

6 **C. The Amended CC&Rs**

7 Without warning or consult with the homeowners, the Board for the Association, on July 2,
8 2007, presented the Amended and Restated Covenants, Conditions and Restrictions (the "Amended
9 CC&Rs") to the Association membership. Order Granting Summary Judgment in NRED 1
10 Litigation, FOF Nos. 23, 24, Exhibit D. The proposed Amended CC&Rs were far more restrictive
11 than the Original CC&Rs and changed the very nature of property ownership within Rosemere
12 Estates. *Id.* at FOF No. 25. The Amended CC&Rs contained numerous and onerous new use
13 restrictions including the drastic expansion of the powers, rights, and duties of the Association, a
14 section entitled "Restrictions on Use, Alienation, and Occupancy," pet restrictions, parking
15 restrictions, lease restrictions, the establishment of a Design Review Committee with unfettered
16 discretion, and a new and expansive definition of "nuisance." *Id.* The Amended CC&Rs also
17 contained a morality provision. *Id.* at FOF Nos. 26. Finally, the Amended CC&Rs contained a
18 construction timeline that would require the Lytles, and only the Lytles, to complete the construction
19 of a custom home on the lot within a mere 60 days of receipt of approval from the proposed *Design*
20 *Review Committee*—something never envisioned in the Original CC&Rs and impossible to adhere
21 to. *Id.* at FOF No. 28. Failure to comply would cost the Lytles \$50.00 per day. *Id.* at 30. Despite
22 failure to obtain the consent of all homeowners, the Board unilaterally recorded the Amended
23 CC&Rs on July 3, 2007, with the Office of the Recorder for Clark County, Nevada. *Id.* at FOF Nos.
24 34, 35, *see also* Amended CC&Rs, Exhibit B.

25 Important to the case at hand, the Amended CC&Rs provide as follows:

26 Section 1.1. "'Act' shall mean and refer to the State of Nevada's version
27 of the Uniform Common-Interest Ownership Act, codified in NRS
28 Chapter 116, as it may be amended from time to time, or any portion
thereof."

1 Section 1.14(e). "...the Property is a common interest community
pursuant to the Act."

2 Section 1.38. "'Property' shall refer to the Property as a whole, including
3 the Lots and Common Elements, as restricted by and marketed and sold to
third parties in accordance with this Declaration."

4 Section 1.24. "'Governing Documents includes the Amended CC&Rs.

5 Article 2: "The Association is charged with the duties and vested with the
6 powers prescribed by law and set forth in the Governing Documents."

7 Section 10.2(c). "An Assessment to pay a judgment against the
8 Association may be made only against the lots in the Property at the time
the judgment was entered, in proportion to the respective Liability for
Common Expense."

9 Amended CC&Rs, Exhibit C.

10 **D. The Association Records Unlawful Liens Under the Amended CC&Rs and**
11 **Chapter 116 and Initiates Foreclosure Against the Lytles**

12 After the Amended CC&Rs were adopted, at a September 15, 2008 Executive Board meeting
13 of the Association, the Association's membership voted to approve a Board proposal that, first, each
14 member of the Association should be assessed \$10,000.00 "in conjunction with [the Lytles']
15 actions" in bringing the NRED 1 litigation and in pursuing litigation against Plaintiff for
16 unarticulated and nebulous reasons, and, second, that "the Association should bring foreclosure
17 proceedings against any lots with outstanding assessments due the Association." Order Granting
18 Summary Judgment in NRED 2 Litigation, FOF No. 10, Exhibit L. The Association then initiated
19 non-judicial foreclosure proceedings against the Lytles. *Id.* at FOF Nos. 11, 20. In addition to
20 instituting the non-judicial foreclosure process afforded to it by NRS Chapter 116 and the Amended
21 CC&Rs, the Board recorded additional, unlawful liens without right against the Lytles. *Id.* at FOF
22 Nos. 12 – 18, 22. The total of the three (3) unlawfully recorded liens was \$209,883.19. *Id.* at FOF
23 Nos. 25, 26

24 **E. NRED 1 Litigation**

25 In 2007, the Lytles filed an NRS 38.310 mandated non-binding arbitration before the Nevada
26 Real Estate Division ("NRED"), naming the Association as respondent. The Lytles sought a
27 declaration that the Amended CC&Rs were unlawfully adopted, recorded and enforced by the
28 Association against the Lytles.

1 After the arbitrator found in favor of the Association, the Lytles filed for a trial de novo in
2 this District Court, case number A-09-593497-C, which was assigned to Judge Michelle Leavitt in
3 Department XII. After the matter was initially dismissed, the Lytles appealed to the Supreme Court,
4 prevailed, and the matter was then remanded back to the District Court.

5 The Lytles ultimately prevailed, entirely, in the litigation, and the Court granted the Lytles
6 summary judgment on July 29, 2013. Order Granting Summary Judgment in NRED 1 Litigation,
7 COL No. 11, Exhibit D. The court made the following pertinent findings:

- 8 • The Association was formed by the homeowners on February 25, 1997. Order
9 Granting Summary Judgment in NRED 1 Litigation, COL No. 11, Exhibit D.
- 10 • The Association is a limited purpose association as defined by NRS 116.1201. *Id.* at
11 COL Nos. 13, 19.
- 12 • The Amended CC&Rs were improperly recorded, were invalid, and the Amended
13 CC&Rs were ordered released. *Id.* at COL Nos. 25, 26.
- 14 • From July 3, 2007, through July 29, 2013, the Amended CC&Rs governed the
15 Association and its members. *See generally id.*

16 The matter was once again appealed, and the Nevada Supreme Court affirmed the district
17 court's Order granting the Lytles summary judgment. The Supreme Court remanded the case to the
18 District Court for redetermination of costs, attorneys' fees and damages on October 19, 2015.
19 Supreme Court Order in NRED 1 Litigation, Exhibit U.

20 On May 25, 2016, after hearing the Lytles' motion for attorneys' fees, the Court awarded the
21 Lytles \$297,072.66 in attorneys' fees pursuant to the Original CC&Rs, the Amended CC&Rs and
22 NRS 116.4117. Order Awarding Attorneys' Fees in NRED 1 Litigation, Exhibit E.

23 On June 17, 2016, the Court awarded the Lytles damages, after a prove-up hearing, in the
24 amount of \$63,566.93. Order Awarding Damages in NRED 1 Litigation, Exhibit F. These damages
25 included amounts expended by the Lytles in the design, engineering, and other costs associated with
26 the construction of their home for Rosemere Estates, all of which were now stale and useless.

27 Finally, on July 22, 2016, the Court awarded the Lytles costs in the amount of \$599.00.
28 Order Awarding Costs in NRED 1 Litigation, Exhibit G. Previously, the Court had awarded

1 \$1,962.80 in costs.

2 On September 2, 2016, the Lytles recorded Abstracts of Judgment against each property
3 within the Association pursuant to the law set forth herein. Abstracts of Judgment from NRED 1
4 Litigation, Exhibit R.

5 **F. NRED 2 Litigation**

6 On March 16, 2010, the Lytles initiated another NRS 38.310 mandated non-binding
7 arbitration before NRED, naming the Association as respondent (the "NRED 2 Litigation"). The
8 purpose of the NRED 2 Litigation was to halt non-judicial foreclosure proceedings initiated by the
9 Association against the Lytles pursuant to NRS, Chapter 116 and the Amended CC&Rs. *See*
10 Complaint in NRED 2 Litigation, Exhibit I. The Lytles also sought an order from the Court directing
11 the Association to comply with NRS Chapter 116 and the Amended CC&Rs where the Association
12 had failed to comply, e.g. approval of budgets, conduct of meetings, etc. *Id.* In that arbitration, all
13 parties stipulated that the Amended CC&Rs were valid and enforceable for the purpose of the NRED
14 2 Litigation. Stipulation, Exhibit H.

15 After the Association prevailed in the Arbitration (in November 2010), the Lytles promptly
16 and timely filed a lawsuit (for trial de novo) on December 13, 2010. Complaint in NRED 2
17 Litigation, Exhibit I. The Association filed a counterclaim, seeking to enforce the assessments the
18 Association levied against the Lytles property.

19 The Lytles included the following language in their Complaint:

20 Pursuant to a stipulation and/or agreement between the Plaintiff TRUST
21 and the Defendant ASSOCIATION in the NRED action, the parties to the
22 NRED action agreed that the Amended CC and R's and Bylaws of the
23 Defendant ASSOCIATION [were] valid and enforceable only for the
24 purpose of the NRED action and because this is a trial de novo of the
25 NRED action the Plaintiff TRUST once again agrees that for the purpose
26 of this litigation only that the Amended CC and R's and bylaws of the
27 defendant ASSOCIATION are valid and enforceable.

28 Complaint in NRED 2 Litigation, ¶ 11, Exhibit I.

On November 14, 2011, the Court granted the Association's Motion for Summary Judgment.
See Order Granting Summary Judgment in NRED 2 Litigation, Exhibit L. The Court also awarded
the Association's Motion for Attorneys' Fees pursuant to NRS Chapter 116 and the Amended

1 CC&Rs, with an amount to be determined at a subsequent hearing. *Id.* The Court then entered two
2 orders granting the Association's attorneys' fees pursuant to NRS 116.4117 and Section 16 of the
3 Amended CC&Rs. Order Granting Assoc. Fees in NRED 2 Litigation, Exhibit J. Thereafter, the
4 Court awarded an additional \$7,068.00 in attorneys' fees to the Association pursuant to NRS
5 116.4117 and the Amended CC&Rs. *See* Order Granting Supplement Fees in NRED 2 Litigation,
6 Exhibit K.

7 On July 16, 2012, the Lytles filed a Notice of Appeal. On December 21, 2015, the Nevada
8 Supreme Court vacated the Order Granting Summary Judgment and remanded this case back to this
9 Court for determination. Specifically, the Supreme Court held that the

10 Lytles' actions during the NRED arbitration were sufficient to 'submit'
11 their slander of title claim to the NRED arbitrator for the purposes of NRS
12 38.330(5). We also conclude that the Lytles did not need to establish that
they suffered monetary damages for their remaining claims to be viable.

13 Supreme Court Order Re: NRED 2 Litigation, Exhibit T. The Supreme Court also vacated the order,
14 awarding attorneys' fees, costs, and damages to the Association. *Id.* In the second footnote of the
15 foregoing Supreme Court Order, and an item of importance to the present case, the Court noted that
16 its ruling was "premised in part on the Lytles' stipulation as to the amended CC&Rs validity." *Id.*

17 Upon remand, the case was essentially thrust back to the beginning. On November 14, 2016,
18 the Court granted the Lytles' Motion for Summary Judgment as to each and every cause of action
19 and against the Association's Counterclaim. *See* Order Granting Summary Judgment in NRED 2
20 Litigation, Exhibit L. The district court then awarded the Lytles the following: \$274,608.28 in
21 attorneys' fees, \$4,725.00 in costs, and \$823,824.84 in punitive damages pursuant to NRS 42.005.
22 *See* Order Granting Attorneys' Fees and Costs in NRED 2 Litigation, Exhibit M; *see also* Order
23 Granting Punitive Damages in NRED 2 Litigation, Exhibit N. Pursuant to the foregoing, the total
24 amount of the judgment against the Association and in favor of the Lytles in the NRED 2 Litigation,
25 including attorneys' fees and costs, is \$1,103,158.12.

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1 **G. NRED 3 Litigation**

2 On April 2, 2015, the Lytles filed an action against the Association in the Eighth Judicial
3 District, Case No. A-15-716420-C, seeking an order from the Court that the Association hold an
4 election, as it has not held such an election since March 24, 2010, despite the legal obligation to do
5 so. *See* Complaint in NRED 3 Litigation, Exhibit O. On September 13, 2017, the Court granted the
6 Lytles' Motion for Summary Judgment in the NRED 3 Litigation, and ordered that election take
7 place before a neutral third party. *See* Order Granting Summary Judgment in NRED 3 Litigation,
8 Exhibit P.

9 On November 7, 2017, the Court awarded the Lytles \$14,807.50 in attorneys' fees and
10 \$655.10 in costs. Order Granting Attorneys' Fees and Costs in NRED 3 Litigation, Exhibit Q.

11 All of the foregoing orders in NRED 1, 2 and 3 Litigations are final and not subject to appeal,
12 and all monetary orders are accruing interest.

13 **III. SUMMARY OF RELEVANT PROCEDURE**

14 On July 12, 2017, Plaintiffs MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE
15 B. BOULDEN TRUST ("Boulden) and LINDA LAMOTHE AND JACQUES LAMOTHE,
16 TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST ("Lamothe") filed a
17 Complaint in this matter against the Lytles, alleging causes of action for (1) slander of title, (2)
18 injunctive relief, (3) quiet title, and (4) declaratory relief. The Complaint related to the Abstracts of
19 Judgment obtained in the NRED 1 Litigation by the Lytles and recorded by the Lytles against the
20 Boulden and Lamothe properties, among others. The Lytles answered the Complaint on February 8,
21 2017.

22 Thereafter, Boulden and Lamothe filed a Motion for Summary Judgment, which was met by
23 a Countermotion for Summary Judgment by the Lytles. On July 25, 2017, the Court issued an order
24 Granting Motion to Alter or Amend findings of Fact Conclusions of Law, wherein the Court granted
25 partial summary judgment for Boulden and Lamothe as to cloud on title, injunctive and declaratory
26 relief, leaving in place Boulden and Lamothe's claim for slander of title, which has yet to be
27 litigated. Thereafter, pursuant to the Court's order, the Abstracts of Judgment were released by the
28 Lytles as to the Boulden and Lamothe properties.

1 On July 25, 2017, Boulden and Lamothe filed their Second Amended Complaint against the
2 Lytles, alleging causes of action for (1) slander of title, (2) injunctive relief, (3) quiet title, and (4)
3 declaratory relief. The slander of title remains at issue.

4 On August 11, 2017, the Lytles filed their Answer to the Second Amended Complaint and
5 Second Amended Counterclaim. Therein, the Lytles named the Dismans as parties to this lawsuit as
6 the new and present owners of Boulden's property. The Lytles allege a single cause of action
7 against the Dismans for declaratory relief. Therein, the Lytles requested that the Court declare the
8 Abstract of Judgment obtained in the NRED 1 Litigation be declared valid against the Dismans
9 property. However, the Court already issued an Order declaring said Abstract invalid, and that
10 Abstract was released against the Dismans property, formerly the Boulden property. The matter is
11 now on appeal before the Nevada Supreme Court.

12 The Dismans filed their Answer and Cross-Complaint on September 27, 2017. Therein, the
13 Dismans alleged the following cross-claims against Boulden and Lamothe: (1) breach of warranty,
14 and (2) unjust enrichment. **The Dismans did not assert any claims against the Lytles.**

15 There are no claims by and between the Dismans and the Lytles. Specifically, the Dismans
16 did not allege any declaratory relief, quiet title, or slander of title claims against the Lytles that could
17 be adjudicated. The only cause of action between them has been adjudicated and is on appeal.

18 **IV. LEGAL ARGUMENT**

19 **A. Summary Judgment Standard**

20 Summary judgment shall be rendered in favor of a moving party if the pleadings, depositions,
21 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that
22 there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a
23 matter of law. NRCP Rule 56(c). "Summary Judgment is appropriate and shall be rendered
24 forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any
25 material fact [remains] and that the moving party is entitled to judgment as a matter of law." *Wood*
26 *v. Safeway*, 121 Nev. Adv. Op. 73, 121 P.3d, 1026, 1029 (2005) (*quoting* NRCP 56(c)). In *Wood*,
27 the Nevada Supreme Court rejected the "slightest doubt" standard from Nevada's prior summary
28 judgment jurisprudence, *Id.* at 1037, and adopted the summary judgment standard which had been

1 articulated by the United States Supreme Court in its 1986 Trilogy: *Celotex Corp. v. Catrett*, 477
 2 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Electrical*
 3 *Industrial Company v. Zenith Radio Corporation*, 475 U.S. 574 (1986). The application of the
 4 standard requires the non-moving party to respond to the motion by “Set[ting] forth specific facts
 5 demonstrating existence of a genuine issue for trial.” *Wood*, 121 p.3d at 1031. This obligation
 6 extends to every element of every claim made, and where there is a failure as to any element of a
 7 claim, summary judgment is proper. *Barmettler v. Reno Air, Inc.*, 114 Nevada 441, 447, 956, P2d.
 8 1382, 1386 (1998).

9 The Nevada Supreme Court held that “Rule 56 should not be regarded as a “disfavored
 10 procedural shortcut” but instead as an integral important procedure which is designed “to secure just,
 11 speedy and inexpensive determination in every action.” *Wood*, 121, p.3d at 1030 (*quoting Celotex*,
 12 477 U.S. at 327). In *Liberty Lobby*, the U.S. Supreme Court noted that:

13 “Only disputes over facts that might affect the outcome
 14 of the suit under governing law will properly preclude
 15 the entry of summary judgment. Factual disputes that
 are irrelevant or unnecessary will not be counted.

16 *Id.* (*quoting Liberty Lobby*, 477 U.S. at 247-48).

17 **B. The Motion For Summary Judgment Should Be Denied Because There Are No**
 18 **Claims To Adjudicate**

19 The Lytles allege a single cause of action for declaratory relief as to the Abstract of Judgment
 20 obtained in the NRED 1 Litigation against the Dismans, as successors in interest to the Boulden
 21 property. The Dismans alleged no claim against the Lytles. The single cause of action alleged
 22 against the Dismans already has been decided by Judge Williams, when he found in favor of
 23 Boulden, the prior owner, as to the competing declaratory relief causes of action. There simply is no
 24 cause of action for which this Court can grant summary judgment. That claim already was decided
 25 and is on appeal. That Order specifically states as follows, as it relates to the Dismans property: (1)
 26 the Lytles clouded title to the property, (2) the Abstract of Judgment is expunged and stricken from
 27 the records, (3) the Lytles are permanently enjoined from recording and enforcing the judgment in
 28 the NRED 1 Litigation against the Dismans property, and (4) the Lytles are permanently enjoined

1 from taking any action in the future against the Disman property that is based on the NRED 1
2 Litigation.

3 Further, the Lytles did not record any abstracts of judgment related to either the NRED 2 or
4 NRED 3 litigation against the Dismans.

5 Conversely, the SEPTEMBER TRUST, DATED MARCH 23, 1972; GERRY R. ZOBRIST
6 AND JOLIN G. ZOBRIST, AS TRUSTEES OF THE GERRY R. ZOBRIST AND JOLIN G.
7 ZOBRIST FAMILY TRUST; RAYNALDO G. SANDOVAL AND JULIE MARIE SANDOVAL
8 GEGEN, AS TRUSTEES OF THE RAYNALDO G. AND EVELYN A. SANDOVAL JOINT
9 LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992; and DENNIS A. GEGEN AND
10 JULIE S. GEGEN, HUSBAND AND WIFE, AS JOINT TENANTS (the "Consolidated Plaintiffs")
11 alleged causes of action for quiet title and declaratory relief against the Lytles. The Dismans did not
12 allege any causes of action against the Lytles. The Consolidated Plaintiffs claims generally seek two
13 things: first, an expungement of the Abstract of Judgment recorded against their respective
14 properties from the NRED 1 Litigation, and second, an order that no additional abstracts or claims
15 from the NRED 2 and NRED 3 Litigation may be recorded against their respective properties. The
16 Dismans make no such claim against the Lytles. In order for this Motion for Summary Judgment to
17 have any standing, the Dismans would have to assert a cause of action against the Lytles, and as set
18 forth above, no cause of action is even alleged.

19 Indeed, the Dismans' dispute, as that matter is laid-out in the pleadings, is currently pending
20 before the Nevada Supreme Court.

21 **C. The District Court's Orders In These Consolidated Cases Are Interlocutory, Not**
22 **Final, And Not Binding On This Court**

23 The Dismans argue that the Order Granting Partial Summary Judgment and entering an
24 injunction in Case A-16-747800-C, by Judge Timothy C. Williams, and the Court's recent Order
25 Granting Summary Judgment in A-17-765372-C are res judicata and necessarily binding. As an
26 initial matter, and as set forth above, Judge Williams' prior order provides the Dismans with the only
27 relief appropriate. Specifically, Judge Williams already adjudicated the only claim between the
28 Lytles and Dismans. Second, however, that order is not final, rather the orders of the Court are

1 partial and interlocutory.

2 The doctrines of res judicata and issue preclusion are “triggered when judgment is entered.”
 3 *Univ. of Nev. v. Tarkanian*, 1110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). There must be a **final**
 4 **determination** by a court of competent jurisdiction. *Id.* An order granting partial summary
 5 judgment is not a final order or judgment where issues of damages remain. *Mid-Century Ins. Co. v.*
 6 *Pavilkowski*, 94 Nev. 162, 576 P.2d 748 (1978), *see also Hallicrafters Co. v. Moore*, 102 Nev. 526,
 7 528, 728 P.2d 441, 442 (1986). Further, there was no certification by the court that this was a final
 8 judgment under NRCP 54(b).

9 A “final order” resolves all claims against all parties, leaving nothing for further
 10 consideration except for post-judgment issues, *i.e.* attorneys’ fees. *Lee v. GNLV Corp.*, 116 Nev.
 11 424, 426, 996 P.2d 416, 417 (2000); *see also Cox v. Gilcrease Well Corp.*, 2014 WL 2466229
 12 (2014).

13 The doctrines of res judicata and issue preclusion are “triggered when judgment is entered.”
 14 *Univ. of Nev. v. Tarkanian*, 1110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). There must be a **final**
 15 **determination** by a court of competent jurisdiction. *Id.* An order granting partial summary
 16 judgment is not a final order or judgment where issues of damages remain. *Mid-Century Ins. Co. v.*
 17 *Pavilkowski*, 94 Nev. 162, 576 P.2d 748 (1978), *see also Hallicrafters Co. v. Moore*, 102 Nev. 526,
 18 528, 728 P.2d 441, 442 (1986). Further, there was no certification by the court that this was a final
 19 judgment under NRCP 54(b). The Order Granting Partial Summary Judgment from Judge Williams
 20 is not a final order as claims remain in that case. *See generally* Order Granting Motion to Alter or
 21 Amend Findings of Fact and Conclusions of Law, Exhibit V.

22 The law-of-the-case doctrine “refers to a family of rules embodying the general concept that
 23 a court involved in later phases of a lawsuit should not re-open questions decided (*i.e.*, established as
 24 law of the case) by that court or a higher one in earlier phases.” *Crocker v. Piedmont Aviation, Inc.*,
 25 49 F.3d 735, 739 (D.C.Cir.1995). “Normally, ‘for the law-of-the-case doctrine to apply, the
 26 **appellate court** must actually address and decide the issue explicitly or by necessary implication.’”
 27 [Emphasis added] *Reconstruct Co. v Zhang*, 317 P.3d 814, 818 (2014) (quoting *Dictor v. Creative*
 28 *Mgmt. Servs., L.L.C.*, 126 Nev. —, —, 223 P.3d 332, 334 (2010)), *see also Dictor v. Creative*

1 *Management Services, LLC*, 126 Nev. 41, 44-46, 223 P.2d 332, 335 (2010) (holding that in order for
 2 the law-of-the-case doctrine to apply, the appellate court must specifically and actually address and
 3 decide the issue). A trial court's ruling does not constitute law of the case. *Byford v. State* 116 Nev.
 4 215, 232, 994 P.2d 700, 711-12 (2000). The issue must be adjudicated on appeal. *Id.* These
 5 Court's two orders granting motions for summary judgment are both on appeal and, therefore, and
 6 not law of the case.

7 **D. The Distinction Between The Various NRED Litigation**

8 There is a key distinction between the various underlying litigation between the Lytles and
 9 the Association that cannot be ignored - in the NRED 2 Litigation, the Lytles and the Association
 10 stipulated that the Amended CC&Rs were valid and enforceable. *See* Stipulation, Exhibit H, *see*
 11 *also* Complaint in NRED 2 Litigation, ¶ 11, Exhibit I. Thus, in issuing an order in the NRED 2
 12 appeal that was seemingly inconsistent with its affirmation of the district court's order in the NRED
 13 1 Litigation declaring the Amended CC&Rs *void ab initio*, the Nevada Supreme Court explained the
 14 parties' stipulation to the Amended CC&Rs as binding and authoritative. Supreme Court Order Re:
 15 NRED 2 Litigation, Fn. 2, Exhibit U.

16 The distinction provides a qualitative difference in facts. Specifically, there is no declaration
 17 that the Amended CC&Rs were *void ab initio* in NRED 2 Litigation. Indeed, for the purposes of that
 18 litigation only, the Amended CC&Rs unquestionably define the rights, liabilities and obligations of
 19 the parties. The Lytles obtained a judgment in the NRED 2 Litigation in the total amount of
 20 \$1,103,158.12, which amount was awarded pursuant to the Amended CC&Rs and NRS, Chapter
 21 116.

22 While the Lytles contend, as set forth herein, that all the rights provided to creditors of the
 23 Association under the Amended CC&Rs and NRS 116.3117 apply in each of the NRED Litigation
 24 matters, the stipulation in the NRED 2 Litigation alleviates any argument to the contrary.

25 **E. NRS 116.3117 Provides That Lytles Can Record Abstracts Of Judgment Against**
 26 **the Dismal Property Within The Association**

27 The Lytles are within their rights, as judgment creditors of the Association, to record a lien
 28 against each unit within the Association because (1) NRS 116.3117 provides this specific right to

judgment creditors of a unit owners' association, (2) the Lytles may invoke all of the rights set forth in the entirety of Chapter 116 because the Association invoked such rights during the underlying litigation (and prior thereto), (3) Chapter 116's statutory mechanism provides such rights to the Lytles as judgment creditors against the Association, and (4) in the case of the NRED 2 Litigation, all parties stipulated that the Amended CC&Rs governed and were valid and enforceable.

1. **NRS 116.3117 Permits a Judgment Creditor to Record a Lien Against All Units Within an Association**

When a statute is facially clear, the Court should give effect to the statute's plain meaning. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court (First Light I)*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007). "[W]hen a term is defined in NRS Chapter 116, the statutory definition controls and any definition that conflicts will not be enforced." *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 406, 215 P.3d 27, 32 (2009). Further, NRS 116.003 states that "the words and terms defined in NRS 116.005 to 116.095, inclusive, have the meanings ascribed to them in those sections." *Id.*

NRS 116.3117 provides, in pertinent part:

1. In a condominium or planned community:

(a) Except as otherwise provided in paragraph (b), **a judgment for money against the association**, if a copy of the docket or an abstract or copy of the judgment is recorded, is not a lien on the common elements, but **is a lien in favor of the judgment lienholder against all of the other real property of the association and all of the units in the common-interest community at the time the judgment was entered**. No other property of a unit's owner is subject to the claims of creditors of the association.

[Emphasis added.] Quite succinctly, Nevada's Common-Interest Ownership Act, set forth in Chapter 116, provides a judgment creditor has a lien "against all of the units in the common-interest community at the time the judgment was entered." NRS 116.3117(1)(a).

The comments to Section 3-117 of the Uniform Common Interest Ownership Act (1982) — the uniform act upon which NRS Chapter 116 is based — reinforce that which is already clear from the plain language of the statute: "the Act makes the judgment lien a direct lien against each individual unit . . ." See UCIOA § 3-117, cmt. 2, *see also, e.g., Ensberg v. Nelson*, 320 P.3d 97, 102 (Wash. Ct. App. 2013) ("[B]y statute, a condominium association is a lien in favor of the judgment

1 lienholder against all of the units in the condominium.”); *Summit House Condominium v. Com.*, 523
 2 A.2d 333, 336 (Pa. 1987) (“[A] judgment against the Council would have constituted a lien against
 3 each individual condominium unit owner.”); *Interlaken Service Corp. v. Interlaken Condominium*
 4 *Ass’n, Inc.*, 588 N.W.2d 262, 266 (Wisc. 1998) (“[A]ny money judgment obtained by [the plaintiff
 5 as against the association] would result in a lien against each of the condominium units.”).

6 The purpose of the statute, however, is not to provide a remedy to creditors. This remedy
 7 exists regardless of this subsection (as explained below). Rather, it protects unit owners within an
 8 association and limits the extent to which a creditor can collect on a judgment against an association
 9 as to each unit owner. NRS 116.3117 provides that a creditor must first collect against any security
 10 interest the creditor may have in common elements before pursuing units. NRS 116.3117(1)(b).

11 **2. The Association is Afforded All Rights and Remedies of NRS, Chapter 116,**
 12 **Because Prior to Final Determination in the NRED Litigation, the**
 13 **Association Enjoyed Such Benefits to the Detriment of Defendants**

14 For a myriad of reasons set forth herein, NRS 116.3117 applies in this case and affords the
 15 Lytles the right to lien the Dismans’ property and all properties within the Association.

16 **a. Background on the Different Types of Common Interest**
 17 **Communities**

18 The term “homeowners’ association” is often misused and, indeed, in the State of Nevada has
 19 no true statutory definition. Rather, a “homeowners’ association” is more of an informal, catch-all
 20 term for all types of common interest communities.

21 Chapter 116 applies to all types of governing bodies of residential common interest
 22 communities created in Nevada. NRS 116.1201. A “common-interest community” is defined as
 23 “real estate described in a declaration with respect to which a person, by virtue of the person’s
 24 ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums,
 25 maintenance or improvement of, or services or other expenses related to, common elements, other
 26 units or other real estate described in that declaration.” NRS 116.021. Some of the types of
 27 common interest communities include: (1) unit owners’ association, (2) limited purpose associations
 28 (NRS 116.1201(2)(a)), (3) small planned communities (NRS 116.1203), (4) nonresidential planned

1 communities (NRS 116.1201(2)(b)), (5) time shares (NRS 116.1201(2)(e)), and condominiums
2 (NRS 116.027).

3 Chapter 116 applies to “all common interest communities” created within Nevada, with
4 defined limitations for limited purpose associations, small planned communities, and nonresidential
5 planned communities. NRS 116.1201.

6 **b. From July 3, 2007 Through July 29, 2013, the Association Was a**
7 **Unit Owners’ Association, for Which the Entirety of NRS,**
8 **Chapter 116 Applied**

9 While the district court in the NRED 1 Litigation held that the Association was a limited
10 purpose association, the district court in that case found that the Amended CC&Rs were recorded on
11 July 3, 2007, in the office of the Recorder for Clark County, Nevada, and from July 3, 2007, through
12 July 29, 2013, when the court granted the Lytles summary judgment in that case, the Association
13 was a full-blown unit owners’ association, subject to and taking advantages of all rights, privileges
14 and remedies afforded by the entirety of Chapter 116, including the right to assess and initiate
15 Chapter 116 foreclosure proceedings for failure to pay assessments, which is exactly what the
16 Association did to the Lytles. *See generally* Order Granting Summary Judgment in NRED 1
17 Litigation, Exhibit D. Further, in the NRED 2 Litigation, the parties stipulated to the enforceability
18 of the Amended CC&Rs. *See* Complaint in NRED 2 Litigation, Exhibit I; *see also* Stipulation,
19 Exhibit H.

20 The Amended CC&Rs adopt Chapter 116 of the Nevada Revised Statutes. Amended
21 CC&Rs, at Article I, Exhibit C. The Amended CC&Rs define the Association pursuant to the
22 Uniform Common-Interest Ownership Act. *Id.* at 1.1. The Amended CC&Rs routinely reference
23 Chapter 116 of the Nevada Revised Statutes. *See, e.g., id.* at 1.13, 1.14, 1.30, 8.1, 10.3 (referring to
24 the lien statutes codified in Chapter 116). Finally, the Amended CC&Rs prescribe a remedy equal to
25 NRS 116.3117 within Section 10.2, specifically, that any judgment against the Association is a
26 judgment against each unit within the Association on a pro rata basis. Amended CC&Rs, § 10.2(e).

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1 In the NRED 2 Litigation, the Lytles and the Association stipulated that Amended CC&Rs
2 were valid and enforceable. Stipulation, Exhibit H, *see also* Complaint in NRED 2 Litigation,
3 Exhibit I.

4 In granting the Lytles' Motion for Attorneys' Fees in the NRED 1 Litigation, the court cited
5 *Mackintosh*, 113 Nev. at 405-406, 935 P.2d at 1162, and held that the Lytles could recover
6 attorneys' fees under the Amended CC&Rs because that document, while declared *void ab initio* by
7 the district court, was in effect and enforced by the Association against the Lytles at all times during
8 the underlying litigation. *See generally*, Order Granting Attorneys' Fees in NRED 1 Litigation,
9 Exhibit E.

10 In *Mackintosh*, *supra*, the purchasers of real property sued a savings and loan association for
11 rescission of a residential property purchase agreement. *Mackintosh*, 113 Nev. at 396-397, 935 P.2d
12 at 1157. The Supreme Court upheld a district court's granting of summary judgment and
13 determination that the purchasers had rescinded the purchase agreement. *Id.* 113 Nev. at 405-406,
14 935 P.2d at 1162. However, the Supreme Court held the district court improperly denied the
15 purchasers' request for attorneys' fees, which request was based on the attorney fee provision in the
16 rescinded agreement. *Id.* The district court, in denying attorneys' fees stated that the rescinded
17 agreement was "void from its date of inception, just as if the contract had never existed." *Id.* The
18 Supreme Court disagreed and cited a Florida Supreme Court case, *Katz v. Van Der Noord*, 546 So.2d
19 1047 (Fla. 1989), which held:

20 We hold that when parties enter into a contract and litigation later ensues over
21 that contract, attorney's fees may be recovered under a prevailing-party
22 attorney's fee provision contained therein even though the contract is
23 rescinded or held to be unenforceable. The legal fictions which accompany a
24 judgment of rescission do not change the fact that a contract did exist. It
25 would be unjust to preclude the prevailing party to the dispute over the
26 contract which led to its rescission from recovering the very attorney's fees
27 which were contemplated by that contract.

28 *Id.* at 1049.

Similarly, in the present case, the "legal fictions" that accompany the court's determination
in the NRED 1 Litigation that the Amended CC&Rs were *void ab initio* cannot change the fact that
they did, indeed, exist from July 3, 2007, through July 29, 2013, and were enforced against the

1 Lytles. Once more, in the NRED 2 Litigation, the parties stipulated that the Amended CC&Rs were
2 valid and enforceable, so the "legal fiction" did not even exist, rather enforceability was actual.

3 The foregoing is akin to the evidentiary "sword and shield" doctrine. Therein, it is held that
4 a party may not use a privilege as both a sword to assert a claim and a shield to protect the content
5 related to the claim. *Molina v. State* 120 Nev. 185, 194, 87 P.3d 533, 539 (2004). A party
6 attempting to enforce a contract against another cannot argue that a court's determination that it was
7 void shields the party from the provisions that would be detrimental, e.g. an attorneys' fee provision.
8 Or, in the present case, members of the Association should not be permitted to shield themselves
9 from certain provisions of Chapter 116, namely NRS 116.3117, once the court in the NRED 1
10 Litigation declared the Amended CC&Rs void after years of those same Amended CC&Rs being
11 recorded and enforced against the Lytles. In fact, the Amended CC&Rs' restrictions were so severe
12 that they prevented the Lytles from building their dream home in the Rosemere Estates community
13 and thrust the Lytles into years of litigation that exhausted the Lytles' retirement savings and created
14 emotional turmoil. Order Granting Summary Judgment in NRED 1 Litigation, FOF Nos. 25 – 31,
15 Exhibit D. Indeed, the Lytles, as the only undeveloped lot, were the only targets of the Amended
16 CC&Rs and the prohibitive building restrictions. *Id.*

17 There are other instances during which the Association took clear advantage of the entirety of
18 Chapter 116 during this operative time period despite a subsequent finding that the Association is a
19 limited purpose association and the Amended CC&Rs are void. For example, the Association filed a
20 countersuit against the Lytles in the NRED 2 Litigation, something a limited purpose association is
21 not permitted to do. NAC 116.090(1)(c)(1), (prohibiting a limited purpose association from
22 enforcing restrictions against unit owners). The Association moved to dismiss and had the
23 Complaint dismissed in the NRED 1 Litigation, purportedly as a result of a failure to timely file
24 under Chapter 38, which does not apply to limited purpose associations. The Association was
25 initially awarded attorneys' fee in the NRED 2 Litigation pursuant to the Amended CC&Rs and
26 provisions of Chapter 116. *See* Order Awarding Attorneys' Fees in NRED 2 Litigation, Exhibit J;
27 *see also* Supplemental Order Awarding Attorneys' Fees in NRED 2 Litigation, Exhibit K.

28 ///

1 The Lytles obtained judgments against the Association due to the Association's actions taken
 2 in order to both defend and impose its position as a unit owners' association. During the entire
 3 pendency of the NRED Litigation (and indeed well before), the Association operated pursuant to the
 4 statutory luxuries afforded to it as a litigant by NRS Chapter 116. And had the Association, and not
 5 the Lytles, prevailed in the NRED Litigation, the Association would enjoy all of the benefits as a
 6 judgment creditor against the Lytles, including the right to lien the Lytles' property and foreclose
 7 thereon.

8 With the utmost respect and deference to this court, the ruling in the instant case thus far
 9 provides the Association (and the members) with forgiveness to utilize NRS Chapter 116 and the
 10 Amended CC&Rs as swords to impose the Association's will during the NRED Litigation and prior
 11 thereto, but as shields from liability and collection once the Association's position was declared
 12 invalid. The public policy underlying *Mackintosh* and its progeny is that such two-faced positions
 13 cannot stand the test of equities.

14 **c. NRS 116.3117 Applies To Limited Purpose Associations**

15 As set forth in Chapter 116 and explained above, the Association is a common interest
 16 community consisting of nine (9) units, as that term is defined by Chapter 116, and organized as a
 17 limited purpose association. Order Granting Summary Judgment in NRED 1 Litigation, FOF No. 6,
 18 COL Nos. 7 – 19, Exhibit D, *see also* NRS 116.021, NRS 116.093. NRS 116.1201(2)(a)(4)
 19 provides, in pertinent part, that Chapter 116 does not apply to a limited purpose association, "except
 20 that a limited purpose association shall comply...with the provisions of NRS 116.4101 to 116.412."
 21 Included within the scope of these provisions is NRS 116.4117, which addresses civil actions for
 22 damages for failure or refusal to comply with provisions of Chapter 116 or an association's
 23 governing documents.

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1 NRS 116.4117(2) provides:

2 Subject to the requirements set forth in NRS 38.310 and except as otherwise
3 provided in NRS 116.3111, a civil action for damages or other appropriate
4 relief for a failure or refusal to comply with any provision of this chapter or
5 the governing documents of an association may be brought:

6 (a) By the association against:

- 7 (1) A declarant;
- 8 (2) A community manager; or
- 9 (3) A unit's owner.

10 (b) By a unit's owner against:

- 11 (1) The association;
- 12 (2) A declarant; or
- 13 (3) Another unit's owner of the association.

14 (c) By a class of units' owners constituting at least 10 percent of the
15 total number of voting members of the association against a
16 community manager.

17 Thus, an owner in a limited purpose association may pursue a civil action against an
18 association as set forth in NRS 116.4117, as the Lytles did in the NRED Litigation.

19 Following the linear statutory reference, then, from NRS 116.4117, NRS 116.3111(3)
20 provides, among other things, that "[l]iens resulting from judgments against the association are
21 governed by NRS 116.3117." NRS 116.3117 then provides:

22 a judgment for money against the association, if a copy of the docket or an
23 abstract or copy of the judgment is recorded, is not a lien on the common
24 elements, but is a lien in favor of the judgment lienholder against all of the
25 other real property of the association and all of the units in the common-
26 interest community at the time the judgment was entered. No other property of
27 a unit's owner is subject to the claims of creditors of the association.

28 As a judgment creditor and lienholder in a proper civil action brought under NRS 116.4117,
the Lytles have a lien on all units in the Association, a common interest community. Pursuant to this
right as set forth in NRS, Chapter 116, Sections 4117(2), 3111 and 3117, the Lytles recorded the
abstracts of judgment.

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F. General Common-Interest Community Principles Define The Association As Including Each Unit Therein, and Defendants May Record a Lien/Abstract Against Each Unit Within the Association

NRS 17.150(2) provides, in pertinent part:

A transcript of the original docket or an abstract or copy of any judgment or decree of a district court of the State of Nevada or the District Court or other court of the United States in and for the District of Nevada, the enforcement of which has not been stayed on appeal, certified by the clerk of the court where the judgment or decree was rendered, may be recorded in the office of the county recorder in any county, **and when so recorded it becomes a lien upon all the real property of the judgment debtor not exempt from execution in that county**, owned by the judgment debtor at the time, or which the judgment debtor may afterward acquire, until the lien expires.

[Emphasis added.]

In recording the abstracts of judgment against the units within the Association, the abstracts became a lien upon all the real property of the Association, as the judgment debtor. Each unit, owned or unowned, within the Association is property of the Association, as set forth in Chapter 116. NRS 116.3117 mirrors the foregoing by encapsulating the lien framework within a single statute.

NRS 116.021 defines a “common interest community” as all “real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration.” NRS 116.093 defines a “unit” as the “physical portion of the common-interest community designated for separate ownership or occupancy...” Thus, an association, or common interest community, includes each unit in the community, including those owned by third parties.

This Nevada Supreme Court concluded as much in granting standing to homeowners’ associations to file claims on behalf of unit owners in construction defect cases. In *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 125 Nev. 449, 215 P.3d 697 (2009), the Supreme Court held that “provisions of NRS Chapter 116, among other sources, demonstrate that a common-interest community includes individual units...” *Id.*, 125 Nev. at 451, 215 P.3d at 699. Thus, the Supreme Court concluded that a homeowners’ association has standing to file representative actions on behalf

of its members for construction defects of units.

NRS 116.3117, clarifies that a judgment may be recorded against each unit. This is not a special rule of any sort in favor of creditors, rather it adds statutory clarity that a judgment against the common-interest community can be recorded against all property within that community, including units defined as being included in the community. These definitions are echoed in the Uniform Common Interest Ownership Act, under Section 1-203(9) and 1-203(35).

a. **The Original CC&Rs Define the Association as Including Each Lot Therein**

Pursuant to the Original CC&Rs, a lien or judgment against the Association established under the Original CC&Rs attaches to each lot within the Association. As a result, the individual property of the owners within the Association, defined as Lots 1 through 9, is subject to lien.

The Original CC&Rs provide as follows:

WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land.

Original CC&Rs, ¶2, Exhibit A. (referring to the “Lots 1 through 9 of Rosemere Court” in the definition above, thereby including the Dismen lot, which the Dismans do not dispute).

A breach or violation of these CC&R’s or any re-entry by reason of such breach or any liens established hereunder shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value as to said lots or PROPERTY or any part thereof; that these CC&R’s shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee’s sale or otherwise.

Id. at ¶ 4 (emphasis added).

The Original CC&Rs were recorded against each of the nine (9) lots within the Association, and each owner, or prospective owner, including the Dismans, purchased property with record and actual notice of the foregoing rights and remedies.³ Order Granting Summary Judgment in NRED 1

³ While CC&Rs are a restrictive covenant, the CC&Rs are interpreted like a contract. *See, e.g., Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.2d 664, 665-66 (2004) (stating that the CC&Rs are a restrictive covenant, which is interpreted like a contract); *see also Lee v. Savalli Estates Homeowners Ass’n*, 2014 WL 4639148 (Nev. Sept. 16, 2014) (affirming *Diaz* that the rules of construction governing

1 Litigation, FOF No. 1, Exhibit D.

2 The second provision cited above specifically attaches liens established under the Original
3 CC&Rs "to said lots or Property." The attorneys' fee award in both the NRED 1, NRED 2 and
4 NRED 3 Litigation, in relevant part, specifically find the Lytles' lien or judgment is established
5 under the Original CC&Rs. Order Granting Attorneys' Fees in NRED 1 Litigation, at 2:1-15,
6 Exhibit E; *see also* Order Granting Attorneys' Fees in NRED 2 Litigation, at 2:6-19, Exhibit M. If
7 liens under the Original CC&Rs could not attach to the lots, there would be absolutely no need to
8 include this provision, *i.e.* there would be no need for the Original CC&Rs to state that such a lien
9 could not extinguish the first deed of trust or any other mortgage. Again, the Association has no
10 property to even secure any loan as the only property that exists is Lots 1 through 9, which includes
11 Plaintiffs' properties. Nowhere in the Original CC&Rs is there any inclusion of property owned by
12 the Association or subject to the Original CC&Rs other than "Lots 1 through 9."

13 Nothing under this provision distinguishes the Lytles' liens or judgment pursuant to the
14 attorneys' fees provision from any other provision or lien or judgment in the Original CC&Rs. The
15 Original CC&Rs simply state "any liens established hereunder." RJN, Original CC&Rs. This
16 necessarily includes the Lytles' liens.

17 **2. The Fact That Dismans Were Not Parties To The NRED Litigation And Not**
18 **Homeowners At The Time Of The Litigation Is Irrelevant**

19 The basis for asserting a lien against each unit (property) within the Association is a
20 prescribed right and remedy afforded to creditors by NRS 116.3117, the Amended CC&Rs, and
21 general common-interest community principles as argued herein. Neither NRS 116.3117 nor
22 Section 10.2(e) of the Amended CC&Rs mandate that an individual unit owner must be a party to
23 the underlying litigation. Indeed, quite the opposite is true. Each unit, not each owner of the unit, is
24 liable up to a pro rata share of any judgment obtained against the Association. NRS 116.3117, *see*
25 *also* Amended CC&Rs, § 10.2(e). The lien attaches to the units, not the individual owners. It runs
26 with the property. Further evidence of this is the fact that Chapter 116 requires sellers within an

27
28 contracts apply to the CC&Rs). "A court should not interpret a contract so as to make meaningless
its provisions." *Phillips v. Mercer*, 94 Nev. 279, 282, 597 P.2d 174, 176 (1978).

1 association to notify all prospective purchasers of any unsatisfied judgments and pending litigation
2 against the Association. *See* NRS 116.4109.

3 **V. CONCLUSION**

4 For the reasons set forth herein, the Lytles respectfully request that the Court deny the
5 Dismans' Motion for Summary Judgment, or in the alternative, for Judgment on the Pleadings.

6 DATED: July 26, 2018

GIBBS GIDEN LOCHER TURNER
7 SENET & WITTBRODT LLP

8
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16 TRUSTEES OF THE LYTLE TRUST
17
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CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on July 26, 2018, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

DANIEL T. FOLEY, ESQ.
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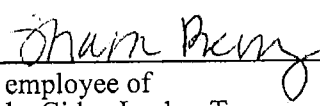
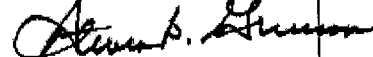

An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP

EXHIBIT K

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Steven D. Grierson
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7
8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

16 Plaintiffs,

17 vs.

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

21 Defendants.

22 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,)
23 THE LYTLE TRUST,)

24 Counter-Claimants,

25 vs.

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

Counter-Defendants.

Case No.: A-16-747800-C

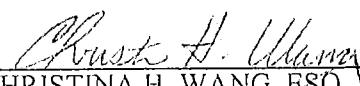
Dept. No.: XVIII

**NOTICE OF ENTRY OF ORDER
DENYING ROBERT Z. DISMAN AND
YVONNE A. DISMAN'S MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS**

1 PLEASE TAKE NOTICE that on December 26, 2018, the Court entered an ORDER
2 DENYING ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR
3 SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON
4 THE PLEADINGS in the above-entitled matter, a copy of which is attached hereto as **Exhibit 1**.

5 DATED this 3rd day of January, 2019.

6 FIDELITY NATIONAL LAW GROUP

7 
8 CHRISTINA H. WANG, ESQ.
9 Nevada Bar No. 9713
10 1701 Village Center Circle, Suite 110
11 Las Vegas, Nevada 89134
12 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

The undersigned employee of Fidelity National Law Group, hereby certifies that she served a copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS** upon the following parties on the date below entered (unless otherwise noted), at the fax numbers and/or addresses indicated below by: [X] (i) placing said copy in an envelope, first class postage prepaid, in the United States Mail at Las Vegas, Nevada, [] (ii) via facsimile, [] (iii) via courier/hand delivery, [] (iv) via overnight mail, [] (v) via electronic delivery (email), and/or [X] (vi) via electronic service through the Court's Electronic File/Service Program.

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DATED: 1/3/19

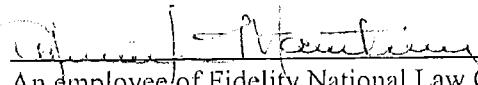
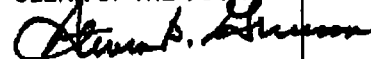

 An employee of Fidelity National Law Group

EXHIBIT 1

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Steven D. Grierson
CLERK OF THE COURT


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3 Nevada State Bar # 11559

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6 Attorneys for Defendants

7 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST8 **DISTRICT COURT**9 **CLARK COUNTY, NEVADA**

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

15 Plaintiffs,

16 v.

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

19 Defendants.

21 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
22 THE LYTLE TRUST,

23 Counter-Claimants,

24 v.

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

27 Counter-Defendants.

Case No.: A-16-747800-C

Dept.: XVIII

**ORDER DENYING ROBERT Z. DISMAN
AND YVONNE A. DISMAN'S MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS**

Date: August 9, 2018

Time: 9:00 a.m.

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

000596

1 Presently before the Court is Counter-Defendants/Cross-Claimants ROBERT Z. DISMAN and
 2 YVONNE A. DISMAN (collectively, the "Dismans")' Motion for Summary Judgment or, in the
 3 Alternative, Motion for Judgment on the Pleadings ("Motion") against Defendants/Counter-Claimants
 4 Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust (collectively, "Lytle Trust") in
 5 Case No. A-16-747800-C, which came on for hearing on August 9, 2018 at 9:00 a.m. in Department
 6 XVIII of the Eighth Judicial District Court, Clark County, Nevada.

7 Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of the Dismans.
 8 Richard Haskin, Esq. of Gibbs Giden Locher Turner Senet & Wittbrodt LLP appeared on behalf of
 9 the Lytle Trust. Daniel T. Foley, Esq. of Foley & Oakes, PC appeared on behalf of Marjorie B.
 10 Boulden, Trustee of the Marjorie B. Boulden Trust, amended and restated dated July 17, 1996
 11 ("Boulden Trust") and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda
 12 Lamothe Living Trust ("Lamothe Trust") (collectively, the "Boulden Plaintiffs"). Additionally,
 13 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of the September Trust,
 14 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
 15 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
 16 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
 17 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
 18 Husband and Wife, as Joint Tenants ("Dennis & Julie Gegen") (collectively, the "September Trust
 19 Plaintiffs") in Case No. A-17-765372-C.

20 The Court having considered the pleadings and exhibits, having heard the arguments of
 21 counsel, and with good cause appearing therefore, the Court hereby makes the following findings and
 22 enters the following Order.

23 FINDINGS

24 1. The Lytle Trust is the owner of certain residential property located in a Clark County,
 25 Nevada, subdivision called Rosemere Estates ("Rosemere Subdivision").

26 2. In 2009, the Lytle Trust filed a lawsuit against the Rosemere Estates Property Owners
 27 Association ("Association") in the Eighth Judicial District Court of Clark County, Nevada, Case No.
 28 A-09-593497-C ("Rosemere Litigation I").

1 3. The Lytle Trust obtained a monetary judgment against the Association in the Rosemere
2 Litigation I and subsequently caused to be recorded abstracts of that judgment ("Abstracts of
3 Judgment") against properties within the Rosemere Subdivision.

4 4. In 2010, the Lytle Trust filed another lawsuit against the Association in the Eighth
5 Judicial District Court of Clark County, Nevada, Case No. A-10-631355-C ("Rosemere Litigation II").
6 The Lytle Trust also obtained a monetary judgment against the Association in that litigation
7 ("Rosemere Litigation II Judgment").

8 5. On December 8, 2016, the Boulden Plaintiffs commenced the instant action against the
9 Lytle Trust alleging causes of action for (1) slander of title, (2) injunctive relief, (3) quiet title, and (4)
10 declaratory relief. Their Complaint related to the Abstracts of Judgment that the Lytle Trust had
11 recorded against their properties within the Rosemere Subdivision related to the Rosemere I Litigation.

12 6. At the time, the Boulden Trust was the owner of the residential property in the
13 Rosemere Subdivision known as 1960 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel
14 No. 163-03-313-008 ("1960 Rosemere Court" or "Property").

15 7. Thereafter, the Boulden Plaintiffs filed a Motion for Partial Summary Judgment, and
16 on July 25, 2017, the Court issued an Order Granting Motion to Alter or Amend Findings of Fact and
17 Conclusions of Law ("Order") wherein the Court granted partial summary judgment for the Boulden
18 Plaintiffs as to cloud on title and injunctive and declaratory relief.

19 8. The Order specifically states as follows with respect to 1960 Rosemere Court: (1) the
20 Lytle Trust clouded title to the Property, (2) the Abstracts of Judgment are expunged and stricken from
21 the record, (3) the Lytle Trust is permanently enjoined from recording and enforcing the Rosemere
22 Litigation I judgment against the Property, and (4) the Lytle Trust is permanently enjoined from taking
23 any action in the future against 1960 Rosemere Court based on the Rosemere Litigation I.

24 9. On July 25, 2017, the Boulden Plaintiffs filed a Second Amended Complaint against
25 the Lytle Trust. The Second Amended Complaint seeks, in part, to enjoin the Lytle Trust from
26 recording the Rosemere Litigation II Judgment against the Boulden Plaintiffs' properties.

27 10. The Boulden Trust subsequently sold 1960 Rosemere Court to the Dismans.

28 11. On August 11, 2017, the Lytle Trust filed its Answer to the Second Amended

1 Complaint and a Counterclaim against the Lamothe Trust and the Dismans ("Counterclaim"). Therein,
2 the Lytle Trust named the Dismans as necessary parties to this action as the new owners of the
3 Property.

4 12. The Lytle Trust's Counterclaim states a single cause of action against the Lamothe
5 Trust and the Dismans for a declaratory judgment that it is entitled to record a lien and/or abstract of
6 the Rosemere Litigation I and II Judgments against the Lamothe Trust's property and the Dismans'
7 Property.

8 13. The Dismans filed the instant Motion seeking summary judgment or, in the alternative,
9 judgment on the pleadings with respect to the Lytle Trust's Counterclaim.

10 14. In its Opposition to the Motion, the Lytle Trust argued, in essence, that the Motion is
11 moot because the Court's prior Order with respect to the Boulden Plaintiffs' Motion for Partial
12 Summary Judgment disposed of the Counterclaim – the only cause of action between the Lytle Trust
13 and the Dismans.

14 15. After review and consideration, this Court holds that the prior Order, including its
15 underlying basis, is the law of the case.

16 16. Consequently, as the law of the case, the Order encompasses the Lytle Trust's
17 Counterclaim.

18 17. The matter is now on appeal before the Nevada Supreme Court. Hence, there is no
19 cause of action or live controversy between the Lytle Trust and the Dismans upon which this Court
20 can grant summary judgment or judgment on the pleadings. *See Personhood Nevada v. Bristol*, 126
21 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("A controversy must be present through all stages of the
22 proceeding, and even though a case may present a live controversy at its beginning, subsequent events
23 may render the case moot.") (Citations omitted).

24 ///

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ORDER

THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Dismans' Motion is DENIED without prejudice as there is no pending cause of action or live controversy between the Lytle Trust and the Dismans.

IT IS SO ORDERED.

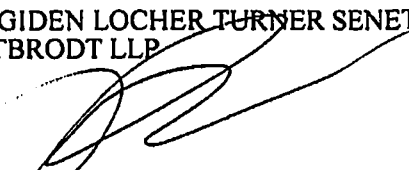
Dated this 26 day of December, 2018.

 DISTRICT COURT JUDGE

d.d.

Submitted by:

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 & WITTBRODT LLP


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

EXHIBIT L

000601

000601

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN
ALLEN LYTLE, AS TRUSTEES OF THE
LYTLE TRUST,

Appellants,

vs.

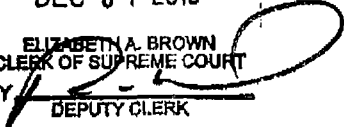
MARJORIE B. BOULDEN, TRUSTEE
OF THE MARJORIE B. BOULDEN
TRUST; LINDA LAMOTHE; JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE
LIVING TRUST; ROBERT Z. DISMAN;
AND YVONNE A. DISMAN,

Respondents.

No. 73039

FILED

DEC 04 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting an injunction in a real property action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

In 1996, appellants Trudi and John Lytle purchased a lot in Rosemere Estates for the purpose of building a residence. The lots in Rosemere Estates are subject to Covenants, Conditions, and Restrictions (Original CC&Rs) imposed by the developer. The Original CC&Rs contemplated the future formation of a property owners' committee that would maintain limited common areas in the development. Two homeowners, acting on behalf of all Rosemere Estates lot-owners, subsequently filed non-profit articles of incorporation to create the committee contemplated in the Original CC&Rs, the Rosemere Estates Property Owners Association (Association).

18-906850

In 2007, the Association amended the Original CC&Rs, effectively trying to turn itself into a homeowners' association under NRS Chapter 116 and enforce new restrictions on the Lytles' lot. The Lytles filed suit against the Association, seeking a declaration that the amended CC&Rs were void as well as damages, costs, and fees. The district court granted summary judgment in favor of the Lytles, finding that: the Original CC&Rs did not form a homeowners' association under NRS Chapter 116, but rather a limited purpose association; the amended CC&Rs were improperly adopted and recorded; and the Association had no power to impose additional restrictions on the Lytles' property as though it were a homeowners' association. Consequently, the district court declared the amended CC&Rs invalid and awarded the Lytles monetary damages, attorney fees, and costs.

The Lytles subsequently recorded abstracts of judgment against properties contained within Rosemere Estates, including two owned by Marjorie Boulden and Linda and Jacques Lamothe.¹ Boulden and the Lamothes filed suit against the Lytles seeking declaratory and injunctive relief and to quiet title and remove the abstracts of judgment clouding title. They later moved for summary judgment on all causes of action. The district court granted the motion, concluding that because Boulden and the Lamothes were not parties to the previous litigation and the Association

¹Respondents Robert Z. Disman and Yvonne A. Disman purchased the property belonging to Marjorie Boulden in August 2017, and were added as respondents to this appeal on the Lytles' motion to join them.

was limited in purpose and not subject to NRS 116.3117's mechanism by which judgments against a homeowners' association may be recorded against properties therein, Boulden and the Lamothes were not obligated under the Lytle's judgment. Determining that the Lytles improperly clouded title, the district court ordered the abstracts of judgment expunged from the properties' titles and entered a permanent injunction enjoining the Lytles from enforcing the judgment or any related abstracts against the Boulden or Lamothe properties.

The Lytles now appeal, arguing that NRS 116.3117 applies to limited purpose associations both through plain statutory language and on equitable grounds or, in the alternative, that they are permitted to record their abstracts of judgment against the subject properties under general principles governing common-interest communities.

DISCUSSION

Standard of review

Where injunctive relief is granted in the form of summary judgment, the standard of review is de novo. *A.L.M.N., Inc. v. Rosoff*, 104 Nev. 274, 277, 757 P.2d 1319, 1321 (1988); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate where there is no dispute of material fact and the moving party is entitled to judgment as a matter of law. *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

NRS 116.3117 does not apply to limited purpose associations

Where a statute's language is unambiguous, this court gives effect to its plain meaning. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*,

123 Nev. 468, 476, 168 P.3d 731, 737 (2007). NRS 116.1201(2)(a) provides, in relevant part, that limited purpose associations are not subject to NRS Chapter 116, with enumerated statutory exceptions, NRS 116.3117 not among them. NRS 116.3117(1)(a) states that a monetary judgment against an association, once recorded, is a lien against all real property of the association and all of the units in the common-interest community. An "association" is defined as a unit-owners' association organized under NRS 116.3101. NRS 116.011. A unit-owners' association must be in existence on or before the date when the first unit is conveyed. NRS 116.3101.

Here, the Lytles do not dispute that the Association is a limited purpose association. Although they assert that properties within limited purpose associations are subject to NRS 116.3117's lien provisions, NRS 116.1201 spells out the specific statutes within NRS Chapter 116 that apply to limited purpose associations, and NRS 116.3117 is not among them. Aside from those listed statutes, NRS Chapter 116 "does not apply to [a] limited purpose association." NRS 116.1201(2)(a). Thus, the plain language of the statute is clear that limited purpose associations are not subject to NRS 116.3117's lien provisions. By listing exactly which provisions within NRS Chapter 116 apply to limited purpose associations, NRS 116.1201 does not leave any room for question or expansion in the way the Lytles urge. We are likewise not persuaded by the Lytles' further contention that they may place a valid judgment lien on the Boulden and Lamothe properties through a series of statutory incorporations. Specifically, although the Lytles argue that NRS 116.3117 applies to limited purpose associations

through NRS 116.4117(2)'s reference to NRS 116.3111, which states that "liens resulting from judgments against the association are governed by NRS 116.3117," NRS 116.4117(2) does not incorporate NRS 116.3111. Instead, it enumerates the circumstances in which suit may be brought for breach of NRS Chapter 116 or governing documents "except as otherwise provided in NRS 116.3111." NRS 116.3111 addresses tort and contract liability for "injury or damage arising out of the condition or use of the common elements," which is not at issue here. Therefore, although NRS 116.4117(2) references NRS 116.3111, it does not incorporate it and there is no interpretive progression that suggests limited purpose associations are subject to NRS 116.3117.

The Lytles next argue that a broad, equitable mechanism set forth in *Mackintosh v. California Federal Savings & Loan Association*, 113 Nev. 393, 935 P.2d 1154 (1997), allows them to record a judgment lien against the Boulden and Lamothe properties. We disagree here as well. The Lytles contend that *Mackintosh* allows them to treat the Association as a homeowners' association subject to all provisions of NRS Chapter 116 in order to enforce their judgment, despite the district court's unchallenged determination in the action in which they obtained their judgment that the Association is a limited purpose association. The facts and holdings of *Mackintosh* do not support the conclusion proffered by the Lytles. Although *Mackintosh* recognized that a prevailing party may recover attorney fees from the other contracting party under a contractual provision even where that contract has been rescinded, it had nothing to do with statutory lien rights. 113 Nev. at 406, 935 P.2d at 1162. The Lytles intermingle two

different legal theories—contractual attorney fees and statutory lien rights—in an attempt to piece together a solution that would allow them to enforce a judgment lien against property owners who were not parties to the Lytles' complaint against Rosemere Estates, and whose property interests had never been subject of any suit. Nothing in *Mackintosh* suggests that applies beyond the context of contractual agreements and the circumstances of that case, and we are not persuaded that it otherwise provides a basis for expanding the application of NRS 116.3117.²

General principles of common-interest communities do not permit the Lytles to record the abstracts of judgment against all properties subject to the Association

The Lytles argue that all of the Rosemere Estates units, including respondents' real properties, are the property of the Association under *D.R. Horton, Inc. v. Eighth Judicial District Court*, 125 Nev. 449, 215 P.3d 697 (2009), and the Lytles consequently may record their abstracts of judgment pursuant to NRS 17.150(2). We disagree.


²The Lytle's also argue that the "sword and shield doctrine" allows the judgment to be recorded against respondents' properties, relying on *Molina v. State*, 120 Nev. 185, 193-94, 87 P.3d 533, 539 (2004), which held that a criminal defendant could not invoke the attorney-client privilege while simultaneously seeking to withdraw his guilty plea when he put the content of his interactions with his attorney at issue by arguing that his attorney advised him to enter a plea without knowledge of his case. *Molina* is inapposite here, as it adjudicated evidentiary issues unrelated to this dispute. Here, although respondents relied on the inapplicability of NRS Chapter 116 in seeking declaratory and injunctive relief in the underlying action in order to have the liens clouding their titles expunged, they were not parties to the Lytle-Rosemere Estates litigation, in which the Lytles likewise relied on NRS Chapter 116 to have Rosemere Estate's amended CC&Rs declared invalid.

NRS 17.150(2) allows a party to record a judgment with a county recorder, which then serves as a lien on the property of the judgment debtor. Because it is undisputed that the respondents were not parties to the Lytles' prior suit against the Association, the question turns on whether the Association holds a property interest in the individual lots constituting Rosemere Estates.


D.R. Horton did not hold that individual units subject to a homeowners' association are the property of that association. *D.R. Horton* only considered the question of standing, not ownership. 125 Nev. at 451-52, 215 P.3d at 699. Additionally, *D.R. Horton's* holding that individual units are part of the common-interest community, *id.* at 460, 215 P.3d 704, does not mean that the property of individual owners is also owned by homeowners' associations, as homeowners' associations and common-interest communities are not the same thing, see NRS 116.011; NRS 116.3101; NRS 116.021. Finally, NRS 116.3117(1)(a) further undermines the Lytles' position that homeowners' associations have an ownership interest in individual units, as it distinguishes between the property owned by the association and the individual units in the common-interest community. Under the association ownership position asserted by the Lytles, the statute's language allowing judgments to be recorded against the units would be rendered superfluous, as NRS 17.150 would be sufficient to allow judgments to be recorded against the units of a common-interest community. Statutory construction principles do not support this position. See *Harris Assocs. v. Clark Cty. Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532,

534 (2003) (“[W]e construe statutes to give meaning to all of their parts and language[.]” (internal quotation marks omitted)).³ Based on the foregoing, we

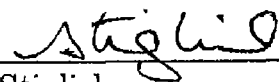
ORDER the judgment of the district court AFFIRMED.

 J.

Cherry

 J.

Parraguirre

 J.

Stiglich

³The Lytles also contend that the Original CC&Rs created a mechanism to record a judgment against the Association on individual units within Rosemere Estates. They cite the provision stating, “[A]ny liens established hereunder shall not defeat . . . the lien of any mortgage . . . as to said lots” As nothing within that provision explicitly permits a judgment against the contemplated association to be recorded as a lien on properties within the community, we conclude that it does not create a mechanism by which the Lytles could record their judgment against the Association as a lien on member properties. *Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.3d 664, 665-66 (2004) (observing that this court reviews de novo the interpretation of a restrictive covenant in CC&Rs); see *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (providing that when “the language of the contract [or CC&R] is clear and unambiguous[,] . . . the contract will be enforced as written” (internal quotation marks omitted)).

cc: Hon. Timothy C. Williams, District Judge
Persi J. Mishel, Settlement Judge
Gibbs Giden Locher Turner Senet & Wittbrodt LLP/Las Vegas
Fidelity National Law Group
Foley & Oakes, PC
Christensen James & Martin
Eighth District Court Clerk

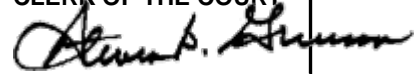
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EXHIBIT M

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11 *Robert Z. Disman and Yvonne A. Disman*

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

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

16 Plaintiffs,

17 vs.

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

21 Defendants.

22 **AND ALL RELATED MATTERS**

Case No.: A-16-747800-C

Dept. No.: XVI

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
ROBERT Z. DISMAN AND YVONNE
A. DISMAN'S MOTION FOR
ATTORNEY'S FEES**

Date of Hearing: May 16, 2019

Time of Hearing: 9:00 a.m.

23 This matter came before the Court for a hearing on May 16, 2019, pursuant to Counter-
24 Defendants Robert Z. Disman and Yvonne A. Disman (collectively referred to herein as, the
25 "Dismans")' Motion for Attorney's Fees ("Motion") against Defendants/Counter-Claimants
26 Trudi Lee Lytle and John Allen Lytle, Trustees of the Lytle Trust (collectively referred to herein
27 as, the "Lytle Trust"), filed on January 23, 2019. The Lytle Trust filed an Opposition to the
28 Motion ("Opposition") on February 12, 2019. The Dismans filed a Reply in Support of the
Motion ("Reply") on February 20, 2019.

Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of the

1 Dismans. Richard E. Haskin, Esq. of Gibbs Giden Locher Turner Senet & Wittbrodt LLP
2 appeared on behalf of the Lytle Trust. Daniel T. Foley, Esq. of Foley & Oak, PC appeared on
3 behalf of Plaintiffs/Counter-Defendants Marjorie B. Boulden, Trustee of the Marjorie B.
4 Boulden Trust, amended and restated dated July 17, 1996 ("Boulden Trust") and Linda Lamothe
5 and Jacques Lamothe, Trustees of the Jacques and Linda Lamothe Living Trust ("Lamothe
6 Trust") (at times collectively referred to herein as, the "Boulden Plaintiffs"). Additionally,
7 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of Plaintiffs in Case
8 No. A-17-765372-C – September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G.
9 Zobrist, Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G.
10 Sandoval and Julie Marie Sandoval Gegen, Trustees of the Raynaldo G. and Evelyn A. Sandoval
11 Joint Living and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S.
12 Gegen.

13 The Court, having reviewed the record, the points and authorities set forth in the Motion,
14 Opposition, and Reply, considered the oral arguments of counsel and good cause appearing
15 therefore, makes the following Findings of Fact, Conclusions of Law and Order.

16 **FINDINGS OF FACT**

17 1. The Dismans are the owners of the residential property in Clark County, Nevada
18 known as 1960 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-
19 008 ("1960 Rosemere Court" or "Property").

20 2. The Lytle Trust is the owner of the residential property in Clark County, Nevada
21 known as Assessor's Parcel No. 163-03-313-009.

22 3. Both properties are located within a subdivision commonly known as Rosemere
23 Estates ("Subdivision").

24 4. On January 4, 1994, a Declaration of Covenants, Conditions and Restrictions
25 governing the Subdivision ("Original CC&Rs") was recorded by Baughman & Turner Pension
26 Trust, then owner and developer of the Subdivision.

27

28

1 5. On July 3, 2007, an Amended and Restated Declaration of Covenants,
2 Conditions, and Restrictions for the Subdivision ("Amended CC&Rs") was recorded
3 purportedly by the Rosemere Estates Property Owners Association ("Association").

4 6. The Amended CC&Rs set forth new requirements for the Subdivision and
5 provided that the changes were made "in order to bring the same into compliance with the
6 provisions of Nevada Revised Statutes ("NRS") Chapter 116.

7 7. In 2009, the Lytle Trust sued the Association in the Eighth Judicial District
8 Court, Case No. A-09-593497-C (the "Rosemere Litigation I"), seeking, *inter alia*, a declaratory
9 judgment that the Amended CC&Rs were not properly adopted and, therefore, void.

10 8. The Dismans were not parties to the Rosemere Litigation I.

11 9. The Lytle Trust ultimately obtained a summary judgment for declaratory relief
12 from the district court in the Rosemere Litigation I, which found and ruled as follows, in
13 pertinent part:

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

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

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

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

23 10. Additionally, the Lytle Trust obtained a monetary judgment against the
24 Association in the Rosemere Litigation I which included an award of attorneys' fees and costs
25 ("Rosemere Litigation I Judgment") and subsequently caused to be recorded abstracts of that
26 judgment ("Abstracts of Judgment") against properties within the Subdivision, including 1960
27 Rosemere Court.

28 11. In 2010, the Lytle Trust filed another lawsuit against the Association in the

1 Eighth Judicial District Court, Case No. A-10-631355-C (the “Rosemere Litigation II”).

2 12. The Dismans were not parties to the Rosemere Litigation II.

3 13. The Lytle Trust also obtained a monetary judgment against the Association in the
4 Rosemere Litigation II which included an award of punitive damages, attorneys’ fees and costs
5 (“Rosemere Litigation II Judgment”).

6 14. On or about December 8, 2016, the Boulden Plaintiffs commenced this case
7 against the Lytle Trust regarding the Abstracts of Judgment that the Lytle Trust had recorded
8 against their properties in the Subdivision.

9 15. At the time, the Boulden Trust was the owner of 1960 Rosemere Court within the
10 Subdivision.

11 16. On March 10, 2017, the Boulden Plaintiffs filed an Amended Complaint against
12 the Lytle Trust, alleging claims for slander of title, injunctive relief, quiet title, and declaratory
13 relief.

14 17. The Boulden Plaintiffs alleged in support of their claims that the Original
15 CC&Rs recorded on January 4, 1994 against all of the properties within the Subdivision created
16 a limited purpose association, that the district court in the Rosemere Litigation I had previously
17 declared that the Subdivision was a limited purpose association, that NRS 116.3117, the statute
18 upon which the Lytle Trust relied in recording the Abstracts of Judgment, was not applicable to
19 the Association, and, therefore, the Abstracts of Judgment could not be recorded against the
20 Boulden Plaintiffs’ properties.

21 18. Thereafter, the Boulden Plaintiffs filed a motion for partial summary judgment,
22 and on April 26, 2017, this Court issued an order granting partial summary judgment in their
23 favor (“Order”) as to the quiet title and declaratory relief causes of action, finding and
24 concluding as follows:

25 7. None of the Plaintiffs were a “losing party” in the
26 Rosemere LPA Litigation¹ as that term is found in Section 25 of
27 the Original CC&Rs.

28 ¹ The Rosemere LPA Litigation is referred to herein as the Rosemere Litigation I.

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

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

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

19. The Order specifically states as follows with respect to 1960 Rosemere Court: (1) the Lytle Trust clouded title to the Property, (2) the Abstracts of Judgment are expunged and stricken from the record, (3) the Lytle Trust is permanently enjoined from recording and enforcing the Rosemere Litigation I judgment against the Property, and (4) the Lytle Trust is permanently enjoined from taking any action in the future against 1960 Rosemere Court based on the Rosemere Litigation I.²

20. The Lytle Trust released its Abstracts of Judgment from the Boulden Plaintiffs'

² The Order was subsequently amended on or about July 25, 2017; however, none of the findings of fact and conclusions of law recited above were modified.

1 properties in accordance with the Order, but recorded notices of lis pendens against those
2 properties on or about May 10, 2017. Moreover, it advised the Boulden Plaintiffs of the
3 Rosemere Litigation II Judgment that it had recently obtained.

4 21. This prompted the Boulden Plaintiffs to file a Second Amended Complaint
5 against the Lytle Trust on July 25, 2017, that sought, *inter alia*, to enjoin the Lytle Trust from
6 recording or enforcing the Rosemere Litigation II Judgment against their properties.

7 22. On or about August 4, 2017, the Boulden Trust sold 1960 Rosemere Court to the
8 Dismans.

9 23. On August 11, 2017, the Lytle Trust filed an Answer to the Second Amended
10 Complaint and a Counterclaim against the Lamothe Trust and the Dismans ("Counterclaim").

11 24. The Counterclaim seeks, in essence, a declaration that the Lytle Trust can record
12 an abstract of the Rosemere Litigation II Judgment against the Lamothe Trust and the Dismans'
13 properties.

14 25. On or about June 28, 2018, the Dismans moved for summary judgment or
15 judgment on the pleadings against the Lytle Trust on the basis that this Court's Order regarding
16 the Rosemere Litigation I Judgment rendered the Counterclaim regarding the Rosemere
17 Litigation II Judgment unsustainable.

18 26. On or about December 27, 2018, Judge Mark B. Bailus denied the Dismans'
19 motion as moot,³ holding that this Court's Order encompasses the Lytles' Counterclaim and
20 prevents the Lytle Trust from recording an abstract of the Rosemere Litigation II Judgment
21 against the Dismans' property.

22 27. On January 23, 2019, the Dismans filed the instant Motion seeking an award of
23 their attorney's fees against the Lytle Trust pursuant to the terms of the Original CC&Rs and/or
24 the provisions of NRS 18.010(2).

25 CONCLUSIONS OF LAW

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27

28 ³ Subsequent to this Court's Order, the case was reassigned to Judge Mark B. Bailus in Department 18. It was then
reassigned to this department.

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

3 2. Section 25 of the Original CC&Rs governing the Subdivision provides:

4 Attorney's Fees: In any legal or equitable proceeding for the
5 enforcement of or to restrain the violation of the Declaration of
6 Covenants, Conditions and Restrictions or any provision thereof,
the losing party or parties shall pay in such amount as may be
fixed by the court in such proceeding.

7 3. The Lytle Trust brought the Counterclaim against the Dismans seeking to
8 enforce, among other things, its alleged rights under the Original CC&Rs against them. The
9 Counterclaim alleges in pertinent part:

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

14 29. Specifically, the Lytles contend as follows:

- 15 a. Pursuant to the Original CC&Rs, a lien or
16 judgment against the association established under
the Original CC&Rs attaches to each lot within the
Association.
- 17 b. Pursuant to the Amended CC&Rs, which were in
18 force at all times from 2007 through July 29, 2013,
19 a lien or judgment against the Association
established under the Amended CC&Rs attaches to
each lot with the Association.
- 20 c. Pursuant to NRS, Chapter 116, the Uniform
21 Common Interest Development Act, a lien or
22 judgment against the Association attached to each
23 lot within the Association, even if the Association
is a limited purpose association, because under
24 NRS 116.021, each common interest community
consists of all "real estate described in a
25 declaration with respect to which a person, by
26 virtue of the person's ownership of a unit, is
obligated to pay for a share of real estate taxes,
27 insurance premiums, maintenance or improvement
of, or services or other expenses related to,
28 common elements, other units or other real estate
described in that declaration." Further under NRS
116.093, each "unit" is defined as the "physical
portion of the common-interest community
designated for separate ownership or occupancy..."

1 Thus, the association, or common interest
2 community, includes each and every unit in the
community, including those owned by third parties.

- 3 d. Pursuant to NRS 116.3117, which governed the
4 Association and all owners during the underlying
5 litigation, a judgment against the Association is a
6 lien in favor of the Lytles against all of the real
7 property within the Association and all of the units
8 therein, including Counter-Defendants' properties.
9 The association and its membership are not entitle
10 to use Chapter 116 and all of its provisions as a
11 sword during the litigation against the Lytles, e.g.
12 to record multiple liens totaling \$209,883.19
13 against the Lytles and attempt foreclosure against
14 the Lytle Property forcing to procure a \$123,000.00
15 cash bond to prevent such foreclosure, and then a
16 shield to defend against the Lytles after they
17 prevailed in that litigation and the Association was
18 declared a limited purpose association.

19 30. The Lytles desire a judicial determination of the parties'
20 rights and duties and a declaration (that) the lien against the
21 Association, specifically, the Abstract of judgment issued in the
22 NRED II Litigation,⁴ can be recorded against 1830 Rosemere
23 Court and 1960 Rosemere Court.

24 4. Given the nature of the Counterclaim, as well as the overall case in which both
25 the Boulden Plaintiffs and the Lytle Trust sought to enforce their alleged rights under the
26 Original CC&Rs, this Court concludes that Section 25 of the Original CC&Rs applies to control
27 the award of attorney's fees.

28 5. Moreover, applying the language of Section 25, the Court concludes that the
Dismans are the winning parties, that the Lytle Trust is the losing party, and that the assessment
of attorney's fees against the losing party is mandatory under Section 25.

6. The Dismans incurred \$35,676.00 in attorney's fees.

7. Under Nevada law, the basic elements to be considered in determining the
reasonable value of an attorney's service are: "(1) the qualities of the advocate: his ability, his
training, education, experience, professional standing and skill; (2) the character of the work to
be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility

⁴ The NRED II Litigation is referred to herein as the Rosemere Litigation II.

1 imposed and the prominence and character of the parties where they affect the importance of the
2 litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to
3 the work; (4) the result: whether the attorney was successful and what benefits were derived.”
4 *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (internal citations
5 omitted).

6 8. Based on the record and the affidavit of the Dismans’ counsel in support of the
7 Motion, the Court finds that the qualities of counsel, including her ability, training, education,
8 experience, professional standing and skill, establish the reasonableness of the fees sought.
9 Furthermore, the Court observed firsthand in reviewing pleadings and at hearings the quality of
10 representation and level of preparation of the Dismans’ counsel. Therefore, the first *Brunzell*
11 factor has been satisfied.

12 9. The Court also finds that the character of the work to be done and its difficulty,
13 intricacy, importance, time and skill required, and responsibility imposed likewise establish the
14 reasonableness of the Dismans’ attorney’s fees. This case has a ten (10) year history which
15 required extensive review, analysis, research and preparation of pleadings by the Dismans’
16 counsel. Therefore, the second *Brunzell* factor has been sufficiently satisfied.

17 10. The Court further finds that the skill, time, and attention given to the work are
18 also indicative of the reasonableness of the Dismans’ attorney’s fees. As shown by the Court
19 records and counsel’s billing statements, the case was contentious and zealously litigated.
20 Tremendous attention and time were paid by counsel. The preparation for this case was detailed
21 and complete and the fees charged were reasonable and necessary. Accordingly, the third
22 *Brunzell* factor has been satisfied.

23 11. The fourth factor assesses the success and benefits derived from the litigation.
24 Through their counsel’s efforts, the Counterclaim was ultimately dismissed. Accordingly, the
25 Lytle Trust cannot reasonably argue that the result obtained was not a successful result for the
26 Dismans. Thus, the fourth *Brunzell* factor has been satisfied to permit the Dismans to recover
27 reasonable attorney’s fees from the Lytle Trust.

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1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is
 2 hereby ordered to pay the attorney's fees as ordered herein by certified check made payable to
 3 Fidelity National Law Group in the amount of Thirty-Five Thousand Six Hundred Seventy Six
 4 and 00/100 Dollars (\$35,676.00) and delivered to Fidelity National Law Group within ten (10)
 5 days of the Notice of Entry of this Order.

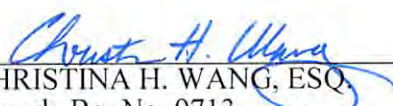
6 **IT IS SO ORDERED.**

7 DATED this 4TH day of Sept., 2019.

8
 9 
 10 DISTRICT COURT JUDGE
 11 

12
 13 Respectfully submitted by:

14 FIDELITY NATIONAL LAW GROUP

15
 16 
 17 CHRISTINA H. WANG, ESQ.
 18 Nevada Bar No. 9713
 19 2450 St. Rose Parkway, Suite 100
 Henderson, Nevada 89074
Attorneys for the Dismans

Approved as to form and content by:

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20
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 24 1140 N. Town Center Drive, Suite 300
 25 Las Vegas, Nevada 89144
 26 *Attorneys for the Lytle Trust*

EXHIBIT N

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1 **ORDR**
2 **CHRISTENSEN JAMES & MARTIN**
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Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

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

23 Defendants.

24 AND ALL RELATED COUNTERCLAIMS
25 AND CROSS-CLAIMS

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

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

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

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

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

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

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

5 Plaintiffs,

6 vs.

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

11 Defendants.

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

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

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

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

8
9 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 24. On February 24, 2017, the Boulden Trust, owner of Parcel No. 163-03-313-008 in
23 the Rosemere Subdivision, and the Lamothe Trust, owner of Parcel No. 163-03-313-002 in the
24 Rosemere Subdivision, filed a Motion for Partial Summary Judgment in this Court in this Case,
25 Case No. A-16-747900-C.
26
27
28

1 25. This Court granted the Boulden Trust's and Lamothe Trust's Motion for Partial
2 Summary Judgment, and on July 25, 2017, entered its Order Granting Motion to Alter or Amend
3 Findings of Fact and Conclusions of Law ("Order").

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

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

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

16 **CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
6 Fourth Abstract of Judgment recorded as Instrument No. 20160902-0002687 in the Clark County
7 Recorder's Office is hereby expunged and stricken from the records of the Clark County
8 Recorder's Office.
9

10 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
11 Lytle Trust is permanently enjoined from recording and enforcing the Judgments obtained from
12 the Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other
13 judgments obtained against the Association, against the September Property, Zobrist Property,
14 Sandoval Property or Gegen Property.
15

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

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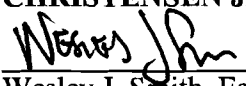
IT IS SO ORDERED.

Dated this ____ day of May, 2018.

DISTRICT COURT JUDGE

Submitted by:

CHRISTENSEN JAMES & MARTIN



Wesley J. Smith, Esq.
Nevada Bar No. 11871
Laura J. Wolff, Esq.
Nevada Bar No. 6869
7440 W. Sahara Ave.
Las Vegas, NV 89117
Attorneys for Plaintiffs September Trust,
Zobrist Trust, Sandoval Trust, and
Dennis & Julie Gegen

Approved as to Form and Content by:

FIDELITY NATIONAL LAW GROUP

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Claimants Robert & Yvonne Dismar

DANIEL T. FOLEY, ESQ.
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Nevada Bar No. 11559
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Defendants/Counter-
Claimants Lytle Trust

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1 **IT IS SO ORDERED.**

2
3 Dated this ____ day of May, 2018.

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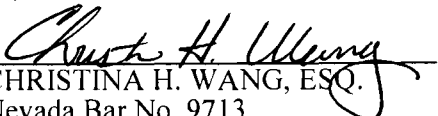
DISTRICT COURT JUDGE

Submitted by:

CHRISTENSEN JAMES & MARTIN

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Attorneys for Plaintiffs/Counter-
Defendants/Cross-Defendants Boulden Trust
and Lamothe Trust

1 **IT IS SO ORDERED.**

2
3 Dated this 22 day of May, 2018.

4
5 **DISTRICT COURT JUDGE**

6 Submitted by:

7
8 **CHRISTENSEN JAMES & MARTIN**

9
10 Wesley J. Smith, Esq.
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Dennis & Julie Gegen

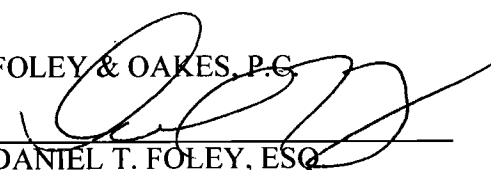
14
15 **Approved as to Form and Content by:**

16 **FIDELITY NATIONAL LAW GROUP**

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20 Claimants Robert & Yvonne Disman

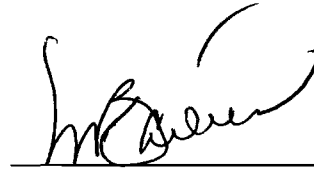
21 **GIBBS GIDEN LOCHER TURNER**
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and Lamothe Trust

1 **IT IS SO ORDERED.**

2
3 Dated this 20 day of May, 2018.



DISTRICT COURT JUDGE

4
5
6 Submitted by:

7
8 **CHRISTENSEN JAMES & MARTIN**

9
10 Wesley J. Smith, Esq.
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15 **Approved as to Form and Content by:**

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EXHIBIT O

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1 **COMP**
2 Richard E. Haskin, Esq.
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4 Timothy Elson, Esq.
5 Nevada State bar # 11559
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9 Las Vegas, Nevada 89144-0596
10 (702) 836-9800

11 Attorneys for Plaintiff
12 TRUDI LEE LYTLE AND JOHN ALLEN
13 LYTLE, AS TRUSTEES OF THE LYTLE
14 TRUST

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 TRUDI LEE LYTLE AND JOHN ALLEN
18 LYTLE, AS TRUSTEES OF THE LYTLE
19 TRUST,

20 Plaintiff,

21 v.

22 ROSEMERE ESTATES PROPERTY OWNERS'
23 ASSOCIATION; DOES 1 through 20, inclusive;
24 and ROE CORPORATIONS 1 through 80,
25 inclusive,

26 Defendants.

27 CASE NO.: A-18-775843-C
28 DEPT.: Department 31

**COMPLAINT FOR DECLARATORY
RELIEF AND PRELIMINARY
INJUNCTION**

**(EXEMPT FROM ARBITRATION –
AFFECTS TITLE TO REAL PROPERTY
AND DECLARATORY RELIEF
REQUESTED)**

19 Plaintiff TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE
20 LYTLE TRUST (hereinafter "Plaintiff" or the "Lyttles"), by and through the undersigned counsel,
21 hereby complains and alleges as follows:

22 **PARTIES, JURISDICTION AND VENUE**

23 1. Plaintiff is the current owner of real property located 1930 Rosemere Court, in Clark
24 County, Nevada, APN 163-03-313-009, and described as:

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

28 ///

1 Plaintiff's Property was previously owned by J. Allen Lytle and Trudi L. Lytle, the current
2 Trustees of the Lytle Trust, having been purchased by deed recorded November 15, 1996.

3 2. Defendant ROSEMER ESTATES PROPERTY OWNERS' ASSOCIATION
4 ("Defendant" or the "Association"), at all times herein mentioned is a common interest community
5 and comprised of nine (9) owners of single family lots, eight of which are developed, all as more
6 particularly described in the recorded Declaration of Covenants, Conditions and Restrictions, dated
7 January 4, 1994 (the "CC&Rs") for the Association, as recorded in the official records of the Clark
8 County Nevada Recorder's office. A true and correct copy of the CC&Rs is attached hereto, and
9 incorporated herein, as Exhibit "1."

10 3. Defendants DOES 1 through 20, inclusive, are sued herein under fictitious names,
11 their true names and capacities being unknown to Plaintiff but are believed to reside in the State of
12 Nevada; Plaintiff will ask leave of Court to amend its Complaint by inserting their true names and
13 capacities in the place and stead of said fictitious names when the same have been ascertained.

14 4. Defendants ROE CORPORATIONS 1 through 80, inclusive, are sued herein under
15 fictitious names, their true names and capacities being unknown to Plaintiff but are believed to be
16 corporations or other entities authorized to conduct business in the State of Nevada; Plaintiff will ask
17 leave of Court to amend its Complaint by inserting their true names and capacities in the place and
18 stead of said fictitious names when the same have been ascertained.

19 5. Plaintiff is informed and believes and based upon such information and belief alleges
20 that each Defendant designated herein as DOES 1 through 20, inclusive, and ROE
21 CORPORATIONS 1 through 80, inclusive (collectively the "DOE and ROE DEFENDANTS"), is
22 responsible in some way and/or manner for the acts and occurrences herein alleged, whether such
23 acts and occurrences were committed intentionally, negligently, recklessly or otherwise, and that
24 each DOE and ROE Defendant is subject to Plaintiff's relief or are involved as otherwise alleged
25 herein.

26 6. At all times mentioned herein, each of the Defendants was the agent and employee of
27 each of the remaining Defendants, and was, in doing the things herein complained of, acting within
28 the course and scope of such agency and employment or are otherwise in privity as alleged herein.

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1 14. The Association consistently held Board elections through March 2010, pursuant to
2 the protocols and methodology of NRS 116.31034, even though the Association is a limited purpose
3 association and Chapter 116 does not provide for a method of election of a Board for a limited
4 purpose association.

5 15. The Board last held an election on March 24, 2010. The Board members in place
6 from 2010 through July 2013 were as follows: Ray Sandoval (President), Orville McCumber
7 (Secretary), and Johnnie McCumber (Treasurer).

8 16. On January 27, 2014, during an unrelated court hearing involving the Association,
9 Orville McCumber, former Board Secretary, testified under oath that he no longer sat on the
10 Association's Board. In August 2015, Ray Sandoval, former Board President, told Plaintiff that the
11 Board "dissolved" and had not conducted any business since July 29, 2013. During this
12 conversation, Mr. Sandoval stated that the Board had not conducted any meetings since July 2013,
13 and did not intend on conducting any future meetings or conducting any future Association business.
14 It was abundantly clear from this conversation that the Board simply does not exist, and all former
15 officers abandoned their positions.

16 17. Presently, there is no sitting and acting Board for the Association, even though such a
17 board is required.

18 18. Thereafter, the Lytles filed a legal action in the Eighth Judicial District Court of
19 Nevada, Case No. A-15-716420-C (the "Prior Lawsuit") to require the Association to hold an
20 election. In the Prior Lawsuit, the Court held that the Association was required to hold an election
21 pursuant to NRS 82.271, 82.276, and 82.306. Despite a ruling requiring the election, the Association
22 has not done so as no neutral third party will agree to handle the election due to the Association
23 lacking funds to compensate the third party in advance of the election.

24 19. As a result of not having a Board, the Association cannot conduct business and
25 maintain the community as required by the CC&RS and Chapters 82 and 116 of the Nevada Revised
26 Statutes. Therefore, the Rosemere Estates Community has begun to dilapidate.

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1 Nevada law.

2 28. Plaintiffs bring this action pursuant to NRS 116.4117(2)(b).

3 29. As such, an order from this Court is appropriate that the Association must conduct the
4 above-referenced activity.

5 **SECOND CAUSE OF ACTION**

6 **((For Breach of Contract / Easement Agreement Against All Defendants))**

7 30. Plaintiff repeats and re-alleges the preceding paragraphs as though fully set forth
8 herein and incorporates the same herein by reference.

9 31. Pursuant to the CC&Rs, as well as other Nevada law, the Association was required to
10 maintain the Rosemere Estates Community and handle the day to day activities required of the
11 Association, as specified in more detail throughout this Complaint.

12 32. The Association breached the CC&Rs, as well as other Nevada law, by failing to
13 maintain the Rosemere Estates Community and handle the day to day activities, which includes, but
14 is no limited to: 1) maintaining the landscaping in the exterior wall planters; 2) maintaining the
15 exterior perimeter and frontage; 3) maintaining the entrance gate; 4) maintaining the private drive
16 and sewer system; 5) ensuring that homeowners are paying their assessments; 6) seeking collection
17 activity against any homeowners that have failed to pay their assessments; 7) paying known creditors
18 of the Association; 8) specially assessing the homeowners to ensure that enough proceeds exist
19 within the HOA funds to pay all known creditors assessing; and 9) any other activity required under
20 Nevada law.

21 33. Plaintiff, at all times, performed under the CC&Rs.

22 34. Plaintiff, at all times, substantially complied with all provisions contained therein.

23 35. Plaintiff alleges that the terms of the CC&Rs, as well as the other obligations under
24 Nevada law, are definite and certain between the parties.

25 36. Plaintiff is informed and believes that certain remedies at law are inadequate because,
26 for example, the Association failed and continues to fail to handle its obligations under the CC&Rs,
27 as well as Nevada law. Monetary damages will not make Plaintiff whole for these types of damages.
28 Plaintiff seeks specific performance to prevent these types of violations from occurring moving

1 forward.

2 37. Plaintiff tendered performance under the CC&Rs, as well as other Nevada law.

3 38. Plaintiff respectfully requests that this Court make an order requiring specific
4 performance and believes the Court will do so given the facts plead herein.

5 39. Plaintiff is informed and believes that it is entitled to the relief demanded herein.

6 40. Plaintiff is informed and believes that the Association is violating and will continue to
7 violate certain provisions in the CC&Rs, as well as Nevada law, as more specifically set forth above.

8 41. The Association's actions will continue to violate Plaintiff's rights respecting the
9 subject of this action, and will tend to render the judgment ineffectual.

10 42. If the Association continues to commit these types of violations, Plaintiff will suffer
11 great or irreparable injury.

12 43. Plaintiff has demonstrated a likelihood of success on the merits.

13 44. Plaintiff has demonstrated a reasonable probability that if the Association's conduct
14 continues, Plaintiff will suffer irreparable harm for which there is an inadequate remedy at law.

15 45. Plaintiff has demonstrated that the threatened injury to it in absence of an injunction
16 outweighs any potential harm that the injunction may cause the Association.

17 46. Plaintiff has demonstrated that the granting of an injunction is not contrary to the
18 public interest.

19 47. Plaintiff respectfully requests that this Court make an order precluding the
20 Association from continuing to breach the CC&Rs, as well as Nevada law, for all violations in which
21 there is not an adequate remedy at law until this matter is resolved.

22 48. It has been necessary for Plaintiff to retain the services of counsel to represent them
23 and to bring this action, and Plaintiff is entitled to recover attorneys' fees and costs incurred herein.

24 **PRAYER FOR RELIEF**

25 Plaintiff responsibly requests the Court grant the following relief:

26 1. For an Order declaring that the Association must continue to operate as required by
27 the CC&Rs and Chapters 82 and 116 of the Nevada Revised Statutes, which includes, but is not
28 limited to: 1) maintaining the landscaping in the exterior wall planters; 2) maintaining the exterior

1 perimeter and frontage; 3) maintaining the entrance gate; 4) maintaining the private drive and sewer
2 system; 5) ensuring that homeowners are paying their assessments; 6) seeking collection activity
3 against any homeowners that have failed to pay their assessments; 7) paying known creditors of the
4 Association; 8) specially assessing the homeowners to ensure that enough proceeds exist within the
5 HOA funds to pay all known creditors assessing; and 9) any other activity required under Nevada
6 law.

7 2. For specific performance requiring the Association to comply with the CC&Rs, as
8 well as other Nevada law, with respect to the Association's maintenance and day-to-day activities;

9 3. For injunctive relief preventing the Association from violating the terms of the
10 CC&RS, as well as other Nevada law, moving forward;

11 4. For appointment of a receiver to handle the maintenance obligations and day-to-day
12 activities, including the financial activities regarding assessments and creditors, until a duly
13 constituted board may be instituted and power transitioned thereto;

14 5. For reasonable attorneys' fees;

15 6. For costs of suit and litigation; and

16 7. For such other and further relief as the Court deems just and proper

17 DATED: June 8, 2018

GIBBS GIDEN LOCHER TURNER
18 SENET & WITTBRODT LLP

19 By: 

20 Richard E. Haskin, Esq.
21 Nevada State Bar # 11592
22 1140 N. Town Center Drive, Suite 300
23 Las Vegas, Nevada 89144
24 Attorneys for Plaintiff

25 TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS
26 TRUSTEES OF THE LYTLE TRUST
27
28

EXHIBIT P

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RECEIVERSHIP SPECIALISTS

STATE AND U.S. FEDERAL COURT RECEIVERS/TRUSTEES

January 22, 2020

To: Mr. & Mrs. Disman
1960 Rosemere Ct.
Las Vegas, NV 89117

From: Kevin Singer
Receivership Specialists

RE: Receivership Over Rosemere Estates Property Owners Association

Dear Mr. & Mrs. Disman;

My name is Kevin Singer and I have been appointed by the District Court of Clark County as the neutral District Court Receiver ("Receiver") over your homeowner's association (HOA). Attached as "**Exhibit 1**" is my appointing order for you to review. My intention is to work with the HOA and its members, not against.

The appointment of the receivership is predicated on judgments against the HOA in the approximate amount of \$1,481,822 by the Lytle family ("the Plaintiff"). The Lytle's own lot 9 in Rosemere Estates. These judgments need to be paid and the Court agreed with the Plaintiff by appointing a Receiver to facilitate the satisfying of the judgments.

We would like to meet with the title holding members of the HOA on February 1, 2020, at 9:30 am at the mailboxes of Rosemere Estates to introduce ourselves, go over the Court's Order and share three ideas we have to pay these judgments. It would be appreciated if someone volunteered their home for the meeting. This will not be an HOA meeting and we will not be conducting HOA business at this meeting.

In the meantime, we welcome a conversation with you regarding the current care and maintenance of the community. We are seeking to know the following:

- 1) Who is currently leading the HOA?
- 2) How much are the HOA dues per home per month?
- 3) Who does the HOA bank with? Provide evidence of bank statements.
- 4) Are there any insurances in place for the HOA?
- 5) A list of all vendors servicing the property for landscaping and your gate, etc.

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11500 W. Olympic Blvd.
Suite 530
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Fax: (310) 552-9066

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Sacramento, CA 95814
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Fax: (775) 686-2401

Phoenix
2 N. Central Avenue
Suite 1800
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Tel: (602) 343-1889
Fax: (602) 343-1801

Lastly, since my appointment on December 18, 2019, I have put the HOA back into good standing with the Nevada Real Estate Division and the Nevada Secretary of State. See **"Exhibits 2 & 3"** showing good standing.

If you have any questions or any information you would like to communicate to me, please call or e-mail my associate Scott Yahraus at (702) 562-4230, Scott@ReceivershipSpecialists.com. All homeowners will be receiving this correspondence.

Respectfully Yours;

A handwritten signature in blue ink, appearing to read "Kevin Singer".

Kevin Singer
Clark County District Court Receiver
Case: A-18-775843-C

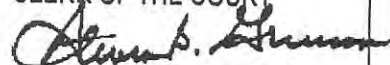
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EXHIBIT 1

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Electronically Filed
12/18/2019 9:33 AM
Steven D. Grierson
CLERK OF THE COURT



NEOJ

Richard E. Haskin, Esq.
Nevada State Bar # 11592

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(702) 836-9800

Attorneys for Plaintiff

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST

DISTRICT COURT

CLARK COUNTY, NEVADA

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST,

Plaintiff,

v.

ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; DOES 1 through 20, inclusive;
and ROE CORPORATIONS 1 through 80,
inclusive,

Defendants.

CASE NO.: A-18-775843-C
DEPT.: XXXI

**NOTICE OF ENTRY OF ORDER
APPOINTING A RECEIVER OF
DEFENDANT ROSEMERE PROPERTY
OWNERS ASSOCIATION**

NOTICE IS HEREBY GIVEN that on the 18th day of December, 2019, a **ORDER**
APPOINTING A RECEIVER OF DEFENDANT ROSEMERE PROPERTY OWNERS
ASSOCIATION was entered in the above-entitled matter, a copy of which is attached hereto.

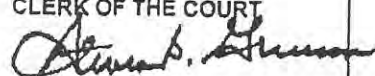
DATED: December 18, 2019

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: Richard E. Haskin

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TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS
TRUSTEES OF THE LYTLE TRUST

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Steven D. Grierson
CLERK OF THE COURT



ORD

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Attorneys for Plaintiff
TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST

**DISTRICT COURT
CLARK COUNTY, NEVADA**

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST,

Plaintiff,

v.

ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; DOES 1 through 20, inclusive;
and ROE CORPORATIONS 1 through 80,
inclusive,

Defendants.

CASE NO.: A-18-775843-C
DEPT.: XXXI

**[PROPOSED] ORDER
APPOINTING A RECEIVER
OF DEFENDANT ROSEMERE
PROPERTY OWNERS ASSOCIATION**

On December 3, 2019, at 9:00 a.m. in Department XXXI of the above-caption Court, Plaintiff TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (hereinafter the "Lytle Trust"), Renewed Application for Appointment of a Receiver came on for hearing. No one appeared for Defendant ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION (the "Association"), which has been defaulted in this case due to its failure to appear.

After reviewing the Lytle Trust's Application for Appointment of a Receiver and considering additional argument at the hearing, the Court makes the following Order:

IT IS ORDERED that the Lytle Trust's Application for Appointment for Receiver is granted pursuant to NRS 32.010(1) and NRS 82.476. A Receiver shall be appointed for the Association which consists of the following properties: APN 163-03-313-001; APN 163-03-313-002; APN 163-

03-313-003; APN 163-03-313-004; APN 163-03-313-005; APN 163-03-313-006; APN 163-03-313-007; APN 163-03-313-008; and APN 163-03-313-009.

IT IS FURTHER ORDERED that Kevin Singer (the "Receiver") is hereby appointed Receiver in this action, subject to the condition that before entering upon his duties as Receiver, he shall execute a receiver's oath and post a bond from an insurer in the sum of \$5,000.00, conditioned upon faithful performance of his duties as receiver herein. The Receiver's oath and bond are to be filed in Department XXXI no later than December 27, 2015. Prior to Receiver posting his bond, Plaintiffs shall advance \$5,000.00 to the Receiver to cover his cost to post a bond and initial fees and expenses. The Receiver shall reimburse Plaintiff's advance through an Association assessment or dues.

IT IS FURTHER ORDERED that the Receiver is directed by this Court to do the following specific acts pursuant to NRS 32.255 which provides the Court, when appointing a receiver, "exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property:"

1. Immediately take possession and control of the Association's financial accounts, including locating all checkbooks, and ledgers, and other Association records and documents including, but not limited to, budgets, reserve studies, insurance policies and other effects of the Association Accounts.

2. Issue and collect a special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against the Association.

3. Pay NRED for mandatory registration pursuant to NRS 116.31155, and if there are insufficient funds within the Association's accounts to pay such fees, issue a special assessment to all owners within the Association to satisfy any amounts due to NRED.

4. Update registration with the ombudsman pursuant to NRS 116.31158.

5. Pay the Secretary of State for the State of Nevada all past due and presently due amounts to amend the Association's status from "revoked" status, and if there are insufficient funds within the Association's accounts to pay such fees, issue and collect a special assessment to all owners within the Association to satisfy any amounts due to Secretary of State.

- 1 6. Conduct an election for the Board of Directors for the Association.
- 2 7. Make any necessary repairs to the common areas, and if there are insufficient funds
- 3 within the Association's account to pay for such repairs, issue and collect a special assessment to all
- 4 owners within the Association to pay for said repairs.
- 5 8. Issue and collect a special assessment to the Association membership to pay the
- 6 receiver's fees and costs.
- 7 9. Exercise any power set forth in NRS 32.290, NRS 32.295, NRS 32.315, and NRS
- 8 32.320.
- 9 10. The Receiver shall have all power and authority of a receiver provided by law,
- 10 including the following powers and responsibilities:
- 11 a. The Receiver is authorized and empowered to operate, manage, control, conduct, care
- 12 for, preserve, and maintain the Receivership Estate ("Receivership Estate" is defined
- 13 as the Association and all operations of the Association). In this regard the Receiver
- 14 shall be authorized to manage, operate and make all decisions on behalf of the
- 15 Association.
- 16 b. The Receiver may change the locks on the doors providing access and access to the
- 17 common areas and management office, so long as this does not interfere with
- 18 Association owner's and resident's access to their units in the Property, and to do all
- 19 things which he deems necessary to protect the Receivership Estate.
- 20 c. The Receiver is authorized to take possession of the Receivership Estate and seize,
- 21 manage and control the Receivership Estate, whether in the possession of the
- 22 Association's board of directors and/or officers, past or present members of the board
- 23 of directors or officers, or any company contracted to provide services to the
- 24 Association, including common area services.
- 25 d. The Receiver is further authorized to take possession of and collect any accounts,
- 26 chattel paper and general intangibles of every kind hereafter arising out of the
- 27 Receivership Estate and take possession of all the books and records relating to the
- 28 foregoing, wherever located, as the Receiver deems necessary for the proper

- 1 administration of the Receivership Estate.
- 2 e. The Receiver is authorized and empowered to enter, gain access to take possession of
- 3 and manage all Association Accounts wherever located pending discharge, including
- 4 the power to demand any and all records from the any and all banks and other
- 5 financial institutions holding present and past Association Accounts.
- 6 f. The Receiver shall preserve and protect the assets, tax records, books and records
- 7 where located while he acts to operate the affairs of the Association.
- 8 g. The Receiver is authorized to review all Accounts of the Association for all
- 9 expenditures and collections. Also, the Receiver is authorized to review the current
- 10 active account statements, contracts, invoices, and materials prepared by or regarding
- 11 any third party (past or present) who provided services to the Association.
- 12 h. The Receiver is authorized and empowered to execute and prepare all documents and
- 13 to perform all acts, either in the name of the Association, as applicable, or in the
- 14 Receiver's own name, which are necessary or incidental to preserving, protecting,
- 15 managing and/or controlling the Receivership Estate while the Receiver operates the
- 16 business of the Association. In particular, the Receiver shall have the authority
- 17 without limitation to immediately cancel, extend, modify or enter into any existing or
- 18 new contracts or leases necessary to operate the Receivership Estate.
- 19 i. The Receiver is authorized and empowered to demand, collect and receive all monies,
- 20 funds and payments arising from or in connections with any sale and/or lease of any
- 21 assets of the Receivership Estate, as well as monthly payments of mortgage debt
- 22 service, maintenance fees, dues, assessments and other fees from Association unit
- 23 owners, including fees paid directly to any person or entity managing any portion of
- 24 the Property on the Association's behalf.
- 25 j. The Receiver may take any and all steps necessary to receive, collect and review all
- 26 mail addressed to or on behalf of the Association, received at any address by any
- 27 owner or board member on behalf of the Association, or any post office boxes held in
- 28 the name of the Association, and the Receiver is authorized to instruct the U.S.

1 Postmaster to re-route, hold, and/or release said mail to said Receiver.

2 k. The Receiver may take possession of all Association Accounts and safe deposit boxes
3 of the Association and accounts as they pertain to the assets, wherever located and
4 receive possession of any money on deposit in said Association Accounts. The
5 Receiver also has the authority to close any Association Account(s) that the Receiver
6 deems necessary for operation or management of the Receivership Estate. Institutions
7 that have provided banking or other financial services to the Association are
8 instructed to assist the Receiver by providing records that he requests. These
9 institutions may charge their ordinary rates for providing this service.

10 l. The Receiver is empowered to use Association tax identification numbers and
11 establish bank accounts at any bank or investment accounts at any financial institution
12 the Receiver deems appropriate for the deposit of monies and funds collected and
13 received in connection with his operation and management of the Receivership
14 Estate. Any institutions that have Association Accounts and/or funds that are part of
15 the Receivership Estate or the Association shall be turned over to the custody and
16 control of the Receiver and that institution shall not be held liable for turnover of
17 funds.

18 m. To the extent feasible, the Receiver shall, within thirty (30) days of his qualification
19 hereunder, file in this action an inventory of all property of which Receiver shall have
20 taken possession pursuant to this Order and file monthly accountings thereafter.

21 n. The Receiver, or any party to this action, may from time to time, and on due notice to
22 all parties, make application to this Court on an ex parte basis or noticed motion for
23 further orders instructing the Receiver.

24 o. The Receiver is authorized to institute ancillary proceedings in this state or other
25 states as is necessary to obtain possession and control of assets of the Association and
26 the Receiver may engage the services of counsel with further court order. The
27 Receiver may pay for such services from the funds of the Receivership Estate. The
28 Receiver may hire legal counsel with further court order to institute such proceedings

1 in this State or other states as is necessary to obtain possession and control of assets
2 of the Association.

3 p. The Receiver is empowered to serve subpoenas when necessary with court approval.

4 q. The Receiver has the authority to assess all Association unit owners to pay for any
5 operation costs or to pay for judgments against the Association. If an Association
6 member does not pay an assessment then the Receiver may proceed to foreclose on
7 said members ownership interest in the property.

8 r. The Receiver has authority to take any and all legal actions or remedies to make sure
9 that Association unit owners pay their monthly debt service, maintenance fees, dues,
10 assessments or other fees.

11 11. The Receiver shall also be entitled to perform the following:

12 a. Hire professionals, including accountants, paralegals, property managers, and
13 attorneys, to aid and counsel the Receiver in performing his duties.

14 b. Hire contractors to evaluate and make repairs to the Property and other assets of the
15 Receivership Estate.

16 c. Pay the fees and costs of any professional retained by the Receiver to aid him.

17 d. Pay such other and ordinary expenses deemed appropriate by the Receiver to carry
18 out the Receiver's duties as specified herein.

19 e. Pay the Receiver's fees from the funds of the Receivership Estate.

20 f. The Receiver may use any federal tax payer identification numbers or apply for a new
21 tax payer number relating to the Association for any lawful purposes and prepare tax
22 returns if required.

23 12. Monthly accounting of Receiver's income, expenses, and fees ("Receiver's Report"):

24 a. The Receiver shall each month prepare and serve on the parties a narrative of what
25 issues he is addressing, accounting of revenues and expenses incurred in the
26 administration of the receivership.

27 b. The Receiver shall pay the Receiver's own fees of \$275 per hour, fees of his agents,
28 and expenses using funds of the Receivership Estate. Upon completion of monthly

Receiver's Report, and the mailing of such statement to the parties' respective attorneys of record, or any other designated person or agent, and if no objection is received within 10 calendar days after the mailing of the interim statement. If a party fails to object within 10 days of receiving Receiver's fees and administrative costs and expenses in the monthly interim statement, they shall thereafter be barred from making an objection to Receiver's fees and administrative costs and expenses as reflected in said interim report;

13. Receiver's final report and discharge:

- a. Motion required. Discharge of the Receiver shall require a Court order upon noticed motion for approval of the Receiver's final report and account and exoneration of the Receiver's bond.
- b. Time. Not later than sixty (60) days after the receivership terminates the Receiver shall file, serve, and obtain a hearing date on a motion for discharge of the Receiver.
- c. Notice. The Receiver shall give notice to all persons of whom the Receiver is aware who have potential claims against the receivership property.
- d. Contents of Motion. The motion to approve the final report and account and for discharge of the Receiver shall contain the following:
 - i. Declaration or Declarations. (1) stating what was done during the receivership; (2) certifying the accuracy of the final accounting, and the basis for said accounting (3) stating the termination of the receivership (such as reinstatement); and (4) stating the basis for an order for the distribution of any surplus or payment of any deficit.
 - ii. Accounting Summary. A summary of the receivership accounting, which shall include: (1) the total revenues received; (2) the total expenditures identified and enumerated by major categories; (3) the net amount of any surplus or deficit; and (4) evidence of necessary supporting facts.

14. Bankruptcy: Nominal Plaintiff's Duty to Give Notice. If any party files a bankruptcy case during the receivership, the Association shall give notice of the bankruptcy case to the Court, to all parties, and to the Receiver three (3) business days after the day on which the Association

1 receives notice of the bankruptcy.

2 15. Bankruptcy: Receiver's Duties. If the Receiver receives notice that a bankruptcy has
3 been filed and part of the bankruptcy estate includes property that is the subject of this Order, the
4 Receiver shall have the following duties:

- 5 a. Turn over property if no relief from the stay will be sought. The Receiver shall
6 immediately contact the party who obtained the appointment of the Receiver, and
7 determine whether that party intends to move in the bankruptcy court for an order for
8 (1) relief from the automatic stay, and (2) relief from the Receiver's obligation to turn
9 over the property (11 U.S.C. § 542). If the party has no intention to make such a
10 motion, the Receiver shall immediately turn over the property to the appropriate
11 entity either to the trustee in bankruptcy if one has been appointed or, if not, to the
12 debtor in possession-and otherwise comply with 11 United States Code § 543.
- 13 b. Remain in possession pending resolution. If the party who obtained the receivership
14 intends to seek relief immediately from both the automatic stay and the Receiver's
15 obligation to turn over the property, the Receiver may remain in possession and
16 preserve the property pending the ruling on those motions (11 U.S.C. § 543(a)). The
17 Receiver's authority to preserve the property shall continue as follows:
- 18 i. The Receiver may continue to collect monthly payments of mortgage debt
19 service, maintenance fees, dues, assessments and other fees from Association
20 unit owners;
- 21 ii. The Receiver may make only those disbursements necessary to preserve and
22 protect any and all accounts of the Receivership Estate.
- 23 c. Turn over property if no motion for relief is filed within fifteen (15) days after notice
24 of the bankruptcy. If the party who obtained the receivership fails to file a motion
25 within fifteen (15) court days after his or her receipt of notice of the bankruptcy
26 filing, the Receiver shall immediately turn over the property to the appropriate entity
27 either to the trustee in bankruptcy if one has been appointed or, if not, to the debtor in
28 possession and otherwise comply with 11 United States Code §543.
- d. Retain Bankruptcy Counsel. The Receiver may petition the Court to retain legal

counsel to assist the Receiver with issues arising out of the bankruptcy proceedings.

IT IS FURTHER ORDERED that the board of directors and officers of the Association, any and all parties to this action, including any of their respective agents, servants, directors, assignees, successors, representatives, employees, and all persons or entities acting under, or in concert with them, or for them, are required to cooperate with the Receiver by providing documents, account records, statements, ledgers, check books, check book register, and any and all documents necessary for the Receiver to manage the affairs of the Receivership Estate. They are also required to pay any assessments which the Receiver imposes on the Association.

IT IS FURTHER ORDERED that receipt of this Order constitutes notice as contemplated in NRS 32.290.

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until: (1) upon entry of an order by the Court finding good cause for removal of the Receiver, or (2) by further order of this Court.

IT IS FURTHER ORDERED, that the Court will maintain jurisdiction over this matter and over the Receiver so long as the Receiver is in place.

IT IS SO ORDERED. — *A status check is set for Thursday, March 12, 2020.*

Dated this 13 day of December 2019.


DISTRICT COURT JUDGE

Submitted by:
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: 

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Daniel M. Hansen, Esq.
Nevada State Bar # 13886
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Plaintiff
TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS
TRUSTEES OF THE LYTLE TRUST

EXHIBIT 2

000661

000661

SilverFlume Business Portal is available for use. Please replace your bookmark with this new URL:
<https://www.nvsilverflume.gov/>

ROSEMER ESTATES PROPERTY OWNERS ASSOCIATION

My Business Checklist

Nevada Business ID: NV19971112707
Entity Type: Domestic Nonprofit
Corporation (82)
Entity Status: Active

As you proceed, your filings *auto-save* to your Dashboard for later access.

Note: The filing of the formation documents or annual renewal includes the State Business License.

Steps to License a Nevada Business

<input type="checkbox"/>	* Articles of Incorporation - Non-Profit Corporation, List and State Business License ?	Active Exp: 02/28/2021
Completed: <input type="checkbox"/> Pending: <input type="checkbox"/> (*) is a required field		

Communication Preferences

☒ Monitor this business via email ?

Related Services

[Disadvantaged Business Resources \(Optional\)](#)
[NV Gender Equality in the Workplace Survey](#)
[Patriot Employer Program](#)
[Reserve a Web Domain](#)

Other Actions

[Amendments](#)
[Cancellations, Dissolutions, Terminations, etc.](#)
[Domestications](#)
[Mergers, Exchanges, and Conversions](#)

Miscellaneous
Reinstatements and Revivals

Questions? Please email support@nvsilverflume.gov

Supported Browsers

000663

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ENTITY INFORMATION**ENTITY INFORMATION****Entity Name:**

ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION

Entity Number:

C3724-1997

Entity Type:

Domestic Nonprofit Corporation (82)

Entity Status:

Active

Formation Date:

02/25/1997

NV Business ID:

NV19971112707

Termination Date:

Perpetual

Annual Report Due Date:

2/28/2021

Solicits Charitable Contribution:

No

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

ORVILLE MCCUMBER

Status:

Active

CRA Agent Entity Type:**Registered Agent Type:**

Non-Commercial Registered Agent

NV Business ID:**Office or Position:****Jurisdiction:****Street Address:**

1961 ROSEMERE CT, LAS VEGAS, NV, 89117, USA

Email Address:**Mailing Address:****Individual with Authority to Act:****Contact Phone Number:****Fictitious Website or Domain Name:****PRINCIPAL OFFICE ADDRESS****Address:****Mailing Address:**

OFFICER INFORMATION☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
President	KEVIN SINGER - COURT RECEIVER	7251 W. LAKE MEAD BLVD. #300, Las Vegas, NV, 89128, USA	01/21/2020	Active
Secretary	KEVIN SINGER - COURT RECEIVER	7251 W. LAKE MEAD BLVD. #300, Las Vegas, NV, 89128, USA	01/21/2020	Active
Treasurer	KEVIN SINGER - COURT RECEIVER	7251 W. LAKE MEAD BLVD. #300, Las Vegas, NV, 89128, USA	01/21/2020	Active
Director	KEVIN SINGER - COURT RECEIVER	7251 W. LAKE MEAD BLVD. #300, Las Vegas, NV, 89128, USA	01/21/2020	Active

Page 1 of 1, records 1 to 4 of 4

CURRENT SHARES

Class/Series	Type	Share Number	Value
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No records to view.

Number of No Par Value Shares:

0

Total Authorized Capital:

[Filing History](#)[Name History](#)[Mergers/Conversions](#)[Return to Search](#)[Return to Results](#)

EXHIBIT 3

000667

Policy 09-01

NRS 116.31155 [8]: Upon the payment of the fees and any administrative penalties and interest required by this section, the Administrator shall provide to the association or master association evidence that it paid the fees and the administrative penalties and interest in compliance with this section.

The Office of the Ombudsman for Common-Interest Communities and Condominium Hotels will provide a receipt to each association or to the master association that is required to submit the annual \$3.00 unit fee.

Beginning July 1, 2008, a certificate of good standing will be provided to each association, at the mailing address on record with the office, after receipt of both the annual unit fees and registration form. The certificate will contain the association's name, master association's name (if applicable), Secretary of State filing number, number of current units, county, and the registration renewal date. The certificate must be displayed in a prominent place.

Definition of "prominent place": an area that can be accessible by the public at their request during business hours; conspicuously; noticeable

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN
3300 W. Sahara Ave., Suite 350
Las Vegas, Nevada 89102
(702) 486-4480 • Fax (702) 486-4520
CICombudsman@red.nv.gov
www.red.nv.gov

State of Nevada
Department of Business and Industry
Real Estate Division

HOMEOWNERS' ASSOCIATION
RENEWAL REGISTRATION CERTIFICATE
ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION

3724-1997

Number of units

9

County

Clark

This shall serve as proof of renewal registration with the Office of the Ombudsman for Common-Interest Communities and Condominium Hotels, as mandated by Nevada Revised Statutes (NRS) chapters 78, 82, 87 and 88.

This certification expires 02/28/2020

ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION
C/O RECEIVERSHIP SPECIALISTS
KEVIN SINGER - COURT RECEIVER
7251 W. LAKE MEAD BLVD. #300
LAS VEGAS, NV 89128

EXHIBIT Q

699000

699000

MOSC
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ. (175)
WESLEY J. SMITH, ESQ. (11871)
LAURA J. WOLFF, ESQ. (6869)
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Facsimile: (702) 255-0871
Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

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

**PLAINTIFFS' MOTION FOR AN
ORDER TO SHOW CAUSE WHY
THE LYTLE TRUST SHOULD
NOT BE HELD IN CONTEMPT
FOR VIOLATION OF COURT
ORDERS**

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

Plaintiffs,

vs.

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

Defendants.

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

Consolidated

HEARING REQUESTED

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

1 (“Gegen”) (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be
2 collectively referred to as “Plaintiffs”), by and through their attorneys, Christensen James &
3 Martin, petition the Court for an Order to Show Cause why Defendants, Trudi Lee Lytle and
4 John Allen Lytle, As Trustees of the Lytle Trust (“Defendants” or “Lytle Trust”), should not be
5 held in contempt of this Court’s Order Granting Motion for Summary Judgment or, in the
6 Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary
7 Judgment executed by the Judge on May 22, 2018 and filed with the Court on May 24, 2018
8 (hereafter “May 2018 Order”). This Motion is based upon the following Memorandum of Points
9 and Authority, Exhibits, Affidavits, all other documents on file with the Court in this matter, and
10 any argument allowed at the time of the hearing of this matter.

11 DATED this 4th day of March 2020.

CHRISTENSEN JAMES & MARTIN

By: /s/ Wesley J. Smith

Wesley J. Smith, Esq.

Nevada Bar No. 11871

*Attorneys for September Trust, Zobrist
Trust, Sandoval Trust and Gegen*

15 **NOTICE OF MOTION**

16 You will please take Notice that the September Trust, Zobrist Trust, Sandoval Trust and
17 Gegen shall bring the above and foregoing Plaintiffs’ Motion for Order to Show Cause on for
18 hearing before Department XVI on the date and time to be set by the Court and noticed to the
19 parties registered for service through the “Clerk’s Notice of Hearing” once a hearing date has
20 been set.

21 DATED this 4th day of March 2020.

CHRISTENSEN JAMES & MARTIN

By: /s/ Wesley J. Smith

Wesley J. Smith, Esq.

Nevada Bar No. 11871

*Attorneys for Intervenor September Trust,
Zobrist Trust, Sandoval Trust and Gegen*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

In May 2018, this Court entered a permanent injunction against the Lytle Trust from seeking to enforce the Judgments obtained in the Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other judgments obtained against the Association, from the Plaintiffs' or their properties. Two weeks later, the Lytle Trust filed a new case seeking the appointment of a receiver to ultimately act as its personal collection agent against the Plaintiffs and their properties. The Lytle Trust materially misrepresented that the Amended CC&Rs governed and failed to inform the Court that a permanent injunction prohibited such action. Without opposition and based on the Lytle Trusts' intentionally misleading statements, a Receiver was appointed. The Receiver then contacted the Plaintiffs, stating:

the appointment of the receivership is predicated on judgments against the HOA in the approximate amount of \$1,481,822 by the Lytle family ("the Plaintiff"). ... These judgments need to be paid and the Court agreed with the Plaintiff by appointing a Receiver to facilitate the satisfying of the judgments....We would like to meet with title holding members of the HOA...[to] share three ideas we have to pay these judgments.

The Receiver enclosed a copy of an Order purporting to give the Receiver power to "issue and collect a special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against the Association."

As will be discussed below, the Lytle Trust's filing of the Receiver Action, the Lytle Trust's efforts to appoint the Receiver, and the Receiver's attempt to collect the Judgments obtained in the Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other judgments obtained against the Association, from the Plaintiffs' or their properties are direct violations of the permanent injunction. This should not be tolerated by the Court. The purpose of this Motion is for the Court to issue an Order to Show Cause why the Defendants should not be sanctioned for their willful violations of the Permanent Injunction.

1 **II.**

2 **STATEMENT OF FACTS**

3 On May 22, 2018, this Court signed an Order Granting Motion for Summary Judgment
4 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for
5 Summary Judgment ("May 2018 Order"). The May 2018 Order was entered by the Court on
6 May 24, 2018. On June 19, 2018, the Lytle Trust appealed the May 2018 Order to the Nevada
7 Supreme Court, Case No. 76198 ("Appeal"). The Supreme Court entered its Order affirming the
8 May 2018 Order on March 2, 2020.¹

9 The Plaintiffs hereby incorporate the findings of fact and conclusions of law from the
10 May 2018 Order as if set forth fully herein. Especially significant is this permanent injunction
11 language in the May 2018 Order:

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

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

18 May 2018 Order at 10:10-19 (emphasis added). Thus, the Lytle Trust is prohibited from taking
19 any action against the Plaintiffs or their properties based on any judgment it has obtained against
20 the Rosemere Association.

21 The May 2018 Order also contained these key findings of fact and conclusions of law:

22 2. The Association is a "limited purpose association" as referenced in NRS
23 116.1201(2).

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

26 ¹ A true and correct copy of the Order of Affirmance of the May 2018 Order is attached to the
27 Motion as Exhibit 8.
28

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

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

6 6. The Plaintiffs were not 'losing parties' in the Rosemere Litigation I,
7 Rosemere Litigation II or Rosemere Litigation III as per Section 25 of the Original
8 CC&Rs.

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

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

13 May 2018 Order at 7-8.

14 The May 2018 Order followed a prior Order issued by the Court in the lead consolidated
15 Case (Case No. A-16-747800-C) on July 25, 2017 ("July 2017 Order") in favor of other similarly
16 situated property owners, Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust
17 ("Boulden"), and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques & Linda
18 Lamothe Living Trust ("Lamothe"). The Plaintiffs also incorporate the findings of fact and
19 conclusions of law from the July 2017 Order. The Lytles appealed the July 2017 Order and the
20 Nevada Supreme Court issued an Order of Affirmance on December 4, 2018 in Case No. 73039,
21 *Trudi Lee Lytle v. Marjorie B. Boulden*. Exhibit 1, Order of Affirmance.

22 The Order of Affirmance unequivocally and absolutely holds that a judgment obtained by
23 the Lytle Trust against the limited-purpose Rosemere Association cannot be enforced against
24 individual owners or their properties, especially "property owners who were not parties to the
25 Lytles' complaint against Rosemere Estates, and whose property interests had never been subject
26 of any suit." Exhibit 1, Order of Affirmance at 6. The Order of Affirmance specifically states:

27 NRS 116.1201(2)(a) provides, in relevant part, that limited purpose associations
28 are not subject to NRS Chapter 116, with enumerated statutory exceptions, NRS
116.3117 not among them. NRS 116.3117(1)(a) states that a monetary judgment
against an association, once recorded, is a lien against all real property of the
association and all of the units in the common-interest community. An
"association" is defined as a unit-owners' association organized under NRS
116.3101. NRS 116.011. A unit-owners' association must be in existence on or
before the date when the first unit is conveyed. NRS 116.3101.

1 Here, the Lytles do not dispute that the Association is a limited purpose
2 association. Although they assert that properties within limited purpose
3 associations are subject to NRS 116.3117's lien provisions, NRS 116.1201 spells
4 out the specific statutes within NRS Chapter 116 that apply to limited purpose
5 associations, and NRS 116.3117 is not among them. Aside from those listed
6 statutes, NRS Chapter 116 "does not apply to [a] limited purpose association."
7 NRS 116.1201(2)(a). Thus, the plain language of the statute is clear that limited
purpose associations are not subject to NRS 116.3117's lien provisions. By listing
exactly which provisions within NRS Chapter 116 apply to limited purpose
associations, NRS 116.1201 does not leave any room for question or expansion in
the way the Lytles urge. We are likewise not persuaded by the Lytles' further
contention that they may place a valid judgment lien on the Boulden and Lamothe
properties through a series of statutory incorporations.

8 Exhibit 1, Order of Affirmance at 4. In summary, the Order of Affirmance expressly states that
9 the statutory mechanism for collecting judgments against an association under NRS 116.3117 is
10 not available for the Lytle Trust's judgments. Exhibit 1, Order of Affirmance at 3-6.

11 Despite the July 2017 Order, May 2018 Order, and the Order of Affirmance, on or around
12 January 22, 2020, the Plaintiffs each received a letter from Kevin Singer of Receivership
13 Specialists ("Receiver Letter") regarding the appointment of Mr. Singer as a Receiver in Case
14 No. A-18-775843-C, *Trudi Lee Lytle et al. v. Rosemere Estates Property Owners' Association*
15 ("Receivership Action"). Exhibit 2, Receiver Letter; Affidavit of Karen Kearl ("Kearl
16 Affidavit"); Affidavit of Gerry Zobrist ("Zobrist Affidavit"); Affidavit of Julie Marie Sandoval
17 Gegen ("Gegen Affidavit") (hereafter Kearl Affidavit, Zobrist Affidavit and Gegan Affidavit are
18 collectively "Plaintiffs' Affidavits"). In the Receiver Letter, Mr. Singer states that "the
19 appointment of the receivership is predicated on judgments against the HOA in the approximate
20 amount of \$1,481,822 by the Lytle family ("the Plaintiff").... These judgments need to be paid
21 and the Court agreed with the Plaintiff by appointing a Receiver to facilitate the satisfying of the
22 judgments.... We would like to meet with title holding members of the HOA...[to] share three
23 ideas we have to pay these judgments." See Exhibit 2 at 1.

24 The Receiver Letter included the Order Appointing a Receiver of Defendant Rosemere
25 Property Owners Association ("Order Appointing Receiver") as an enclosure. Exhibit 3, Order
26 Appointment Receiver. The Order Appointing Receiver directs the Receiver to "issue and collect
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1 a special assessment upon all owners within the Association to satisfy the Lytle Trust's
2 judgments against the Association." *Id.* at 2.

3 On January 29, 2020, Plaintiffs' attorney Wesley J. Smith sent a letter to the Receiver
4 notifying him that his actions were in direct violation of the Permanent Injunction issued in this
5 Case, demanded that he cease and desist from any further effort to collect any judgment or take
6 any action against the Plaintiffs, demanded that any further communication with the Plaintiffs be
7 directed through counsel, and demanded that the Receiver, as an officer of the Court, notify the
8 Receivership Action Court of this Court's May 2018 Order and of violation of the Permanent
9 Injunction. Exhibit 4, Smith Letter.

10 On January 30, 2020, the Receiver sent a letter directly to each of the Plaintiffs
11 explaining that he would seek additional instructions from the Receivership Action Court
12 through his attorney based on the information obtained from Mr. Smith. Exhibit 5, January 30,
13 2020 Letter. As of the date of this Motion, the Receiver's attorney has not filed any paperwork
14 regarding these issues in the Receivership Action. *See* Affidavit of Wesley J. Smith ("Smith
15 Aff.") at ¶ 9.

16 The Plaintiffs have discovered that the Receivership Action was filed on June 8, 2018,
17 just two weeks after this Court entered its May 2018 Order. The Complaint alleges that the
18 Rosemere Estates Property Owners' Association ("Association") is not functioning, that the
19 common elements of the community are not being maintained, and that "the Association has not
20 paid known creditors of the Association, which includes...the Lytles, which hold multiple
21 judgments against the Association." Exhibit 6, Complaint at ¶ 21.

22 In the Renewed Application for Appointment of Receiver filed on October 24, 2019
23 ("Application") in the Receivership Action, the Lytle Trust asserts that the main purpose in
24 requesting a Receiver is to require the owners in the Subdivision to pay the Rosemere I, II and III
25 Judgments. Exhibit 7, Application at 3:2-4, 5:17-18 ("Additional grounds exist because the
26 Association is refusing to pay and refusing to assess Association members related to various
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1 monetary judgments awarded to the Lytles against the Association”), 13:19-28 (“a receiver may
2 be appointed...after judgment, to carry the judgment into effect”), 14:1-2, 16-28 (“the Lytle Trust
3 obtained judgments against the Association and a Receiver is needed to carry those judgments
4 into effect”), 15:20-25 (“the Association has a duty...to pay its debts, including the Judgments
5 obtained by the Lytle Trust”), 16:17-22 (“the Association is without any governing body to
6 assess the homeowners and pay the judgments”).

7 The Lytle Trust provides careful and selected detail about the Rosemere I, II and III cases
8 in the Application but fails to mention either of these consolidated cases or appeals. Most
9 importantly, the Lytle Trust failed to inform the court about the July 2017 Order, the May 2018
10 Order, or the Order of Affirmance. *See* Exhibit 7, Application generally.² The Lytle Trust did not
11 inform the Receivership Action Court that there is a permanent injunction issued by this Court
12 directly related to and prohibiting enforcement of Rosemere judgments against the Plaintiffs or
13 their properties. Yet, the very purpose of the Order Appointing Receiver is to attempt to collect
14 the Rosemere judgments from the Plaintiffs.

15 III.

16 ARGUMENT

17 The Lytle Trust’s attempts to appoint a Receiver to collect on the Judgments against the
18 Plaintiffs or their properties, to use the Amended CC&Rs, and to expand the powers granted to
19 the Association (and the Receiver) by the original CC&Rs and NRS 116.1201 are in clear
20 violation of this Court’s May 2018 Order. The relief requested in the Application and entered in
21 the Receivership Order is blatantly calculated to ignore this Court’s May 2018 Order and
22 provides relief this Court clearly prohibited the Lytle Trust from seeking. Once improperly
23

24 ² In a footnote at the very end of the Application, the Lytle Trust states: “The Lytle Trust is
25 evaluating whether any of the judgments preclude enforcement, even in small part, against any or
26 all of the Association’s other members.” Exhibit 7, Application at 18, n 5. This statement is
27 meaningless. The Lytle Trust actively sought the appointment of a receiver to enforce those
28 judgments against the property owners.

empowered, the Receiver's letter to the Plaintiffs seeking to collect the Lytle Trust's judgments violated this Court's permanent injunction. Thus, Plaintiffs are now seeking an Order to Show Cause and are requesting their attorney's fees and costs for having to bring this Motion.

A. This Court Should Use Its Inherent Power to Enforce its May 2018 Order.

This court has inherent power to protect the dignity and decency in its proceedings and to enforce its decrees, orders and judgments. *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428, 440 (Nev. 2007); *see also In re Determination of Relative Rights of Claimants & Appropriators of Waters of Humboldt River Sys. & Tributaries v. State Eng'r of the State of Nev. & Water Comm'rs of the Sixth Jud. Dist. Ct.*, 59 P.3d 1226, 1229 (Nev. 2002). "Further, courts have the inherent power to prevent injustice and to preserve the integrity of the judicial process...." *Halverson*, 123 Nev., at 262. A party is required to adhere to court orders, even erroneous orders, until terminated or overturned. *Rish v. Simao*, 368 P.3d 1203, 1210 (Nev. 2016). Thus, this Court's May 2018 Order is in effect and should be enforced.

Pursuant to NRS 22.010(3), a party may be held in contempt of court for "disobedience or resistance to any lawful...order...issued by the court...." In Nevada, courts have the "inherent" ability to compel obedience to its orders through their contempt powers. *See Phillips v. Welch*, 12 Nev. 158, 801 P.2d 1363 (1877); *Lamb v. Lamb*, 83 Nev. 425, 428, 433 P.2d 265 (1967) ("The power of courts to punish for contempt...is inherent"). District court judges are afforded broad discretion in imposing sanctions for contempt. *See Young v. Johnny Ribeiro Building*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). Generally, "an order for civil contempt must be grounded upon one's disobedience of an order that spells out 'the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed on him.'" *Southwest Gas Corp. v. Flintkote Co.*, 99 Nev. 127, 131, 659 P.2d 861,864 (1983) (*quoting Ex Parte Slavin*, 412 S.W.2d 43, 44 (Tex. 1967)).

The moving party has the burden of showing by clear and convincing evidence that the party against whom contempt is sought violated a specific and definite court order. *In re*

1 *Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002). If the moving party meets this burden, the burden
2 shifts “to the contemnors to demonstrate why they were unable to comply.” *Id.*
3 A party may be found in civil contempt for disobedience of a specific and definite court order if
4 it fails to take all reasonable steps within its power to comply. *In Re Dual-Deck Video Cassette*
5 *AntiTrust Lit.*, 10 F.3d 693, 695 (9th Cir. 1993). The contempt “need not be willful,” and there is
6 no good faith exception to the requirement to obey a court order. *Id.*

7 The permanent injunction in the May 2018 Order is specific and definite. “The Lytle
8 Trust is permanently enjoined from recording and enforcing the Judgments obtained from the
9 [Rosemere cases], or any other judgments obtained against the Association, against the”
10 Plaintiffs properties. May 2018 Order at 10. Further, “the Lytle Trust is permanently enjoined
11 from taking any action in the future directly against the Plaintiffs or their properties based upon
12 the [Rosemere cases].” *Id.* There is no ambiguity in those direct orders to the Lytle Trust. As will
13 discussed below, the Lytle Trust clearly violated the permanent injunction. The burden is on the
14 Lytle Trust to demonstrate why they were unable to comply, or rather, why they took affirmative
15 actions to violate the May 2018 Order.

16 **B. The Order Appointing Receiver Violates the May 2018 Order.**

17 The Complaint initiating the Receivership Action was filed just two weeks after the May
18 2018 Order was entered in this Case. Exhibit 6, Complaint. The Lytle Trust did not seek a
19 receiver in this case or any of the three prior cases in which it obtained judgments against the
20 Association. Instead, the Lytle Trust initiated a brand-new case, virtually assuring that a new
21 judge would be assigned that would not have knowledge of the prior litigation and would not be
22 aware of this Court’s Orders.

23 While the timing and circumstances of the new case filing are suggestive of the Lytle
24 Trust’s intent, the pleadings and motions filed in the Receivership Action demonstrate an effort
25 to thwart this Court’s Orders. The Lytle Trust purposefully and selectively presented facts to a
26 new judge, conveniently leaving out key findings of fact and conclusions of law from the
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1 Rosemere I, II, and III cases, and completely ignoring this Case entirely, including failing to
2 inform the court about the permanent injunction in the May 2018 Order (or the similar
3 permanent injunction in the July 2017 Order). This breach of duty of candor to the Court resulted
4 in the Order Appointing Receiver that the Lytle Trust is now trying to use to obtain payment
5 from the Plaintiffs in clear contravention of the May 2018 Order.

6 The Lytle Trust made representations to the court in the Receivership Action that directly
7 contradict the conclusions of law from this Court. The May 2018 Order prohibits “recording and
8 enforcing the Judgments obtained from the Rosemere Litigation I, Rosemere Litigation II and
9 Rosemere Litigation III, or any other judgments obtained against the Association” against the
10 Plaintiffs or their properties. The Order Appointing Receiver breaches this prohibition, as
11 follows:

12 [The Receiver has the authority to] Issue and collect a special assessment upon all
13 owners within the Association to satisfy the Lytle Trust’s judgments against the
14 Association.... The Receiver has the authority to assess all Association unit owners
15 to pay for any operation costs or to pay for judgments against the Association. If
16 an Association member does not pay an assessment then the Receiver may proceed
17 to foreclose on said members ownership interest in the property.

18 Exhibit 3, Order Appointing Receiver at 2:19-20, 6:4-7. This language is an egregious attempt by
19 the Lytle Trust to obtain payment on the Judgments in clear violation of this Court’s May 2018
20 Order.

21 The May 2018 Order holds that “the Association is a ‘limited purpose association’ as
22 referenced in NRS 116.1201(2).” May 2018 Order at 7:20-21. It also concluded that “the
23 Amended CC&Rs were judicially declared to have been improperly adopted and recorded, the
24 Amended CC&Rs are invalid and have no force and effect and were declared void ab initio.” *Id.*
25 at 7:24-28. Thus, the Amended CC&R’s cannot grant the Association, or any receiver appointed
26 to act on its behalf, any authority because they have no force or effect. The only powers the
27 Association or Receiver would be entitled to exercise are those enumerated in the original
28

1 CC&Rs or NRS 116.1201(2) regarding a limited-purpose association created to maintain
2 landscaping and other common elements.³

3 The Order Appointing Receiver grants the Receiver authority that exceeds the authority
4 granted to the Association by NRS 116.1201 and the original CC&Rs. This directly contradicts
5 the May 2018 Order. The Order Appointing Receiver supposes to grant the Receiver broad
6 powers that the Association would not otherwise possess by statute or its enabling document. *See*
7 Exhibit 3, Order Appointing Receiver at 2-9. A perfect example of this is the authority to “issue
8 and collect a special assessment upon all the owners within the Association to satisfy the Lytle
9 Trust’s judgments against the Association” as discussed above. Exhibit 3, Order Appointing
10 Receiver. The original CC&Rs do not contain any power of special assessment. Further, NRS
11 116.3117, which would allow judgments against an association to be liens against the individual
12 properties in the community, is not included in NRS 116.1201’s list of applicable provisions.
13 The Nevada Supreme Court has conclusively ended any debate on that issue. *See* Exhibit 1,
14 Order of Affirmance at 3-6.

15 As discussed herein, the July 2017 Order, the May 2018 Order, or the Order of
16 Affirmance directly contradict much of the Lytle Trusts’ argument regarding application of the
17 Amended CC&Rs and the legality of an assessment against the Plaintiffs. *Compare, e.g.,* Exhibit
18 7, Application at 12-13 (presenting arguments regarding *Mackintosh*) with Exhibit 1, Order of
19 Affirmance at 5-6 (rejecting the Lytle Trust’s *Mackintosh* arguments: “Nothing in *Mackintosh*
20 suggests that [it] applies beyond the context of contractual agreements and the circumstances of
21 that case, and we are not persuaded that it otherwise provides a basis for expanding the

22
23 ³ These include the following sections of NRS 116, *only*: NRS 116.31155 - Pay the fees imposed
24 on the Association to pay for the costs of administering Office of Ombudsman and Commission;
25 NRS 116.31158 - Register the Association with the Ombudsman; NRS 116.31038 - Deliver to
26 the Association certain property held or controlled by declarant; NRS 116.31083 – Notice and
27 hold meetings of the executive board, take minutes and periodically review certain financial and
28 legal matters at meetings; NRS 116.31152 – Prepare a study of reserve in accordance with the
requirements of this section including submission to the Division; NRS 116.31073 - Maintain,
repair, restore and replace security walls; and NRS 116.4101 to 116.4112 – Comply with the
requirements for a Public Offering Statement pursuant to these sections.

1 application of NRS 116.3117.”). The May 2018 Order and the Order of Affirmance specifically
2 rejected the ability to assess the judgments against the property owners pursuant to the Amended
3 CC&Rs or NRS 116.3117. *See* May 2018 Order at 7-8; Exhibit 1, Order of Affirmance at 4-8.
4 Yet that is exactly Lytle Trust argues the Receiver should be able to do. *See* Exhibit 7,
5 Application at 11:4-28 (“4. The Amended CC&Rs Grant the Association Authority to Assess
6 Each Unit for Payment of Judgments Against the Association”), 13:1-17, 17:1-9 (“the Amended
7 CC&Rs provide the Association with the ability to specially assess each unit owner for payment
8 of the judgments”).⁴ As such, the Lytle Trust is in breach of this Court’s May 2018 Order and
9 should be held in contempt of this Court.

10 **C. The Lytle Trust Cannot Bypass the Permanent Injunction or This Court’s Orders**
11 **by Hiding Behind the Receiver.**

12 The permanent injunction binds the Lytle Trust, its “officers, agents, servants, employees,
13 and attorneys; and other persons who are in active concert or participation” with the Lytle Trust.
14 *See* NRCP 65(d)(2). The Lytle Trust had actual notice of the May 2018 Order as it was a party to
15 this Case and appealed (and lost) the May 2018 Order to the Nevada Supreme Court. It is also
16 clear that the Lytle Trust sought out the Receiver’s services, presented him to the Court, and
17 advanced the Receiver’s costs. The Lytle Trust’s counsel wrote the Order Appointing Receiver.
18 The Receiver then acted based on the direction provided by the Lytle Trust, following a course
19 of action set in motion by the Lytle Trust.

20 The Lytle Trust was unquestionably prohibited by the May 2018 Order from taking any
21 action to collect the Rosemere judgments from the Plaintiffs or their properties. The Lytle Trust
22 was further bound by the July 2017 Order and the Nevada Supreme Court’s Order of
23 Affirmance. The express purpose of the Lytle Trust seeking appointment of the Receiver was so
24 that the Receiver could make assessments against the Plaintiffs’ properties to satisfy the Lytle

25 _____
26 ⁴ Of course, the Lytle Trust argues its own property should NOT be subject to an equal burden of
27 assessment. Exhibit 7, Application at 17:10-28, 18:1-7 (arguing the Lytle Trust will not be made
28 whole if it is required to pay some of the punitive damages).

1 Trust's judgments against the Association. The Lytle Trust was not legally permitted to seek
2 collection from the Plaintiffs or their properties in this manner. Passing the illegal collection
3 effort to the Receiver cannot be used to circumvent the July 2017 Order, Order of Affirmance, or
4 the May 2018 Order.

5 Further, the July 2017 Order, Order of Affirmance, and May 2018 Order set forth certain
6 rules of law regarding the legal rights of the Association. The Order Appointing Receiver
7 purports to give the Receiver power to act on behalf of the Association to do things that the
8 Association had the power to do but was failing or refusing to do. The July 2017 Order, Order of
9 Affirmance, and May 2018 Order directly impact those powers. For instance, the Amended
10 CC&Rs are *void ab initio* and NRS 116.3117 is not applicable to the Association. Therefore, the
11 Receiver acting in the Association's place cannot use the Amended CC&Rs or NRS 116.3117 to
12 accomplish anything because they have no force or effect on the Association and grant it no
13 rights. In other words, the appointment of the Receiver cannot alter legal realities or bypass the
14 July 2017 Order, Order of Affirmance, and May 2018 Order.

15 **D. The Receiver's Letter Violates the May 2018 Order.**

16 In May 2018, the Plaintiffs obtained a permanent injunction from this Court prohibiting
17 the Lytle Trust from "recording and enforcing the Judgments obtained from the Rosemere
18 Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other judgments obtained
19 against the Association" against the Plaintiffs or their properties. May 2018 Order at 10. In
20 January 2020, the Receiver violated the May 2018 Order by threatening to "issue and collect a
21 special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments
22 against the Association." Exhibit 3, Order Appointing Receiver at 2 (included with Receiver
23 Letter). The January 22, 2020 letter from the Receiver specifically stated that "the appointment
24 of the receivership is predicated on judgments against the HOA in the approximate amount of
25 \$1,481,822 by the Lytle family ("the Plaintiff"). ... These judgments need to be paid and the
26 Court agreed with the Plaintiff by appointing a Receiver to facilitate the satisfying of the
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1 judgments....We would like to meet with title holding members of the HOA...[to] share three
2 ideas we have to pay these judgments.” Exhibit 2 at 1. In other words, following a course of
3 action set in motion by the Lytle Trust, the Receiver was attempting to do exactly what the May
4 2018 Order enjoined the Lytle Trust from doing.

5 **E. The Lytle Trust Did Not Engage in Good Faith Compliance and Failed to Take Any**
6 **Corrective Action**

7 The Plaintiffs have established with clear and convincing evidence that the May 2018
8 Order has been violated. The violations are so direct and intentional, that there cannot possibly
9 be an argument that the Lytle Trust made good faith reasonable efforts to comply with the terms
10 of the permanent injunction and has substantially complied. Additionally, The Plaintiffs sent a
11 letter to the Receiver, with copy to the Lytle Trust, on January 29, 2020, notifying them that the
12 actions were in direct violation of the May 2018 Order. No corrective action has been taken in
13 this Case or the Receivership Action. *See cf. Boink Sys., Inc. v. Las Vegas Sands Corp.*, No.
14 2:08-CV-00089-RLH, 2011 WL 3419438, at *3 (D. Nev. Aug. 3, 2011) (no contempt where
15 violator made good faith reasonable efforts to comply and took immediate corrective action).
16 Thus, contempt penalties are appropriate here.

17 **F. The Lytle Trust and its Counsel Should be Assessed Penalties, Including Plaintiffs’**
18 **Attorney’s Fees and Costs, for Violating the May 2018 Order.**

19 A \$500 penalty may be assessed and imprisonment not exceeding 25 days may be
20 ordered for each violation of the May 2018 Order. NRS 22.100(2). In addition, the court may
21 require the Lytle Trust, its counsel, and/or the Receiver to pay to the Plaintiffs their “reasonable
22 expenses, including, without limitation, attorney’s fees, incurred by the party as a result of the
23 contempt. NRS 22.100(3); *Keresey v. Rudiak*, No. 75177-COA, 2019 WL 3967438, at *6 (Nev.
24 App. Aug. 21, 2019) (attorney’s fees for time spent preparing and arguing their motion for an
25 order to show cause, renewed motion for an order to show cause, and for time related to the
26 hearing associated with those motions were proper). A sanction for “[c]ivil contempt is
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1 characterized by the court's desire to...compensate the contemnor's adversary for the injuries
2 which result from the noncompliance." *State, Dept. of Indus. Relations, Div. of Indus. Ins.*
3 *Regulation v. Albanese*, 112 Nev. 851, 919 P.2d 1067, 1071 (1996) (*quoting Falstaff Brewing*
4 *Corp. v. Miller Brewing Co.*, 702 F.2d 770, 778 (9th Cir.1983)).

5 The Plaintiffs request that this Court assess a \$500.00 penalty per Plaintiff to the Lytle
6 Trust, its counsel, and the Receiver, as well as award all Plaintiffs' attorney's fees and costs
7 incurred as a result of violations of the May 2018 Order, including but not limited to having to
8 prepare, file and argue this Motion and intervene in the Receivership Action.⁵

9 **IV.**

10 **CONCLUSION**

11 Based on the foregoing, the Plaintiffs respectfully request this Court to issue an Order
12 requiring Defendants to appear and show cause why they should not be held in contempt for
13 violation of the May 2018 Order. Plaintiffs also respectfully request that a \$500 fee be assessed
14 per Plaintiff and that the Plaintiffs be awarded all of their reasonable expenses incurred as result
15 of the Lytle Trust's violation, including without limitation the Plaintiffs' attorney's fees and
16 costs.

17 DATED this 4th day of March 2020.

18 CHRISTENSEN JAMES & MARTIN

19 By: /s/ Wesley J. Smith

20 Wesley J. Smith, Esq.

21 Nevada Bar No. 11871

22 *Attorneys for September Trust, Zobrist*
23 *Trust, Sandoval Trust and Gegen*

24
25 ⁵ As a result of the violation of the May 2018 Order, Plaintiffs were also forced to intervene in
26 the Receivership Action to inform the court of this Court's Orders and to amend or rescind the
27 Receivership Order to avoid further violations of the permanent injunction. The Plaintiffs' fees
28 and costs for those efforts should be included in the fee award in this case.

CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On March 4, 2020, I caused a true and correct copy of the foregoing Plaintiffs' Motion for an Order to Show Cause, to be served in the following manner:

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

Liz Gould (liz@foleyoakes.com)
 Daniel Foley (Dan@foleyoakes.com)
 Maren Foley (maren@foleyoakes.com)
 Jennifer Martinez (jennifer.martinez@fnf.com)
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 Richard E. Haskin, Esq. (rhaskin@gibbsgiden.com)
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 Joel D. Henriod (JHenriod@LRRC.com)
 Daniel F. Polsenberg (DPolsenberg@LRRC.com)
 Dan R. Waite (DWaite@LRRC.com)

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

Kevin Singer
 Scott Yahraus
 Receivership Specialists
 7251 W. Lake Mead Blvd., Suite 300
 Las Vegas, NV 89128

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

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

Kevin Singer (Kevin@ReceivershipSpecialists.com)
 Scott Yahraus (Scott@receivershipspecialists.com)

/s/ Natalie Saville

Natalie Saville

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

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

**DECLARATION OF COUNSEL IN
 SUPPORT OF PLAINTIFFS'
 MOTION FOR AN ORDER TO
 SHOW CAUSE**

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

Plaintiffs,

vs.

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

Defendants.

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

Consolidated

State of Nevada)
) ss.
 County of Clark)

Wesley J. Smith, Esq., states under penalty of perjury:

1. I am at least 18 years of age. I personally prepared this Declaration and I am familiar with all factual statements it contains, which I know to be true and correct, except for

CHRISTENSEN JAMES & MARTIN
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any statements made on information and belief, which statements I believe to be true. I am competent to testify to the same and would so testify if called upon as a witness.

2. I am an attorney licensed to practice before all state and federal courts of the State of Nevada.

3. I am a partner and shareholder in the law firm Christensen James & Martin, Chtd. ("CJM"), counsel for the Plaintiffs, September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Jule Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife as Joint Tenants (hereafter "Gegen") (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be collectively referred to as "Plaintiffs") in the above-captioned case.

4. I make this Declaration in support of Plaintiffs' Motion for an Order to Show Cause ("Motion").

5. A true and correct copy of the Nevada Supreme Court Order of Affirmance entered on December 4, 2018 in Case No. 73039, *Trudi Lee Lytle v. Marjorie B. Boulden*, affirming the decision of this Court in Case No. A-16-747800-C is attached to the Motion as Exhibit 1.

6. I reviewed the online records of the Eighth Judicial District Court, Clark County Nevada, and I found and printed records from that website, including the following documents for Case No. A-18-775843-C:

a. A true and correct copy of the Order Appointing a Receiver of Defendant Rosemere Property Owners Association, attached to the Motion as Exhibit 3;

b. A true and correct copy of the Complaint, attached to the Motion as Exhibit 6; and

c. A true and correct copy of the Renewed Application for Appointment of Receiver filed on October 24, 2019, attached to the Motion as Exhibit 7.

1 7. On January 29, 2020, I sent a letter to the Receiver on behalf of the Plaintiffs
2 notifying him that his letter was in direct violation of the permanent injunction issued in this
3 Case, demanded that he cease and desist from any further effort to collect any judgment or take
4 any action against the Plaintiffs and that he, as an officer of the Court, notify the Court of this
5 Court's May 2018 Order. A true and correct copy of the letter I mailed to the Receiver is
6 attached to the Motion as Exhibit 4.

7 8. As of the date of this Motion, the Receiver's attorney has not filed any paperwork
8 with the Court in this Case or Case No. A-18-775843-C with regard to these issues.

9 9. The Plaintiffs have incurred fees and costs as a result of the Lytle Trust's actions,
10 including responding to the Receiver, preparing this Motion, and preparing a Motion to Intervene
11 in the Receivership Action, which fees and costs were reasonable and necessary to protect the
12 Plaintiffs from violation of the May 2018 Order. Detail on the fees and costs incurred will be
13 provided when this Court grants the Plaintiffs' request for fees and costs.

14 Further your affiant sayeth naught.

15 DATED this 30th day of March, 2020.



17 _____
18 Wesley J. Smith, Esq.
19 NV Bar No. 11871

EXHIBIT R

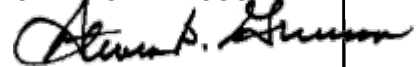
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Steven D. Grierson

CLERK OF THE COURT

**JMOT****CHRISTINA H. WANG, ESQ.**

Nevada Bar No. 9713

FIDELITY NATIONAL LAW GROUP

8363 W. Sunset Road, Suite 120

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Tel: (702) 667-3000

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*Attorneys for Counter-Defendants/Cross-Claimants**Robert Z. Disman and Yvonne A. Disman***DISTRICT COURT****CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

AND ALL RELATED MATTERS

Case No.: A-16-747800-C

Dept. No.: XVI

**JOINDER TO PLAINTIFFS' MOTION
 FOR AN ORDER TO SHOW CAUSE
 WHY THE LYTLE TRUST SHOULD
 NOT BE HELD IN CONTEMPT FOR
 VIOLATION OF COURT ORDERS**

Hearing Date: April 21, 2020

Hearing Time: 9:00 a.m.

Counter-Defendants/Cross-Claimants ROBERT Z. DISMAN and YVONNE A. DISMAN (hereinafter collectively referred to as, the "Dismans"), by and through their attorneys of record, the Fidelity National Law Group, hereby file this Joinder to Plaintiffs' Motion for an Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders, filed on March 4, 2020.

The Dismans hereby join in the arguments raised as set forth in the Motion for those reasons stated therein, the papers and pleadings on file herein, and any oral argument that the

1 Court may entertain at the time of any hearing on the Motion.

2 DATED this 6th day of March, 2020.

3 FIDELITY NATIONAL LAW GROUP

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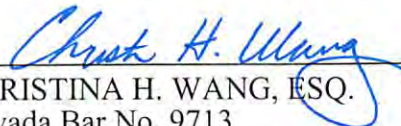
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CHRISTINA H. WANG, ESQ.

Nevada Bar No. 9713

8363 W. Sunset Road, Suite 120

Las Vegas, Nevada 89113

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

CERTIFICATE OF SERVICE

The undersigned employee of Fidelity National Law Group, hereby certifies that she served a copy of the foregoing **JOINDER TO PLAINTIFFS' MOTION FOR AN ORDER TO SHOW CAUSE WHY THE LYTLE TRUST SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF COURT ORDERS** upon the following parties on the date below entered (unless otherwise noted), at the fax numbers and/or addresses indicated below by: [X] (i) placing said copy in an envelope, first class postage prepaid, in the United States Mail at Las Vegas, Nevada, [] (ii) via facsimile, [] (iii) via courier/hand delivery, [] (iv) via overnight mail, [] (v) via electronic delivery (email), and/or [X] (vi) via electronic service through the Court's Electronic File/Service Program.

Richard E. Haskin, Esq.
Timothy P. Elson, Esq.
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144-0596
*Attorneys for Defendants/Counter-
Claimants Trudi Lee Lytle and John
Allen Lytle, Trustees of The Lytle Trust*

Daniel T. Foley, Esq.
FOLEY & OAKES, PC
1210 S. Valley View Blvd., Suite 208
Las Vegas, Nevada 89102
*Attorneys for Plaintiffs Marjorie B.
Boulden, Trustee of The Marjorie B.
Boulden Trust, amended and restated
dated July 17, 1996; and Linda Lamothe
and Jacques Lamothe, Trustees of the
Jacques and Linda Lamothe Living Trust*

Kevin B. Christensen, Esq.
Wesley J. Smith, Esq.
Laura J. Wolff, Esq.
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Ave.
Las Vegas, Nevada 89117
*Attorneys for September Trust, Zobrist
Trust, Sandoval Trust and Dennis &
Julie Gagn*

Kevin Singer
Scott Yahraus
Receivership Specialists
7251 W. Lake Mead Blvd., Suite 300
Las Vegas, NV 89128

DATED: 3/6/2020

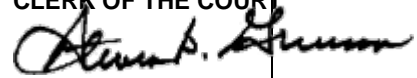


An employee of Fidelity National Law Group

EXHIBIT S

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

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

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFFS'
MOTION FOR ORDER TO SHOW
CAUSE WHY THE LYTLE TRUST
SHOULD NOT BE HELD IN
CONTEMPT FOR VIOLATION OF
COURT ORDERS**

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

Plaintiffs,

vs.

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

Defendants.

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

CONSOLIDATED

NOTICE IS HEREBY GIVEN, that an Order Granting Plaintiffs' Motion for Order to
Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders

1 was entered in the above-captioned matter on May 22, 2020. A copy of the Order is attached
2 hereto.

3 DATED this 22nd day of May 2020.

CHRISTENSEN JAMES & MARTIN

4
5 By: /s/ Wesley J. Smith
6 Wesley J. Smith, Esq.
7 Nevada Bar No. 11871
8 *Attorneys for September Trust, Zobrist*
9 *Trust, Sandoval Trust and Gegen*
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CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 & FAX: (702) 255-0871

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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On May 22, 2020, I caused a true and correct copy of the foregoing Notice of Entry of Order Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders, to be served in the following manner:

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

Liz Gould (liz@foleyoakes.com)
 Daniel Foley (Dan@foleyoakes.com)
 Maren Foley (maren@foleyoakes.com)
 Jennifer Martinez (jennifer.martinez@fnf.com)
 Christina Wang (christina.wang@fnf.com)
 Mia Hurtado (mia.hurtado@fnf.com)
 Richard E. Haskin, Esq. (rhaskin@gibbsgiden.com)
 Robin Jackson (rjackson@gibbsgiden.com)
 Shara Berry (sberry@gibbsgiden.com)
 Daniel Hansen (dhansen@gibbsgiden.com)
 Joel D. Henriod (JHenriod@LRRC.com)
 Daniel F. Polsenberg (DPolsenberg@LRRC.com)
 Dan R. Waite (DWaite@LRRC.com)

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

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

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

/s/ Natalie Saville
 Natalie Saville

ORDR**CHRISTENSEN JAMES & MARTIN**

KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

WESLEY J. SMITH, ESQ.

Nevada Bar No. 11871

LAURA J. WOLFF, ESQ.

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Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com

*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen***EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

ORDER GRANTING PLAINTIFFS'
MOTION FOR ORDER TO SHOW
CAUSE WHY THE LYTLE TRUST
SHOULD NOT BE HELD IN
CONTEMPT FOR VIOLATION OF
COURT ORDERS

Date: April 22, 2020

Time: 9:00 a.m.

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

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

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

5 Plaintiffs,

6 vs.

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

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust
13 Should Not Be Held in Contempt for Violation of Court Orders ("Motion") filed by the September Trust,
14 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
15 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
16 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
17 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
18 Husband and Wife, as Joint Tenants ("Dennis & Julie Gegen") (collectively the "Plaintiffs"), the Joinders
19 filed by Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust, amended and restated dated July
20 17, 1996 ("Boulden Trust") and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda
21 Lamothe Living Trust ("Lamothe Trust") and Robert Z. Disman and Yvonne A. Disman (the "Dismans"),
22 and the Opposition and Reply thereto, which came on for hearing on April 22, 2020 at 9:00 a.m. in
23 Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

24 Wesley J. Smith, Esq. of Christensen James & Martin, Chtd. appeared on behalf of the Plaintiffs.
25 Daniel T. Foley, Esq. of Foley & Oakes, PC appeared on behalf of the Boulden Trust and Lamothe Trust.
26 Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of the Dismans. Dan R.
27 Waite, Esq. of Lewis Roca Rothgerber Christie LLP and Richard Haskin, Esq. of Gibbs Giden Locher
28 Turner Senet & Wittbrodt LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as Trustees
of the Lytle Trust ("Lytle Trust"). Patricia Lee, Esq. of Hutchison & Steffen was present on behalf of
Kevin Singer, court appointed Receiver over the Rosemere Estates Property Owners Association

1 (“Association”), in Case No. A-18-775843-C, *Trudi Lee Lytle et al. v. Rosemere Estates Property*
 2 *Owners’ Association* (“Receivership Action”).

3 The Court having considered the Motion, Joinders, Opposition, and Reply, together with the
 4 Exhibits thereto, having heard the arguments of counsel, and with good cause appearing therefore, the
 5 Court hereby grants the Motion and Joinders and enters the following Findings of Fact, Conclusions of
 6 Law, and Order:

7 **FINDINGS OF FACT**

8 1. On April 26, 2017, this Court entered its Findings of Fact, Conclusions of Law, and Order
 9 Granting the Boulden Trust and Lamothe Trust’s Motion for Partial Summary Judgment (“April 2017
 10 Order”) against the Lytle Trust. On the Lytle Trust’s Motion for Reconsideration or, in the alternative,
 11 Motion to Alter or Amend Judgment, on July 27, 2017, this Court entered its Order Granting Motion to
 12 Alter or Amend Findings of Fact and Conclusions of Law (“July 2017 Order”) in favor of the Boulden
 13 Trust and the Lamothe Trust on their Motion for Partial Summary Judgment.¹ The July 2017 Order is
 14 hereby incorporated by reference.

15 2. In the July 2017 Order, the Court concluded, in part, that: the Association is a “limited
 16 purpose association” as referenced in NRS 116.1201(2); as a limited purpose association, NRS 116.3117
 17 is not applicable to the Association; as a result of the Rosemere Litigation I (referred to in the July 2017
 18 Order as the Rosemere LPA Litigation) between the Lytle Trust and the Association, the Amended
 19 CC&Rs at issue were judicially declared to have been improperly adopted and recorded, were invalid,
 20 have no force and effect, and were declared *void ab initio*; the Boulden Trust and Lamothe Trust were
 21 not parties to the Rosemere Litigation I; the Boulden Trust and Lamothe Trust were not “losing parties”
 22 in the Rosemere Litigation I per Section 25 of the Original CC&Rs; the Final Judgment in the Rosemere
 23 Litigation I against the Association in favor of the Lytle Trust is not against, and is not an obligation of,
 24
 25

26 ¹ The April 2017 Order included an order that the Lytle Trust had slandered title. The Court
 27 subsequently determined that it had not made findings of fact or conclusions of law on this issue and
 28 amended accordingly by entering the July 2017 Order without any order on the slander of title claim.
 The slander of title claim was later dismissed by stipulation between the parties. *See* Notice of Entry of
 Stipulation and Order to Dismiss All Remaining Claims Without Prejudice filed on January 14, 2019.

1 the Boulden Trust and Lamothe Trust; and the Final Judgment against the Association in the Rosemere
2 Litigation I is not an obligation or debt owed by the Boulden Trust and Lamothe Trust.

3 3. The July 2017 Order also included the following permanent injunction at page 7:

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

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

11 4. The Court ordered the Lytle Trust to expunge the Abstracts of Judgment that it had
12 recorded against properties owned by the Boulden Trust and Lamothe Trust. The Lytle Trust released
13 the Abstracts of Judgment, but immediately recorded two *lis pendens* against the Boulden Trust and
14 Lamothe Trust properties. Thereafter, the Lytle Trust refused to voluntarily expunge the *lis pendens* and
15 the Boulden Trust and Lamothe Trust were forced to file a Motion to Expunge *Lis Pendens*. This Court
16 summarily granted the Motion on June 23, 2017 and the *lis pendens* were ordered stricken, but the Lytle
17 Trust was not held in contempt.

18 5. The Lytle Trust appealed the July 2017 Order and the Nevada Supreme Court issued an
19 Order of Affirmance on December 4, 2018 in Case No. 73039, *Trudi Lee Lytle v. Marjorie B. Boulden*
20 (“First Order of Affirmance”).²

21 6. After entry of the July 2017 Order, the September Trust, Zobrist Trust, Sandoval Trust,
22 and Gegens, which also own property within the Rosemere Subdivision, approached the Lytle Trust and
23 requested that it release the Abstracts of Judgment recorded against their properties as well. After the
24 Lytle Trust refused to release the Abstracts of Judgment as to their properties, the September Trust,
25 Zobrist Trust, Sandoval Trust, and Gegens filed a Complaint against the Lytle Trust in Case No. A-17-
26 765372-C, which was consolidated with this Case (Case No. A-16-747900-C) on February 21, 2018.

27 ² The Boulden Trust sold its property to the Dismans on August 4, 2017. This Court subsequently held,
28 in an Order entered on or about December 26, 2018, that the July 2017 Order likewise applied to the
Rosemere Litigation II Judgment, which the Lytle Trust sought to enforce against the Lamothe Trust
and the Dismans’ and their properties after entry of the July 2017 Order.

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

5 8. In the May 2018 Order, the Court concluded, in part, that: the Association is a “limited
6 purpose association” as referenced in NRS 116.1201(2); as a limited purpose association, NRS 116.3117,
7 the statute upon which the Lytle Trust relied to record the Abstracts of Judgment, is not applicable to the
8 Association; as a result of the Rosemere Litigation I between the Lytle Trust and the Association, the
9 Amended CC&Rs at issue were judicially declared to have been improperly adopted and recorded, were
10 invalid, have no force and effect, and were declared *void ab initio*; the September Trust, Zobrist Trust,
11 Sandoval Trust, and Gegens were not parties to the Rosemere Litigation I, Rosemere Litigation II, or
12 Rosemere Litigation III; the September Trust, Zobrist Trust, Sandoval Trust, and Gegens were not
13 “losing parties” in the Rosemere Litigation I, Rosemere Litigation II, or Rosemere Litigation III per
14 Section 25 of the Original CC&Rs; the Judgments issued in the Rosemere Litigation I, Rosemere
15 Litigation II, or Rosemere Litigation III (collectively the “Rosemere Judgments”) against the Association
16 in favor of the Lytle Trust are not against, and are not an obligation of, the September Trust, Zobrist
17 Trust, Sandoval Trust, or Gegens to the Lytle Trust; and the Rosemere Judgments against the Association
18 are not an obligation or debt owed by the September Trust, Zobrist Trust, Sandoval Trust, or Gegens to
19 the Lytle Trust.

20 9. The May 2018 Order, at page 10, lines 10-19, contained the following permanent
21 injunction:

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

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

1 10. On June 19, 2018, the Lytle Trust appealed the May 2018 Order to the Nevada Supreme
2 Court, Case No. 76198, *Trudi Lee Lytle v. September Trust, Dated March 23, 1972*. This appeal was
3 consolidated with the Lytle Trust's subsequent appeal of an award of attorney's fees and costs in favor
4 of the September Trust, Zobrist Trust, Sandoval Trust, and Gegens under NRS 18.010(2)(b), Case No.
5 77007. The Supreme Court entered its Order of Affirmance affirming the May 2018 Order and
6 subsequent fees order on March 2, 2020 ("Second Order of Affirmance").

7 11. On June 8, 2018, the Lytle Trust filed a new action, Case No. A-18-775843-C, *Trudi Lee*
8 *Lytle et al. v. Rosemere Estates Property Owners' Association* ("Receivership Action"), asserting claims
9 against the Association for (a) Declaratory Judgment, and (b) Breach of Contract/Easement Agreement.

10 The prayer for relief in the Receivership Action sought:

11 a. an Order declaring that the Association must continue to operate as required by the
12 CC&Rs and Chapters 82 and 116 of the Nevada Revised Statutes, which includes, but is not limited
13 to: 1) maintaining the landscaping in the exterior wall planters; 2) maintaining the exterior
14 perimeter and frontage; 3) maintaining the entrance gate; 4) maintaining the private drive and
15 sewer system; 5) ensuring that homeowners are paying their assessments; 6) seeking collection
16 activity against any homeowners that have failed to pay their assessments; 7) paying known
17 creditors of the Association; 8) specially assessing the homeowners to ensure that enough proceeds
18 exist within the HOA funds to pay all known creditors assessing; and 9) any other activity required
19 under Nevada law.

20 b. specific performance requiring the Association to comply with the CC&Rs, as well
21 as other Nevada law, with respect to the Association's maintenance and day-to-day activities;

22 c. injunctive relief preventing the Association from violating the terms of the CC&RS,
23 as well as other Nevada law, moving forward;

24 d. appointment of a receiver to handle the maintenance obligations and day-to-day
25 activities, including the financial activities regarding assessments and creditors, until a duly
26 constituted board may be instituted and power transitioned thereto; and

1 e. reasonable attorneys' fees, costs of suit and litigation, and such other and further
2 relief as the Court deems just and proper

3 12. The Complaint in the Receivership Action alleges that the Association is not functioning,
4 that the common elements of the community are not being maintained, and that "the Association has not
5 paid known creditors of the Association, which includes, but is not limited to, the annual dues to the
6 Nevada Secretary of State or the Nevada Department of Real Estate or the Lytles, which hold multiple
7 judgments against the Association." Complaint at ¶ 21.

8 13. In a Renewed Application for Appointment of Receiver filed by the Lytle Trust on October
9 24, 2019 ("Application") in the Receivership Action, the Lytle Trust asserts that one reason for a Receiver
10 over the Association was due to the Association's refusal to pay the Rosemere Judgments, including its
11 refusal to assess Association members, including the Plaintiffs, so the Association could pay the
12 Rosemere Judgments. Application at 3:2-4, 5:17-18 ("Additional grounds exist because the Association
13 is refusing to pay and refusing to assess Association members related to various monetary judgments
14 awarded to the Lytles against the Association"), 13:19-28 ("A receiver may be appointed...[a]fter
15 judgment, to carry the judgment into effect" (quoting NRS 32.010(3))), 14:1-2, 16-28 ("the Lytle Trust
16 obtained judgments against the Association and a Receiver is needed to carry those judgments into
17 effect"), 15:20-25 ("the Association has a duty...to pay its debts, including the Judgments obtained by
18 the Lytle Trust"), 16:17-22 ("the Association is without any governing body to assess the homeowners
19 and pay the judgments").

20 14. The Lytle Trust disclosed to the judge in the Receivership Action (the "Receivership
21 Court") that the Amended CC&Rs had been judicially declared *void ab initio* and of no force or effect.
22 *Id.* at 8:11-12 (the District "Court determined that the Amended CC&Rs were not properly adopted or
23 recorded, that the Amended CC&Rs are invalid, and that the Amended CC&Rs have no force or effect");
24 8 at n.3 ("Note, Rosemere 2 Litigation commenced more than six years *before* the Court in Rosemere 1
25 Litigation ruled that the Amended CC&Rs were invalid.") (emphasis in original); 9:13-17 ("In granting
26 the Lytle Trust's Motion for Attorneys' Fees, the district court in the Rosemere 1 and Rosemere 2
27 Litigations . . . held that the Lytle Trust could recover attorneys' fees under the Amended CC&Rs because
28

1 that document, while declared *void ab initio* by the district court, was in effect and enforced by the
2 Association against the Lytle Trust at all times during the underlying litigation.”).

3 15. However, The Lytle Trust further argued in the Application that the Amended CC&Rs
4 provide authority for a receiver to make special assessments on the Plaintiffs’ and other owners’
5 properties to collect funds to pay the Rosemere Judgments. *Id.* at 11:4-28, 13:1-17, 17:1-9. The Lytle
6 Trust’s Application included a section heading in its Statement of Fact section titled “The Amended
7 CC&Rs Grant the Association Authority to Assess Each Unit for Payment of Judgments Against the
8 Association.” *Id.* at 11:4-5. The Lytle Trust also represented that “the District Court already ruled that
9 the Association is liable for attorneys’ fees, costs and damages pursuant to the Amended CC&Rs, which
10 provide the Association with the ability to specially assess each property (unit) for the costs of the
11 judgments. Amended CC&Rs ¶ 10.11, Exhibit 16.” *Id.* at 17:6-9.

12 16. The Lytle Trust did not inform the Receivership Court about this Case, the July 2017 Order,
13 May 2018 Order, or the Orders of Affirmance.³ The Lytle Trust did not inform the Receivership Court
14 that this Court had issued permanent injunctions against the Lytle Trust relating to enforcement of the
15 Rosemere Judgments against the Plaintiffs, the Boulden Trust, the Lamothe Trust, the Dismans, or their
16 properties.

17 17. On December 18, 2019, based on the Lytle Trust’s Application, the Receivership Court
18 entered an Order Appointing a Receiver of Defendant Rosemere Property Owners Association (“Order
19 Appointing Receiver”). The Order Appointing Receiver, drafted by the Lytle Trust, directs the Receiver
20 to “[i]ssue and collect a special assessment upon all owners within the Association to satisfy the Lytle
21 Trust’s judgments against the Association.” Order Appointing Receiver at 2:19-20. It further empowers
22 the Receiver with “the authority to assess all Association unit owners to pay for any operation costs or
23 to pay for judgments against the Association. If an Association member does not pay an assessment then
24 the Receiver may proceed to foreclose on said member’s ownership interest in the property.” *Id.* at 6:4-
25 7.

26
27 ³ The Court notes that the Second Order of Affirmance was issued after entry of the Order Appointing
28 Receiver and the Lytle Trust could not have informed the Receivership Court of it prior to entry of the
Order Appointing Receiver.

21. The Association has never been a party to this Case.

1. This case has a history, such as the filing of the *lis pendens* against the Boulden Trust and Lamothe Trust properties after the Court had ordered the expungement of the Abstracts of Judgment and continued enforcement of the Abstracts of Judgment against the September Trust, Zobrist Trust, Sandoval Trust, and Gegens' properties after entry of the July 2017 Order, that demonstrates that the Lytle Trust does not respect this Court's Orders.

⁵ After the hearing on the Motion but prior to entry of this Order, the Boulden Trust and the Lamothe Trust withdrew their Joinders pursuant to a settlement with the Lytle Trust. Therefore, the Boulden Trust and Lamothe Trust are no longer considered movants for purposes of the relief granted herein.

2. This Court has inherent power to enforce its decrees, orders and judgments. A party is required to adhere to court orders, even disagreeable or erroneous orders, until terminated or overturned.

3. The proper course of action if a party disagrees with a Court order is to appeal.

4. The May 2018 Order must be obeyed by the Lytle Trust.

5. Each paragraph, each finding of fact, and each conclusion of law in the May 2018 Order must be given its plain meaning, and each paragraph of that Order's permanent injunction must be obeyed by the Lytle Trust.

6. As a result of the Findings of Fact and Conclusions of Law in the May 2018 Order, there were specific orders which are not mutually exclusive. Each issue ordered by the Court should be given its meaning, and they are not in conflict.

7. The Court's factual determinations and conclusions of law culminated with the permanent injunction language starting at Page 10, Line 10 of the May 2018 Order, which stated:

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

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

8. These paragraphs are not mutually exclusive and each must be obeyed by the Lytle Trust.

9. The Findings of Fact, Conclusions of Law, and Orders contained in the May 2018 Order, including the permanent injunctions, are clear, specific and unambiguous as to what the parties could and could not do in this case. Further, the terms of the permanent injunction are specific and definite so that the Lytle Trust could readily know exactly what duties or obligations were imposed on it.

10. The May 2018 Order's permanent injunction clearly precluded the Lytle Trust from doing anything as it relates to enforcing and recording the Rosemere Judgments against the Plaintiffs and Dismans or their properties.

11. Indeed, the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans in any way, shape, or form.

12. The Plaintiffs have demonstrated by clear and convincing evidence that the Lytle Trust violated the clear and specific terms of the permanent injunction found in the May 2018 Order when it initiated an action against the Association that included a prayer for appointment of a receiver, applied for appointment of a receiver, and argued that the Association, through the Receiver, could make special assessments on the Plaintiffs' and other property owners for the purpose of paying the Rosemere Judgments, all while failing to inform the Receivership Court of this Case, this Court's Orders, or that the Lytle Trust had been enjoined from enforcing the Rosemere Judgments against the Plaintiffs, the Boulden Trust, the Lamothe Trust, and the Dismans, or their properties.

13. The Lytle Trust's actions, as stated in the Findings of Fact and set forth herein, directly and indirectly violated the May 2018 Order.

14. Any references to the power of assessment exercised by the Association, or the Receiver on behalf of the Association, against the individual homeowners for payment of the Rosemere Judgments in the Order Appointing Receiver, as advocated for and drafted by the Lytle Trust, directly and indirectly violates the May 2018 Order.

15. The Lytle Trust has failed to show why it was unable to comply with the May 2018 Order.

16. The Lytle Trust has failed to demonstrate how its actions did not violate the clear and specific terms of the May 2018 Order.

17. A party may be held in contempt of court for disobedience or resistance to any lawful order issued by the court. NRS 22.010(3)

18. "[I]f a person is found guilty of contempt, a fine may be imposed on the person not exceeding \$500 or the person may be imprisoned not exceeding 25 days, or both." NRS 22.100(2).

19. In addition, the court may award "reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt." NRS 22.100(3).

ORDER

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

1 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion for Order
2 to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders, as
3 well as the Joinders thereto filed by the Boulden Trust, the Lamothe Trust, and the Dismans, are
4 GRANTED.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
6 violated the May 2018 Order.

7 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
8 is in contempt of the May 2018 Order.

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
10 shall pay a \$500 penalty to each movant for violation of the May 2018 Order; specifically, \$500 payable
11 to the September Trust, \$500 payable to the Zobrist Trust, \$500 payable to the Sandoval Trust, \$500
12 payable to the Gegens, and \$500 payable to the Dismans.

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1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the September
 2 Trust, Zobrist Trust, Sandoval Trust, Gegens, and Dismans, may file applications for their reasonable
 3 expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.
 4 The Court will consider such applications on the merits.

5 **IT IS SO ORDERED.**

6 Dated this 22 day of May, 2020.

7 
 8 DISTRICT COURT JUDGE CG

9 **Submitted by:**

10 **CHRISTENSEN JAMES & MARTIN**

11 /s/ Wesley J. Smith

12 Wesley J. Smith, Esq.
 13 Nevada Bar No. 11871
 14 Laura J. Wolff, Esq.
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 16 7440 W. Sahara Ave.
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 18 *Attorneys for Plaintiffs September Trust,*
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 20 *Dennis & Julie Gegen*

Approved as to Form and Content by:

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16 **Reviewed by Not Approved by:**

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19 Reviewed But Not Approved

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RE: Case No. A-16-747800-C - Boulden v. Lytle - ORDR - Proposed Order Granting Plaintiffs' Motion for Order to Show Cause

Wang, Christina <Christina.Wang@fnf.com>

Mon 5/18/2020 9:52 AM

To: Wesley Smith <wes@cjmlv.com>

Cc: Engelman, Lace <Lace.Engelman@fnf.com>

Approved – thanks.

Christina H. Wang

Litigation Counsel

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PLEASE NOTE THAT OUR OFFICE HAS MOVED TO THE ABOVE ADDRESS.

The Law Division of Alamo Title Insurance, Chicago Title Insurance Co., Commonwealth Land Title Insurance Co., Fidelity National Title Insurance Co., and Fidelity National Title Group, Inc.

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From: Wesley Smith <wes@cjmlv.com>

Sent: Monday, May 18, 2020 9:45 AM

To: Wang, Christina <Christina.Wang@fnf.com>

Cc: Engelman, Lace <Lace.Engelman@fnf.com>

Subject: Re: Case No. A-16-747800-C - Boulden v. Lytle - ORDR - Proposed Order Granting Plaintiffs' Motion for Order to Show Cause

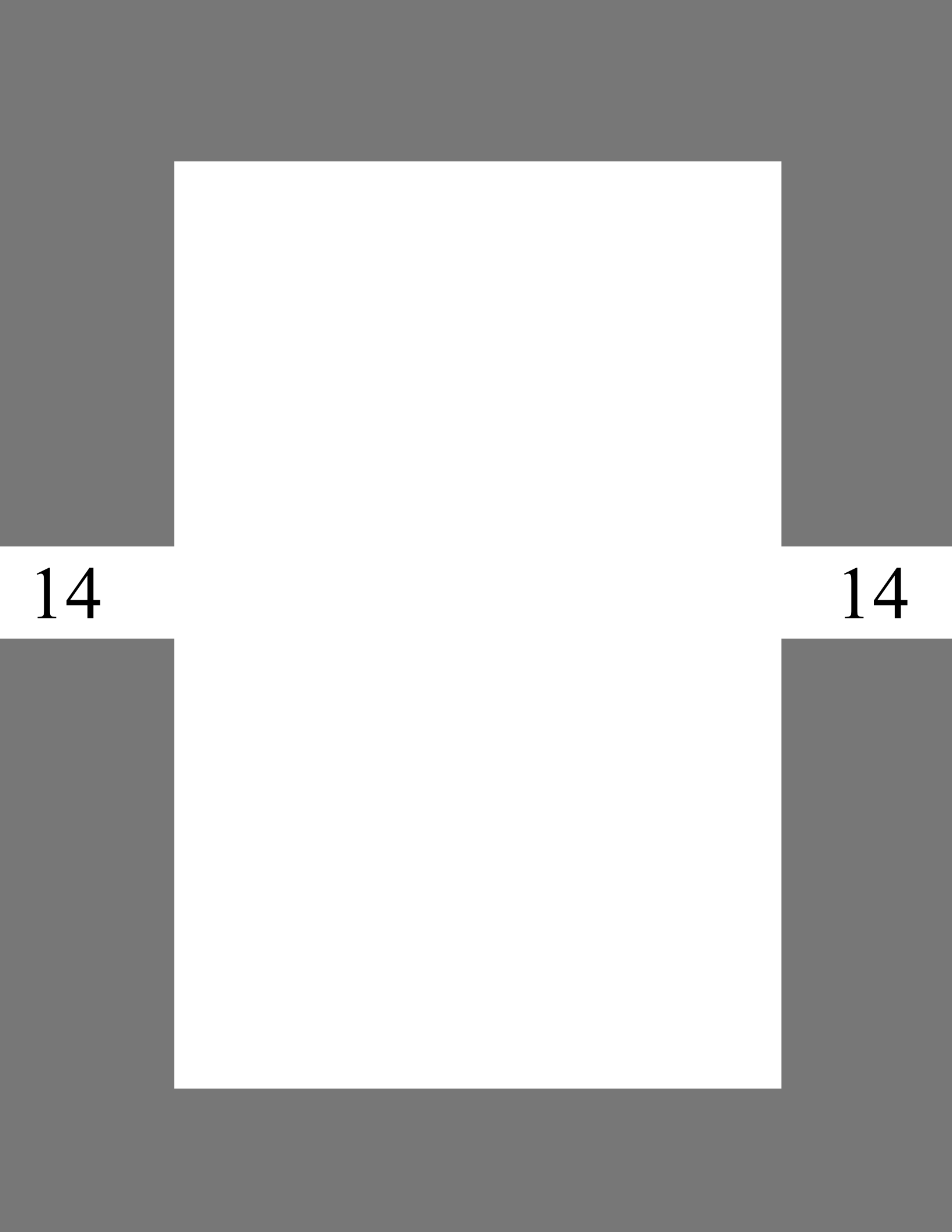
IMPORTANT NOTICE - This message sourced from an external mail server outside of the Company.

Christina,

Per our discussion, can you please approve this version which adds the date to footnote 2?

Wes Smith

Christensen James & Martin



14

14

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

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

**REPLY TO DEFENDANT LYTLE
TRUST'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES AND COSTS**

**Date of Hearing: July 7, 2020
Time of Hearing: 9:00 a.m.**

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

Plaintiffs,

vs.

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

Defendants.

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

Consolidated

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

1 Tenants (“Gegen”) (collectively the “Plaintiffs”), by and through their attorneys, Christensen
2 James & Martin, hereby Reply to the Lytle Trust’s Opposition to Plaintiffs’ Motion for
3 Attorney’s Fees and Costs. This Reply is based upon the following Memorandum of Points and
4 Authorities, Declaration and Exhibits filed herewith and the pleadings and papers on file.

5 DATED this 29th day of June, 2020.

CHRISTENSEN JAMES & MARTIN

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

7 Wesley J. Smith, Esq.

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9 7440 W. Sahara Avenue

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13 *Attorneys for September Trust, Zobrist*
14 *Trust, Sandoval Trust and Gegen*

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I.

17 ARUMENT

18 As set forth in the Motion, this Court already invited the Plaintiffs to make an application
19 for its expenses incurred as a result of the Lytle Trust’s contempt. On May 22, 2020, the Court
20 entered its Contempt Order concluding that the Lytle Trust had directly and indirectly violated
21 the May 2018 Order, that a party may be held in contempt for violating its orders, and that the
22 Court may impose fines and award “reasonable expenses, including, without limitation,
23 attorney’s fees, incurred by the party as a result of the contempt.” Contempt Order at 11:9-23
24 (quoting NRS 22.100(3)). The Court Ordered that the Lytle Trust violated the May 2018 Order,
25 is in contempt of the May 2018 Order, shall pay a fine of \$500 to each movant, and that the
26 Plaintiffs may file applications for their reasonable expenses, including, without limitation,
27 attorney’s fees, incurred as a result of the contempt. The Lytle Trust have not attacked an award
28 of fees and costs on that ground. As explained below, the Plaintiffs have demonstrated that they

1 are also entitled to fees and costs pursuant to the Original CC&Rs, NRS 18.020, 18.050,
2 18.010(2)(b) and NRAP 39(e).

3 **A. This Court Can Award Fees Incurred in the Receivership Action.**

4 Plaintiffs have asked this Court to award attorney's fees and costs incurred for the
5 Receivership Case because this Court found that the Lytle Trust's effort to appoint a receiver in
6 that Case was a violation of this Court's May 2018 Order. *See* Contempt Order at 11:1-14. The
7 Plaintiffs engaged in the Receivership Case for the specific purpose of putting an end to those
8 violations and to alert that Court to the fact that this Court had issued permanent injunctions
9 against the Lytle Trust. Thus, all the fees expended related to the Receivership Case are
10 inextricably tied to this Case. The Plaintiffs gave an opportunity to avoid those fees. The
11 Plaintiffs sent a letter to the Receiver with a copy to the Lytle Trust demanding that they cease
12 and desist their violation of this Court's Prior Orders and inform the Receivership Court about
13 the permanent injunctions. The Lytle Trust ignored the Plaintiffs and ferociously defended their
14 actions as compliant with this Court's Orders. The Lytle Trust has not disputed these facts in
15 their Opposition.

16 The Lytle Trust cites two cases for the proposition that this Court cannot award fees
17 incurred in the Receivership action. Neither case is persuasive authority, nor do they support the
18 Lytle Trust's argument. In *MacLean Townhomes, LLC v. Charter Oak Fire Insur. Co.*, 2009 WL
19 734698, *3 (W.D. Wash. 2009), the Court did not award attorney's fees and costs incurred
20 because "Plaintiff has failed to show that the fees were related to coverage issues." In this Case,
21 the fees expended in the Receivership Case are directly related to this matter and were made
22 necessary by the Lytle Trust's violations of this Court's Orders.

23 *Lupoli v. Venus Labs., Inc.*, 731 N.Y.S.2d 217, 218 (N.Y. App. Div. 2001), can also be
24 distinguished from this matter because it concerns the violation of a claim splitting rule in New
25 York landlord-tenant law. *See Caracaus v. Conifer Cent. Square Assocs.*, 158 A.D.3d 63, 68, 68
26 N.Y.S.3d 225, 229 (N.Y. App. 2017) (citing *Lupoli* and stating "The First Department, similarly,

1 wrote that ‘the prohibition against the splitting of causes of action requires that such fees be
2 sought within the action in which they are incurred, and not in a subsequent action”). The
3 *Caracus* court explained that “the claim splitting rule exists to prevent a plaintiff from harassing
4 a defendant with multiple suits where one suit would have sufficed to afford the plaintiff full
5 relief....The claim splitting rule thus applies only when a plaintiff commences a new action or
6 interposes a new counterclaim to expand his or her recovery from a prior action...” This Case
7 does not share *Lupoli*’s area of law or procedural posture. The Plaintiffs were forced to litigate in
8 multiple cases due to the Lytle Trust’s litigation tactics, not their own.

9 The Lytle Trust also asserts that the language of Section 25 of the Original CC&Rs
10 prevents this court from awarding the fees incurred in the Receivership Case because of the
11 words “in such proceeding”. All fees expended in the Receivership Case were incurred in order
12 to give effect to this Court’s Orders. Thus, all billings in the Receivership Case can be awarded
13 by this Court because the Plaintiffs were trying to uphold the Court’s Orders in this proceeding.

14 The Lytle Trust has also arbitrarily assigned the fees that should be apportioned to the
15 Receivership Case. If this Court should find in favor of the Lytle Trust on this issue, CJ&M has
16 attached their billing statements with those portions highlighted in pink that are applicable to the
17 Receivership Action, which total \$36,259. This includes drafting a motion to intervene, motion
18 to amend or set aside the Order Appointing receiving and reply thereto, opposing the Receiver’s
19 motion and Lytle Trust’s extensive joinder, and two hearings, including a substantive hearing on
20 the competing motions that required substantial preparation and argument.

21 **B. All Fees Incurred in the Receivership Action Were Necessary**

22 The Lytle Trust spends four (4) pages asserting that the Motion to Intervene in the
23 Receivership Action could have been avoided because the Lytle Trust was willing to stipulate to
24 the intervention. It is convenient to say to that the Lytle Trust would have stipulated, had the
25 Plaintiffs simply asked, but there is no basis for this assertion. The undisputed facts as set forth
26 in the Plaintiffs’ Motion for Attorney’s Fees (7:4-9:20), show that the Lytle Trust has been
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1 unwilling to stipulate to reasonable requests in the past including removal of the liens,
2 consolidation, dismissal of the appeal and rescinding the Receivership Order. The Plaintiffs sent
3 a letter to the Receiver and Lytle Trust on January 29, 2020 requesting that they take affirmative
4 action but received no response. *See* Exhibit 5. Thus, there was nothing curious or unreasonable
5 about filing a Motion to Intervene on March 4, 2020, more than a month after the Lytle Trust
6 failed to act or respond. In fact, the Lytle Trust did not advance the idea of allowing Plaintiffs to
7 intervene in the Receivership Action until two (2) days after the Motion to Intervene was filed,
8 when Mr. Waite associated into the Receivership Action. *See* Lytle Trust's Opposition at 4:15-21
9 and Exhibit F. To now say they would have stipulated without the Motion to Intervene is
10 disingenuous and belies the precedence the Lytle Trust has set in this case from the beginning.

11 Further, Plaintiffs never declined to stipulate to the intervention, but only demanded that
12 such stipulation comply with law. By Rule, intervention requires a "motion [] stat[ing] the
13 grounds for intervention and be accompanied by a pleading that sets out the claim or defense for
14 which intervention is sought." NRCP 24. Although stipulation was offered, Plaintiffs rightly felt
15 it was necessary to include in the stipulation the grounds for intervention in order to comply with
16 Rule 24(c).¹

17 Following NRCP 24, the Plaintiffs included many more facts in the stipulation than had
18 been offered by the Lytle Trust. There was no poisoning or emotional bias intended, only
19 informing the Court of undeniable and unchangeable facts directly necessary to its decision.
20 These facts are many of the same facts that this Court relied on in determining that the Lytle
21 Trust violated the May 2018 Order. *See* Exhibit F attached to the Lytle Trust's Opposition. True
22 to form, the Lytle Trust states that it would not agree to the "highly disputed allegations" that
23

24 ¹ The Lytle Trust makes a big issue of Plaintiffs' counsel holding internal conferences about the
25 proposed stipulation instead of immediately agreeing to the terms drafted by the Lytle Trust's
26 counsel. However, given the history, facts, and strange procedural posture created by the Lytle
27 Trust, it makes sense for Plaintiffs' counsel to pause, assess and confer about what the Lytle
28 Trust offered, particularly since they had not responded to the letter sent to the Receiver in
January.

1 Plaintiffs' counsel wanted to insert in the Stipulation even though Plaintiffs' counsel also added
2 the language that "Plaintiff Lytle Trust does not agree with the Proposed Intervenor's allegations
3 . . ." See Lytle Trust's Opposition, Exhibit F, Stipulation and Order Allowing Intervention 3:4-6
4 (§ 2). In the end, it was the Lytle Trust's refusal to include relevant facts in the stipulation that
5 frustrated the effort and required a decision by the Court. Notably, the facts that Plaintiffs sought
6 to include form the basis for the Court's Order holding the Lytle Trust in contempt. None of
7 these facts prevent this Court from awarding Plaintiffs' fees for the preparation of the Motion to
8 Intervene as well as all other matters related thereto.

9 **C. Plaintiffs Are Entitled to Attorney's Fees Pursuant to the Terms of the Original**
10 **CC&RS**

11 This Court has already awarded fees and costs to the Disman and Lamothe/Boulden
12 parties under the Original CC&Rs and just recently dismissed their appeal of that Order. Thus, it
13 is hard to fathom why the Lytle Trust spends four (4) pages trying to convince the Court that the
14 Original CC&Rs do not apply to an attorney's fees award to the Plaintiffs. Clearly, this Court has
15 already set a precedent and the law of the case and/or issue preclusion apply.

16 *1. Issue Preclusion and Law of the Case Provide a Basis for Plaintiffs' Attorney's Fees*

17 In *Executive Mgmt. v. Ticor Title Ins. Co.*, 114 Nev. 823, 835-36, 963 P.2d 465, 473-74
18 (1998), the Court clarified the three-part test for issue preclusion as follows: "(1) the issue
19 decided in the prior litigation must be identical to the issue presented in the current action; (2)
20 the initial ruling must have been on the merits and have become final; and (3) the party against
21 whom the judgment is asserted must have been a party in privity with a party to the prior
22 litigation." "Unlike claim preclusion, issue preclusion 'does not apply to matters which could
23 have been litigated but were not.' " *Id.* at 473 quoting *Pomeroy v. Waitkus*, 183 Colo. 344, 517
24 P.2d 396, 399 (1974). Here, all claims and issues presented are identical and the decision was
25 final. The Lytle Trust was party to all decisions at issue in this case. Thus, issue preclusion
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1 applies to the attorney's fees and costs that were awarded to the Boulden/Lamothe and Disman
2 parties.

3 With regard to the law of the case doctrine, the Nevada Supreme Court stated in footnote
4 3 of the Order of Affirmance, dated March 2, 2020:

5 Although this court has previously stated that trial court decision do not constitute law-
6 of-the-case, *see Byford v. State*, 116 Nev. 215, 232, 994 P.2d 700, 711-12(2000), we note
7 that federal law provides that the doctrine applies to district court decisions, although it
8 does not preclude a district court from reconsidering its own rulings unless a higher court
has ruled on the issue and mandated a certain outcome. *See, e.g., Askins v. U.S. Dep't of*
Homeland Sec., 899 F.3d 1035, 1042 (9th Cir. 2018); *Moore v. James H. Matthews &*
Co., 682 F.2d 830, 833-34 (9th Cir. 1982)

9 *See* Order of Affirmance attached to the Motion as Exhibit 2. Thus, this Court could look to the
10 law of the case as a solid reason for awarding the Plaintiffs their attorney's fees and costs.

11 *2. The Lytle Trust's Counterclaim Makes No Difference to This Issue*

12 The Lytle Trust's attempt to discredit precedence by stating that the CC&Rs were only
13 implicated for the other homeowners because of the Lytle Trust's counterclaim is a distinction
14 without a difference. The Court Minutes dated May 17, 2019 provide that:

15 The Court has ruled that the CC&R's control the award of attorney's fees in this matter.
16 Pursuant to paragraph 25 of the CC&R's regarding attorney's fees, the losing party or
17 parties shall pay in such amount as may be fixed the court. Applying the language of the
18 CC&R's the Court determined that the Boulden and Lamothe Plaintiffs and Disman
Counter Defendants are the winning parties, the Lytle Defendants are the losing party
and the language is mandatory regarding the assessment of attorney fees against the
losing party.

19 This language does not reference the Lytle Trust's counterclaims but broadly recognizes that
20 paragraph 25 of the CC&Rs applies, which was confirmed by the specific words of Judge
21 Williams at the hearing:

22 And so that -- to me that covers everything as far as -- you could enforce the
23 CC&Rs or you can restrain somebody under the CC&Rs. What they were doing
24 here was essentially this, they were restraining your client from filing the abstract
25 because they had no right pursuant to the CC&Rs to do such a thing. Because this
was a limited purpose homeowners association, it wasn't a full-blown
homeowners association, there was no right to do it.

26 Reporters Transcript of Motion for Attorney's Fees and Costs dated May 16, 2019 ("Transcript")
27 at 38:3-11, attached hereto as Exhibit 9. Judge Williams also stated, "Additionally, the thrust,
28

1 focus, and essence of all this litigation stemmed from the original CC&Rs, I mean, they did, and
2 going back to Judge Leavitt and her determination, what I did, the comments by the Nevada
3 Supreme Court, and the affirmance.” Ex. 9, Transcript at 62:15-19.

4 In the instant case, the Plaintiffs are the winning parties pursuant to the Original CC&RS
5 and so should be awarded their fees and costs like the other Plaintiffs-end of story. Further, the
6 Boulden/Lamothe Order Granting Motion for Attorney’s Fees and Costs and Order Denying
7 Defendant’s Motion to Retax and Settle Costs (“Boulden/Lamothe Order”) reflects Judge
8 Williams findings by only stating one conclusion of law which provides that “Section 25 of the
9 CC&Rs is a mandatory provision regarding the award of attorney’s fees and costs being paid by
10 the losing party in any legal or equitable proceeding for the enforcement of or to restrain the
11 violation of the CC&Rs or any provision thereof.” Boulden/Lamothe Order at 8:5-9. Of course,
12 the Findings of Fact, Conclusions of Law and Order Granting Robert Z. Disman and Yvonne A.
13 Disman Motion for Attorney’s Fees (“Disman Order”) mentions the Counterclaim because that is
14 how this party got involved in this case, but it is important to point out that when mentioning the
15 counterclaim the Order provides that, “Given the nature of the Counterclaim, as well as the
16 overall case...” Disman Order, Conclusions of Law No. 4. There is no basis to grant fees to the
17 other homeowner plaintiffs under the CC&Rs, but not the Plaintiffs here.

18 *3. The Plaintiffs Actions Enforced and Restrained the CC&Rs*

19 The Lytle Trust alleges that the Plaintiffs were not enforcing the CC&Rs, nor enjoining
20 violation of the CC&Rs, and did not reference the CC&Rs in their demand letters. Just because
21 the Plaintiffs did not reference the CC&Rs in letters does not mean they were not implicated.
22 The letter was not a legal brief. However, in the General Allegations section of the Complaint,
23 the Plaintiffs reference the CC&Rs in paragraphs 15-17, including CC&R Paragraph 24, which
24 provides that the Lytle Trust had to sue the Plaintiffs directly to enforce the CC&Rs and they did
25 not. Further, the Lytle Trust argued in its Opposition to Motion for Summary Judgment, Or, In
26 The Alternative, Motion For Judgment On The Pleadings; And Countermotion For Summary
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1 Judgment (“Lytle Trust MSJ”) that the terms of the Original CC&Rs allowed a lien or judgment
2 against the Association to attach to each lot within the Association. *See* Lytle Trust MSJ 10:4-7
3 (“As set forth below, the Lytles rightfully recorded the Abstracts of Judgments, including those
4 against Plaintiffs, pursuant to the Original CC&Rs . . .”) and 20:22-24 (“Pursuant to the Original
5 CC&Rs, a lien or judgment against the Association established under the Original CC&Rs
6 attaches to each lot within the Association.”). The Lytle Trust took these same arguments to the
7 Supreme Court. Thus, this litigation was necessary to restrain the Lytle Trust’s violation of the
8 Original CC&Rs.

9 Further, the Plaintiffs were required to enforce the terms of the Original CC&RS because
10 the Lytle Trust continued to act as if the Amended CC&Rs had power, which also violated the
11 Original CC&Rs as the only contract that governed. *See* Lytle Trust MSJ at 18:5-6 (“A ruling in
12 favor of Plaintiffs in the instant case would provide the Association with forgiveness to utilize
13 NRS Chapter 116 and the Amended CC&Rs as swords. . .”); *see also* Appellants’ Opening Brief
14 (Docket No. 76198) at 28, attached hereto as Exhibit 11 (“Appellants simply seek an equal
15 application of the rules-specifically that the Amended CC&Rs and Chapter 116 be open to
16 Appellants to utilize in enforcing the Judgment in enforcing the NRED 2 Litigation”). The Lytle
17 Trust continued to use the Amended CC&Rs even in the Receivership Case. *See* Renewed
18 Application for Appointment of Receiver filed on October 24, 2019 (“Application”), at Part
19 II.C.4 (“The Amended CC&Rs Grant the Association Authority to Assess Each Unit for
20 Payment of Judgments Against the Association”) and Part III.D, attached hereto as Exhibit 12.

21 The Plaintiffs prevailed in enforcing the Original CC&Rs by obtaining injunctive
22 relief prohibiting the Lytle Trust from recording its Judgments against Plaintiffs’ properties
23 in violation of the Original CC&Rs and in stopping the Lytle Trust from using the Amended
24 CC&Rs to do so in this case and in the Receivership Case. There is no shoehorning by the
25 Plaintiffs. The true reality is that this case was all about the CC&Rs from the beginning. The
26 only revisionist here is the Lytle Trust.

1 4. *The Argument Regarding Chapter 38 Mediation Has No Merit*

2 The Lytle Trust asserts that the Plaintiffs were required to undertake Chapter 38
3 meditation. This argument was already dismissed by Judge Williams: “Well, tell me this. I
4 understand it’s mandatory, but at the end of the day it would be up to you to make a
5 determination as to whether a motion to dismiss should be filed because they failed to meet the
6 condition precedent as it relates to NRED.” Ex. 10, Transcript at 19:8-12. Further, Plaintiffs have
7 never alleged in any of their pleadings that this case was about or subject to NRS 38.310 nor has
8 the Lytle Trust interpreted it be so in any of their defenses or pleadings. Plaintiffs alleged in
9 paragraph 52 of their Complaint that they would suffer irreparable harm (“Plaintiffs will suffer
10 irreparable harm if they are not able to sell their Properties due to the recording of the Abstracts
11 of Judgment”), which excludes their claims from the requirements of NRS 38.310. For NRS
12 38.310 purposes, a “civil action” is defined as “includ[ing] an action for money damages or
13 equitable relief” but excludes “an action in equity for injunctive relief in which there is an
14 immediate threat of irreparable harm.” NRS 38.300(3). NRS 38 did not apply to this Case then
15 and is not a bar to a fee award now.

16 **D. Plaintiffs’ Fees Should Not Be Reduced**

17 The Lytle Trust asserts that this Court must use the “lodestar” method in its
18 determination. However, the case cited by the Lytle Trust states that, “[T]he method upon which
19 a reasonable fee is determined is subject to the discretion of the court . . .the court is not limited
20 to one specific approach . . .however, the court must continue its analysis by considering the
21 requested amount in light of the factors enumerated by this court in *Brunzell v. Golden Gate*
22 *Nat’l Bank.*” *Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 549
23 (2005) (citations omitted). Thus, the *Brunzell* factors are the guide to reasonable fee in this case.
24 *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 81, 319 P.3d 606, 615 (2014) (to determine if the
25 fees sought are reasonable and justified in amount “the district court must consider
26 the *Brunzell* factors.”). The Plaintiffs have submitted adequate evidence of the hours actually
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1 incurred in this Case and the Court can determine a reasonable award based on this evidence
2 under the guidance of the *Brunzell* factors. There is no basis for the wholesale, and frankly
3 ridiculous, reductions suggested by the Lytle Trust.

4 *1. Block Billing is Amenable to Consideration Under the Brunzell Factors*

5 The Lytle Trust cites to many out of jurisdiction cases regarding block billing. However,
6 what the Nevada Supreme Court has said about block billing is as follows:

7 The courts that have addressed block billing observe that block billing makes it
8 difficult for a court to review the reasonableness of the requested attorney fees, as
9 compared with single task time entries. . . Nevertheless, **block-billed time**
10 **entries are generally amenable to consideration under the *Brunzell* factors,**
11 **(citations omitted), and a district court must consider block-billed time entries**
12 **when awarding attorney fees.** If a district court encounters difficulty considering
13 the character of the work done or the work actually performed because of block
14 billing, then the district court may order additional briefing or discount the
relevant block-billed time entry or entries by an appropriate amount. *See Welch*,
480 F.3d at 948 (suggesting that a 10 to 30 percent reduction might be reasonable
for block-billed fees). But only where a district court determines that none of the
task entries comprising the block billing were necessary or reasonable may a
district court categorically exclude all of the block-billed time entries. *Mendez*,
540 F.3d at 1129 (“[S]uch billing practices are legitimate grounds for reducing or
eliminating certain claimed hours, but not for denying all fees.”).

15 In this case, the block-billed entries submitted by Wayne’s counsel
16 contained two to four task entries. This is not an extreme example of block billing
17 and does not unduly interfere with the district court’s ability to judge the
reasonableness of the attorney fees. . . Thus, we conclude that it was an abuse of
discretion for the district court to categorically exclude all block-billed time
entries from the attorney fees award.

18 *In re Margaret Mary Adams 2006 Trust*, 131 Nev. 12932015 WL 1423378 (Table) *2-3
19 (Nevada, March 26, 2015) (emphasis added). Further, billing records are not the only evidence
20 and are not even required. *O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 558, 429 P.3d 664,
21 671 (Nev. App. 2018). A court can determine a reasonable fee based on “ ‘all the facts and
22 circumstances’ after the court considered how the plaintiff’s “work, thought and skill
23 contributed” to the successful outcome.” *Id.* at 670–71. Thus, block billing in a fee statement
24 cannot be determinative of the reasonableness of the fee request.

25 The Plaintiffs’ billings must not be eliminated or reduced significantly simply because
26 some are block billed entries. In fact, a review of the Plaintiffs’ billing statements show that most
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1 block billed entries have only 2-4 tasks and are not an extreme example of block billing. If
2 anything, the block billed entries describe the “work, thought and skill contributed” to the
3 successful outcome in this Case. Certainly, the entries do not present “difficulty considering the
4 character of the work done or the work actually performed.” This Court can judge the
5 reasonableness of Plaintiffs’ attorney’s fees in light of the *Brunzell* factors without resorting to
6 the drastic and draconian slashing that the Lytle Trust urges.

7 *2. Clerical Tasks Should be Compensable in this Case*

8 The Lytle Trust asserts that clerical tasks, including calendaring, internal filing,
9 downloading documents, preparing exhibits, etc., are not compensable. The Lytle Trust also
10 points out that there seems to be something wrong with all CJ&M partners working on the case.
11 CJ&M is a small law firm. There are currently only six (6) attorneys, no paralegals and one (1)
12 law clerk. None of the attorney’s has their own assigned staff. Further, CJ&M’s malpractice
13 insurance policy requires that all calendaring be done by at least two (2) different persons.
14 Therefore, calendaring is performed by the attorney’s themselves in duplicate and recorded in
15 their time records to demonstrate compliance with their carrier requirements. In any event,
16 calendaring is an extremely quick task and the Court can easily determine whether a block entry
17 containing calendaring is reasonable.

18 In *Missouri v. Jenkins*, 491 U.S. 275, 288 n. 10 (1989), cited by the Lytle Trust, the
19 Supreme Court states, “It is appropriate to distinguish between legal work, in the strict sense, and
20 investigation, clerical work, compilation of facts and statistics and other work which can often be
21 accomplished by non-lawyers but which a lawyer may do because he has no other help available.
22 Such non-legal work may command a lesser rate. Its dollar value is not enhanced just because a
23 lawyer does it.”

24 Here, CJ&M gives thought to their rate and the kinds of tasks the attorney’s perform
25 because of lack of support staff when deciding their hourly rate on a case. CJ&M’s hourly fee in
26 this case is a reflection of that consideration. CJ&M’s \$260.00 per hour is much less than most
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1 firms charge for an hourly fee with the experience that CJ&M has. As a relevant example, a
2 review of the attorney's fees charged by Richard Haskins in the underlying Rosemere Judgments
3 shows that he was charging \$340 per hour to the Lytle Trust in 2016. *See* Affidavit of Richard
4 Haskin in Support of Motion for Attorneys' Fees filed in Case No. A-10-631355-C, attached
5 hereto as Exhibit 13; Declaration of Wesley J. Smith, ¶ 12 attached hereto.

6 In another case cited by the Lytle Trust, *Adkins v. Comm'r of Soc. Sec.*, 393 F.Supp.3d
7 713, 720 (N.D. Ohio 2019), the Court there held that "Counsel's affidavit includes eight entries
8 that, at least in part, seek compensation for 'tickling,' or calendaring the case for deadlines or
9 other tasks. (Doc. 19-1 at 2-3). Such work is not compensable, and I will reduce each such entry
10 by 0.2 hours, a 1.6-hour reduction." *Adkins* is not persuasive because the 0.2 hour reduction does
11 not appear on its face to be realistic to the time it actually takes to put an event on a calendar.
12 Moreover, the Lytle Trust's suggested reductions (\$1,586 for calendaring; \$23,374.00 for
13 receiving, downloading and preparing documents) are outrageous. Again, the Lytle trust has
14 included the amount for the entire entry instead of a portion of the billings. CJ&M would not be
15 in business if they charged that much money for such tasks alone. If this Court finds that any
16 reduction is necessary for these tasks, a reduction of 0.1 hours per entry would be far more
17 appropriate and a closer approximation of the time actually spent. However, as explained above,
18 this type of work by the attorneys was considered when providing the lower hourly rate and
19 should be included in the fee award to Plaintiffs.

20 *3. Corroborative Work is Necessary and Valuable*

21 CJ&M should not be punished for using more than one (1) attorney on this case. The
22 Lytle Trust has asserted that inter-office conferences and emails between attorneys should only
23 be billed by one (1) attorney. However, as one court stated in rejecting a challenge to fees based
24 on the identical methodology employed by the Lytle Trust, "A conference with only one
25 participant is no longer a conference. The upshot of accepting [the defendant's] view would be to
26 hold that all conferencing by Plaintiff's attorneys was excessive and duplicative." *Chin v.*
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1 *DaimlerChrysler Corp.*, 520 F.Supp.2d 589, 605 (D.N.J. 2007) (reversed on other grounds). The
2 better view is that “Conferences between attorneys ... are necessary, valuable, and often result in
3 greater efficiency and less duplication of effort, thus requiring fewer hours overall.” *Avaya Inc.*
4 *v. Telecom Labs, Inc.*, 2016 WL 1059007 * 33 (D.N.J., September 15, 2016) (citing *Apple*
5 *Corps. v. Int’l Collectors Soc’y*, 25 F.Supp.2d 480, 488 (D.N.J. 1998)).

6 This is the view taken by CJ&M and the Plaintiffs. CJ&M works in a collaborative
7 environment, which enhances the representation of the client and the quality of its work product.
8 CJ&M attorneys frequently conference and communicate with each other regarding the issues
9 presented in their cases and collaborate on the drafting of court documents to ensure that well-
10 reasoned, soundly researched, and coherent arguments are presented to the courts. Their clients
11 and the courts benefit substantially from this practice. The Lytle Trust has failed to provide any
12 evidence or argument that any conference was excessive or duplicative – only that such
13 conferences occurred. Considering the length of this case and the issues involved, it makes sense
14 that the attorneys at CJ&M would discuss the issues in preparation for their case. Plaintiffs
15 should not be punished for holding interoffice conferences or exchanging emails because such
16 are valuable and resulted in greater efficiency in the instant case. Smith Declaration ¶ 13.

17 *4. Attorney’s Working on the Same Task is Not Necessarily Duplicative*

18 The Lytle Trust presents billings that presumably show CJ&M attorneys working on the
19 same tasks. However, it is not unusual for multiple attorneys to research, write, review and revise
20 the same pleadings and work product in a collaborative effort. “A trial court may reasonably
21 award attorney fees that include time for work performed by several attorneys from one law firm
22 on a single case.” *Attard v. Citizens Ins. Co. of Am.*, 237 Mich.App 311, 328–330, 602 NW2d
23 633 (Mich. Ct. App. 1999). “With respect to the other two attorneys who worked on the appeal . .
24 . The hours claimed were neither unnecessary, excessive, or duplicative. There is no support for
25 the Commission’s finding. . .that having a panel of two attorneys during a moot court session is
26 unreasonably duplicative.” *Tenants of 710 Jefferson Street, NW v. D.C. Rental Hous. Com’n*, 123
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1 A.3d 170, 198-199 (D.C. 2015). In the instant case, several CJ&M attorneys worked on this case
2 together and reviewed and revised each other's pleadings. This is the normal course of action for
3 CJ&M, which brought great results in this case and many other cases.

4 *5. CJ&M Billing Statements Provide Sufficient Detail*

5 The Lytle Trust asserts that some billing entries are too vague to determine if the fees
6 expended are reasonable. However, a review of the "vague entries" show that many provide
7 sufficient detail in light of the circumstances of the case like "Review Pleadings and Orders
8 filed" and "Review All Appellate Proceedings", "Review Pleadings in Appeal" billed in October
9 and November 2018. During this time, the Lytle Trust filed its Docketing Statement and Motion
10 to Consolidate, which the Plaintiffs opposed. Also, a Stipulation and Order were filed on
11 December 12, 2018, thus coordinating with the billing on December 13, 2018. Similarly, billings
12 in January 2019 coordinate with filings from the Appellate Court including an Order to
13 Consolidate. These hours were reasonably expended and coordinate with the timing and
14 circumstances of the case.

15 **E. The Brunzell Factors Weigh in Favor of Plaintiffs**

16 The Lytle Trust asserts that the work done by Plaintiffs was routine and though hotly
17 contested was not difficult. However, what the Lytle Trust fails to consider is that they might
18 qualify as a "vexatious litigant" in that they have repeatedly filed frivolous lawsuits and appeals
19 in an apparent attempt to harass the Plaintiffs and abuse the court process. *See Black's Law*
20 *Dictionary* 952 (8th ed. 2004). Further, what the Lytle Trust chooses to ignore is that Plaintiffs
21 gave the Lytle Trust opportunities to simplify and reduce the attorney's fees incurred in this
22 litigation at key points. The Lytle Trust chose not to. The Lytle Trust has not disputed this in
23 their Opposition. Simply because a case does not present difficult issues does not mean that the
24 case can be handled in short order. This Court is well aware of the tortured history of these
25 matters. The consolidated cases alone have been proceeding for at least three years and produced
26 countless motions, hearings, and no fewer than five separate appeals. The "easiness" of the work
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1 argument is further suspect since the Lytle Trust has now hired two (2) different law firms in this
2 consolidated case alone.² If this case was so easy and routine why keep hiring new attorneys?
3 Perhaps the true difficulty of this matter lies in the fact that the Lytle Trust continues to push its
4 legally unreasonable and unsupported positions no matter how many times they lose. The fees
5 incurred in this Case have been necessary in order for the Plaintiffs to defend themselves from
6 the Lytle Trust's violations of law and obtuse litigation strategies.

7 **F. Plaintiffs Are Entitled to a Standing Order for All Future Fees**

8 In order to simplify matters, Plaintiffs have requested that this Court award all additional
9 fees incurred. This makes sense if this Court awards fees pursuant to the CC&Rs because the
10 Plaintiffs are the prevailing parties and should be awarded all their fees to prosecute this case to
11 completion.

12 **II.**

13 **CONCLUSION**

14 As referenced through this Reply, the Lytle Trust's Judgments against the Association are
15 based, in large part, on an award of attorney's and costs. *See* Exhibit 8 (awarded fees and costs in
16 the amount of \$297,072.66 by Judge Leavitt in Case No. A-09-593487 and \$274,608.28 by
17 Judge Bare in Case No. A-10-631355-C). The Lytle Trust has attempted to attack the Plaintiffs'
18 request for fees and costs here on grounds of block billing, clerical or administrative work,
19 collaborative work by multiple attorneys, attorney conferences, fees on appeal, etc. A review of
20 the fee statements underlying the Lytle Trust's fee awards shows these same features through the
21 billings. *See, e.g.,* Exhibit 13 at 90 (statement dated 4/1/2012 showing entries for clerical tasks
22 like filing and calendaring), 102 (statement dated 8/1/2012 showing block billing, multiple
23 attorney's billing on the case, multiple attorney's billing for the same task on the same date,
24 emails between attorneys), 133 (statement dated 2/1/2014 showing billing for work on appeal),
25

26 ² The Lytle Trust was awarded fees and costs for work by four different law firms. *See* Exhibit
27 13 at 4.
28

1 145 (statement dated 10/1/2014 showing conferences between attorneys). The Lytle Trust was
2 awarded fees despite these practices, yet asks this Court to reduce the Plaintiffs fees on that basis
3 relying on non-binding cases from other jurisdictions. The Court should reject these arguments.

4 The time and effort put into this case by Plaintiffs' counsel was both necessary to the
5 cause and reasonable. Plaintiffs have succeeded in every aspect of this Case at thwarting the
6 Lytle Trust's repeated efforts to collect the Rosemere Judgments from the Plaintiffs and act
7 beyond the scope of the Original CC&Rs and NRS 116. The amount of attorney's fees requested
8 are reasonable and should be awarded to the Plaintiffs in total. The Court should award
9 attorney's fees and costs to the Plaintiffs in the amount of \$153,548.28 for the time period of
10 May 23, 2018 through April 30, 2020 and allow the Plaintiffs the opportunity to present other
11 attorney's fees and costs as this matter continues. The Court should Order that all monies be paid
12 within 30 days of the Notice of Entry of Order filed with the Court.

13 DATED this 29th day of June, 2020.

14 CHRISTENSEN JAMES & MARTIN

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

16 Wesley J. Smith, Esq.

17 Nevada Bar No. 11871

18 7440 W. Sahara Avenue

19 Las Vegas, NV 89117

20 Tel.: (702) 255-1718

21 Fax: (702) 255-0871

22 *Attorneys for September Trust, Zobrist*
23 *Trust, Sandoval Trust and Gegen*
24
25
26
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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On June 29, 2020, I caused a true and correct copy of the foregoing Reply to Defendant Lytle Trust's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs, to be served in the following manner:

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

Liz Gould (liz@foleyoakes.com)
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/s/ Natalie Saville

Natalie Saville

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

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

**DECLARATION OF COUNSEL IN
 SUPPORT OF REPLY TO
 DEFENDANT LYTLE TRUST'S
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR ATTORNEY'S
 FEES AND COSTS**

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

Plaintiffs,

vs.

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

Defendants.

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

Consolidated

DECLARATION OF WESLEY J. SMITH, ESQ.

STATE OF NEVADA)

:ss.

COUNTY OF CLARK)

Wesley J. Smith, Esq., being first duly sworn and under penalty of perjury of the laws of
 the United States of America and the State of Nevada:

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

1 1. I am at least 18 years of age and of sound mind. I personally prepared this
2 Declaration and I am familiar with all factual statements it contains, which I know to be true and
3 correct, except for any statements made on information and belief, which statements I believe to
4 be true. I am competent to testify to the same and would so testify if called upon as a witness.

5 2. I am an attorney licensed to practice before all state and federal courts of the State
6 of Nevada.

7 3. I am a partner and shareholder in Christensen James & Martin, Chtd. ("CJM"),
8 counsel for the Plaintiffs, September Trust, dated March 23, 1972 ("September Trust"), Gerry R.
9 Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family
10 Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Jule Marie Sandoval Gegen, as Trustees of
11 the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992
12 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife as Joint
13 Tenants (hereafter "Gegen") (collectively referred to as "Plaintiffs") in the above-captioned case.

14 4. I make this Declaration in support of Reply to Defendant Lytle Trust's Opposition
15 to Plaintiffs' Motion for Attorney's Fees and Costs ("Reply").

16 5. Exhibit 8 contains true and correct copies of the Notice of Entry of Order
17 Granting Punitive Damages After Hearing entered in Case No. A-10-631355-C on May 15, 2017
18 and Order on Plaintiffs John Allen Lytle and Trudi Lee Lytle's Motion for Attorneys' Fees
19 entered in Case No. A-09-593487-C on June 3, 2016.

20 6. Exhibit 9 are true and correct copies of highlighted billing statements from
21 Christensen James & Martin ("CJ&M") to the Plaintiffs September Trust, Zobrist Trust,
22 Sandoval Trust and Gegen, respectively, which detail the tasks performed and attorney's fees
23 and costs incurred from May 23, 2018 through April 30, 2020, highlighted according to the
24 following colors: Yellow is the district court pre-appeal, blue is appeal, green is contempt, and
25 pink is specific to the receiver case.

26 7. Exhibit 10 is a true and correct copy of the Reporters Transcript of Motion for
27 Attorney's Fees and Costs dated May 16, 2019.

28

1 8. Exhibit 11 is a true and correct copy of Appellants' Opening Brief (Docket No.
2 76198).

3 9. Exhibit 12 is a true and correct copy of the Renewed Application for Appointment
4 of Receiver filed on October 24, 2019.

5 10. Exhibit 13 is a true and correct copy of the Affidavit of Richard Haskin in
6 Support of Motion for Attorneys' Fees filed in Case No. A-10-631355-C.

7 11. CJ&M is a small law firm. There are currently only six (6) attorneys, no
8 paralegals and one (1) law clerk. None of the attorney's has their own assigned staff.

9 12. CJ&M's malpractice insurance policy requires that all calendaring be done by at
10 least two (2) different persons. Therefore, calendaring is performed by the attorney's themselves
11 in duplicate and recorded in their time records to demonstrate compliance with their carrier
12 requirements. In any event, calendaring is an extremely quick task and would comprise only a
13 small fraction of any block time entry, likely less than 0.1 of an hour.

14 13. CJ&M works in a collaborative environment, which enhances the representation
15 of the client and the quality of its work product. CJ&M attorneys frequently conference and
16 communicate with each other regarding the issues presented in their cases and collaborate on the
17 drafting of court documents to ensure that well-reasoned, soundly researched, and coherent
18 arguments are presented to the courts. Their clients and the courts benefit substantially from this
19 practice.

20 14. CJ&M gives thought to their rate and the kinds of tasks the attorney's perform
21 because of lack of support staff when deciding their hourly rate on a case. CJ&M's hourly fee in
22 this case is a reflection of that consideration. CJ&M's \$260.00 per hour is much less than most
23 firms charge for an hourly fee with the experience that CJ&M has.

24 15. I have reviewed the attorney's fees charged by the Lytle Trust's attorney's
25 (Exhibit 13), which show that its counsel was billing \$340 per hour in 2016.

26 16. The Lytle Trust has attempted to attack the Plaintiffs' request for fees and costs
27 on grounds of block billing, clerical or administrative work, collaborative work by multiple
28

1 attorneys, attorney conferences, fees on appeal, etc. A review of the fee statements underlying
2 the Lytle Trust's fee awards shows these same features throughout the billings. *See, e.g.*, Exhibit
3 13 at 90 (statement dated 4/1/2012 showing entries for clerical tasks like filing and calendaring),
4 102 (statement dated 8/1/2012 showing block billing, multiple attorney's billing on the case,
5 multiple attorney's billing for the same task on the same date, emails between attorneys), 133
6 (statement dated 2/1/2014 showing billing for work on appeal), 145 (statement dated 10/1/2014
7 showing conferences between attorneys). The Lytle Trust was awarded fees despite these
8 practices, yet asks this Court to reduce the Plaintiffs fees on that basis relying on non-binding
9 cases from other jurisdictions. The Court should reject these arguments.

10 17. I submit that Plaintiffs' attorney's fees and costs were actually and necessarily
11 incurred and are reasonable.

12 Further your affiant sayeth naught.

13 DATED this 29th day of June, 2020.

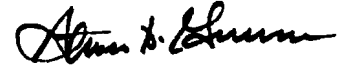
14 /s/ Wesley J. Smith
15 Wesley J. Smith, Esq.
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Exhibit 8

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Exhibit 8

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ORDR

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Bryan M. Gragg, Esq.
Nevada State Bar # 13134

**GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP**

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Las Vegas, Nevada 89113-4059
(702) 836-9800

Attorneys for Plaintiff
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. A-09-593497-C
Dept.: XII

**ORDER ON PLAINTIFFS JOHN ALLEN
LYTLE AND TRUDI LEE LYTLE'S
MOTION FOR ATTORNEYS' FEES**

On May 2, 2016, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion for Attorneys' Fees came on regularly for hearing, the Honorable Michelle Leavitt presiding. Plaintiffs appeared through counsel, Richard E. Haskin of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt, LLP. There was no appearance for Defendant Rosemere Estates Property Owners' Association ("Defendant"). Defendant did not file an opposition to the Motion and did not make an appearance at the hearing.

Having considered the moving papers, the affidavits and declarations filed concurrently therewith, and the exhibits attached thereto, the Court finds that as the prevailing party, Plaintiffs are entitled to an award of attorney fees under the Original CC&Rs, the Amended CC&Rs and NRS § 116.4117.

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1 The plain terms of the Original CC&Rs authorize an award of fees in favor of Plaintiffs. As
2 the Original CC&Rs provide, in pertinent part:

3 24. Except as otherwise provided herein, Subdivider or any owner or
4 owners of any of the lots shall have the right to enforce any or all of the
5 provisions of the covenants, conditions, and restrictions upon any other
6 owner or owners. In order to enforce said provision or provisions, any
appropriate judicial proceeding in law or in equity may be initiated and
prosecuted by any lot owners or owners against any other owner or
owners.

7 25. Attorney's Fees: In any legal or equitable proceeding for the
8 enforcement of or to restrain the violation of the Declaration of Covenants,
Conditions and Restrictions or any provision thereof, the losing party or
9 parties shall pay in such amount as may be fixed by the court in such
proceeding.

10 See Original CC&Rs, ¶¶ 24, 25. Plaintiffs prevailed in enforcing the Original CC&Rs (by
11 obtaining a declaration from this Court that that the Amended CC&Rs are invalid and that Defendant
12 did not have the powers it claimed to have) and prevailed in restraining the violation of the Original
13 CC&Rs (by obtaining injunctive relief prohibiting Defendant from enforcing the Amended CC&Rs
14 and requiring public notice of their revocation). According, Plaintiffs are entitled to an award of
15 attorney fees, pursuant to the terms of the Original CC&Rs.

16 Further, the Amended CC&Rs also contain a mandatory fee shifting provision entitling
17 Plaintiffs to an award of attorney fees. As provided in the Amended CC&Rs, Section 16.1(a):

18 16.1(a) In the event the Association, or any Owner shall commence
19 litigation or arbitration to enforce any of the covenants, conditions,
20 restrictions or reservations contained in the Governing Documents, the
21 prevailing party in such litigation or arbitration shall be entitled to
costs of suit and such attorney's fees as the Court or arbitrator may
adjudge reasonable and proper.

22 See Amended CC&Rs, § 16.1(a).

23 A litigant can recover attorneys' fees when a contract, such as the Amended CC&Rs, is held
24 unenforceable. *Mackintosh v. California Federal Sav. & Loan Ass'n* (1997) 113 Nev. 393, 405-406,
25 935 P.2d 1154, 1162.

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1 Finally, Plaintiff are also entitled to an award of attorney fees pursuant to NRS 116.4117.
 2 NRS 116.4117 provides as follows:

3 1. Subject to the requirements set forth in subsection 2, if a declarant,
 4 community manager or any other person subject to this chapter fails to
 5 comply with any of its provisions or any provision of the declaration
 6 or bylaws, any person or class of persons suffering actual damages
 7 from the failure to comply may bring a civil action for damages or
 8 other appropriate relief. . .

9 4. The court may award reasonable attorney's fees to the prevailing
 10 party.

11 The term "damages" in the phrase "suffering actual damages" refers to *damages* in the
 12 general sense of specifically provable injury, loss, or harm rather than the specific sense of economic
 13 damages. Whether quantifiable as a monetary loss or not, Plaintiffs suffered an injury, loss or harm
 14 as a result of the Association's actions. Accordingly, under the statute they had the right to bring a
 15 civil action for damages or other appropriate relief and, having, prevailed thereon may be awarded
 16 their reasonable attorney fees as the prevailing party.

17 Plaintiffs' attorneys' fees, as set forth in the Motion, satisfy the factors set forth in *Brunzell v.*
 18 *Golden gate Nat'l Bank* (1969) 85 Nev. 345, 349, 455 P.2d 31, 33. The Court considered all of the
 19 factors and applied them to Plaintiffs' request for attorneys' fees. Specifically, the Court considered
 20 and applied:

- 21 1. The qualities of the advocate, *i.e.* his ability, training and experience;
- 22 2. The character of the work done, it's difficulty, intricacy, importance, time and
 23 skill required,;
- 24 3. The work actually performed by the attorneys;
- 25 4. The result, *i.e.* whether the attorney was successful in achieving a result of the
 26 client.

27 The Court applied each of the foregoing *Brunzell* factors to the work performed by Plaintiffs'
 28 attorneys, as set forth in the various affidavits and declarations presented to this Court with the
 moving papers. The Court finds that Plaintiffs are entitled to an award of \$297,072.66 in attorneys'
 fees as the prevailing party in this action, having achieved the revocation of the Amended CC&Rs
 and removing the cloud on title to their property.

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1 Therefore, the Court orders as follows:

2 IT IS ORDERED that Plaintiffs' Motion for Attorneys' Fees is granted, and Plaintiffs are
3 awarded \$297,072.66 in attorneys' fees.

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6 IT IS SO ORDERED this 25 day of May, 2016.

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HONORABLE MICHELLE LEAVITT

11 District Court Judge, Dept. XII
RL

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13 DATED: May 19, 2016

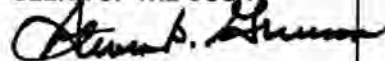
14 GIBBS GIDEN LOCHER TURNER
15 SENET & WITTBRODT LLP

16 By: 

Richard E. Haskin, Esq.
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7450 Arroyo Crossing Parkway, Suite 270
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Attorneys for Plaintiff
JOHN ALLEN LYTLE and TRUDI LEE LYTLE

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT

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Steven D. Grierson
CLERK OF THE COURT



OGM
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Attorneys for Plaintiffs
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE

DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN ALLEN LYTLE and TRUDI LYTLE, as
Trustees of the Lytle Trust,

Plaintiffs,

v.

ROSEMERE ESTATES PROPERTY OWNERS
ASSOCIATION, a Nevada non-profit corporation;
and DOES I through X, inclusive,

Defendants.

CASE NO. A-10-631355-C
Dept.: XXXII

**ORDER GRANTING PLAINTIFF JOHN
ALLEN LYTLE AND TRUDI LEE
LYTLE'S, AS TRUSTEES OF THE LYTLE
TRUST, PUNITIVE DAMAGES AFTER
HEARING**

Hearing Date: March 21, 2017
Hearing Time: 9:30 a.m.

ROSEMERE ESTATES PROPERTY OWNERS
ASSOCIATION, a Nevada non-profit corporation;
and DOES I through X, inclusive,

Counterclaimants,

v.

JOHN ALLEN LYTLE and TRUDI LYTLE, as
Trustees of the Lytle Trust,

Counterdefendants.

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1 On April 25, 2017, Plaintiffs John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle
2 Trust, ("Plaintiffs") Motion for Damages came on regularly for hearing, the Honorable Rob Bare
3 presiding. Plaintiffs appeared through counsel, Richard E. Haskin, Esq. of Gibbs Giden Locher
4 Turner, Senet & Wittbrodt, LLP. The Court held an evidentiary hearing, and Plaintiffs presented
5 Trudi Lee Lytle as a witness. There was no appearance for Defendant Rosemere Estates Property
6 Owners' Association ("Association"). The Association did not file an opposition to the Motion for
7 Damages and did not make an appearance at the hearing.

8 Having considered the Motion, the testimony of Trudi Lee Lytle at hearing, and the exhibits
9 admitted during the hearing, having also heard the arguments of counsel, the pleadings and papers
10 on file herein, and good cause appearing therefore, the Court finds:

11 1. The Lytles prevailed on summary judgment with respect to their slander of title claim.
12 Order, Conclusions of Law, ¶¶ 16-27.

13 2. Plaintiffs suffered damages as a result of the Board's retaliatory actions in the form of
14 attorneys' fees and costs incurred in removing the cloud on title. *Summa Corp. v. Greenspun*, 98
15 Nev. 528, 532, 655 P.2d 513, 515 (1982).

16 3. Plaintiffs planned to build a dream home in the Rosemere Estates community, and the
17 actions taken by the Board with respect to the recording of the three liens against Plaintiffs' property
18 were intentionally and directly targeted at Plaintiffs in order to prevent them from ever moving into
19 the community.

20 4. The Association, through its Board, recorded three (3) improper and unlawful liens
21 against Plaintiff's Property. Each lien incorporated the prior lien amount, reaching a total of
22 \$209,883.19, when the only amount that had been adjudicated and could possibly be subject to lien,
23 if at all, was \$52,255.19. With respect to this amount, Plaintiffs posted a bond in that amount which
24 was deemed, by the Association, as good and sufficient. Hence, any lien was unnecessary.

25 5. The Court finds that the Association did not have a right to have any of these liens
26 recorded against Plaintiffs' Property.

27 6. The totality of the liens made it impossible for Plaintiffs to sell the Property.

28 ///

1 7. The Association's actions were clearly taken in order to prevent Plaintiffs from
2 building their dream home and ever residing in the community.

3 8. Once more, Plaintiffs underwent financial hardship in posting the various bonds in
4 order to appeal this action (and other actions).

5 9. This matter commenced with the unlawful amendment in July 2007 and did not
6 conclude until the Supreme Court affirmed the District Court's ruling that the Association's conduct
7 was, indeed, unlawful and in violation of the Lytles' rights as homeowners, subjecting Plaintiffs to
8 years of costly litigation.

9 10. The Association suspended the Plaintiffs' voting rights, the right to run for the Board,
10 blocked Plaintiffs' attendance at meetings, and suspended membership privileges, all without
11 complying with Article 12, Section 1.2(d) of the Amended CC&Rs and NRS 116.31041(2).

12 11. The Association's retaliatory actions did, indeed, cost Plaintiffs their dream home,
13 and Plaintiffs cannot now afford to build on the property they purchased long ago.

14 12. The evidence presented by Plaintiffs provides ample and clear and convincing
15 evidence that the Association's actions were malicious and taken with the clear intent to injure the
16 Lytles through causing them financial and emotional distress.

17 13. The Association is, therefore, guilty of civil oppression and malice.

18 14. The Court previously found and awarded attorneys' fees in the amount of
19 \$274,608.28.

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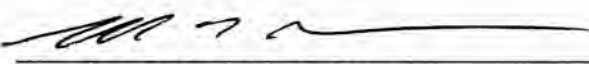
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1 Therefore,

2 IT IS HEREBY ORDERED that that Plaintiffs' be awarded punitive damages in the amount
3 of \$823,824.84 pursuant to NRS 42.005.


4
5 DATED this 11 day of May, 2017.

6
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8 
HONORABLE ROB BARE
DISTRICT COURT JUDGE

9 ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 1

10
11 Submitted by:

12 GIBBS GIDEN LOCHER TURNER, SENET
13 & WITTBRODT LLP

14
15 
16 Richard E. Haskin, Esq.
17 Nevada State Bar # 11592
18 1140 N. Town Center Drive, Suite 300
19 Las Vegas, Nevada 89144
Attorneys for Plaintiffs
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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Exhibit 9

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Exhibit 9

STATEMENT

Christensen James & Martin

7440 W. Sahara Ave. 000744
Las Vegas, NV 89117
702/255-1718
702/255-0871 Fax
Carma@CJMLV.com

History of Billing

Gerry R. Zobrist and Jolin G. Zobrist Family Trust

1901 Rosemere Court
Las Vegas, NV 89117
Attn: Gerry R. Zobrist

May 12, 2020

Professional Services

			<u>Hrs/Rate</u>	<u>Amount</u>
5/23/2018	- LJW	Preparation of Memorandum of Costs	0.43 260.00/hr	110.50
5/24/2018	- LJW	Conference with W Smith regarding Fees and Costs; review Bills to redact Privileged Information; conference with Clerk	0.48 260.00/hr	123.50
	- WJS	Email from L Wolff regarding Motion for Fees; review signed Order; conference with Clerk regarding filing Order; preparation of Notice of Entry of Order; review draft Notice of Entry; conference with L Wolff regarding Motion for Fees, review Billing Statements	0.25 260.00/hr	65.00
5/28/2018	- LJW	E-mails to and from Clerk regarding Notice	0.03 260.00/hr	6.50
5/29/2018	- LJW	Preparation of Motion for Fees; preparation of Declaration for Fees; preparation of Exhibits	0.63 260.00/hr	162.50
5/30/2018	- LJW	Preparation of Declaration for Fees; preparation of Exhibits for Motion; review Billings for Privilege; telephone call to Clerk regarding Redaction of Privileged Information; preparation of Spreadsheet calculating Fees and Costs	0.58 260.00/hr	149.50
5/31/2018	- DEM	Preparation of documents for Disclosure in Motion for Fees; conference with W Smith	0.13 260.00/hr	32.50
	- LJW	Preparation of Declaration for Fees; preparation of Exhibits for Motion; preparation of Spreadsheet calculating Fees and Costs	0.38 260.00/hr	97.50
	- WJS	Review redacted Fee Statements; prepare for filing; review and redline draft Motion for Fees, associated Research and Citation Check; review and redline Declaration in Support of Fees Motion	1.38 260.00/hr	357.50

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Gerry R. Zobrist and Jolin G. Zobrist Family Trust

Page 2

			<u>Hrs/Rate</u>	<u>Amount</u>
6/1/2018	- WJS	Revise Motion, Declaration and Memo of Costs; conference with Clerk regarding Fee Statements; email to L Wolff; review Rules regarding Timing	0.28 260.00/hr	71.50
	- LJW	Telephone call with W Smith regarding Motion for Attorney's Fees and Costs; telephone call with Clerk regarding redaction of Bills; review revisions to Motion	0.13 260.00/hr	32.50
6/4/2018	- WJS	Emails to and from L Wolff; revise Fees Motion and related Documents	0.20 260.00/hr	52.00
	- LJW	Review and revise Memorandum of Costs, Declaration of W. Smith, Motion for Attorney's Fees and Costs, Exhibits and update Summary of Fees and Costs; telephone call to Clerk regarding redaction and filing updated Billing Summary	0.55 260.00/hr	143.00
6/5/2018	- WJS	Review Notices from Court; review filings; calendar Hearing Date; email to L Wolff regarding Notice of Hearing	0.08 260.00/hr	19.50
6/6/2018	- LJW	Preparation of Notice of Hearing; emails to and from W Smith regarding Notice; emails to and from Clerk regarding Notice; review filed Pleadings	0.15 260.00/hr	39.00
6/11/2018	- LJW	Review Motion to Retax Costs; email to W Smith regarding Motion; email to Clerk regarding Receipts; Research Evidence of Costs	0.43 260.00/hr	110.50
6/12/2018	- LJW	Research Memorandum and Evidence of Costs; telephone call to Clerk regarding Receipts and Spreadsheet; preparation of Opposition to Motion to Retax Costs	0.48 260.00/hr	123.50
6/13/2018	- WJS	Email from R Haskin; emails to and from L Wolff; review NRAP; emails to and from R Haskin regarding Request for Stipulation on Appeal Reply	0.20 260.00/hr	52.00
	- LJW	Preparation of Opposition to Motion to Retax Costs; emails to and from W Smith regarding request to file Reply; Research Issues related to Replies to Amicus Brief; telephone call with Clerk regarding Costs	0.58 260.00/hr	149.50
6/14/2018	- LJW	Research Costs Awarded by District Courts and preparation of Opposition to Motion to Retax Costs	0.33 260.00/hr	84.50
6/15/2018	- WJS	Emails to and from L Wolff; review and revise Opposition to Motion to Retax Costs and Support Declarations; telephone call from L Wolff; conference with K Christensen	0.38 260.00/hr	97.50
	- LJW	Preparation of Opposition to Motion to Retax Costs; revisions to Motion; preparation of Declaration for Opposition; preparation of Exhibits for Opposition; emails to and from W Smith; emails to and from Clerk	0.95 260.00/hr	247.00
6/19/2018	- WJS	Review Notices from Court; review Notice of Appeal and Appeal Statement filed by Lytles; review Property Records regarding Recorded Releases; review NRAP regarding timing and Appeal; review Notice from Supreme Court; review Motion for Leave to File	0.35 260.00/hr	91.00

Gerry R. Zobrist and Jolin G. Zobrist Family Trust

Page 3

			<u>Hrs/Rate</u>	<u>Amount</u>
		Response to Amicus Brief; email to D Foley and C Wang regarding Motion and Appeal Issues		
6/19/2018	- KBC	Conference with W Smith regarding Appeal Notice and Fees Motion; calendar Brief Due Dates	0.05 260.00/hr	13.00
6/20/2018	- WJS	E-mails to and from D Foley; draft Opposition to Motion for Leave to Respond to Amicus Brief; email to D Foley	0.55 260.00/hr	143.00
	- LJW	Review Motion to File Amicus Brief; emails to and from W Smith regarding Amicus	0.10 260.00/hr	26.00
6/22/2018	- LJW	Review Releases	0.10 260.00/hr	26.00
	- WJS	Review Notice from Court; review Opposition to Motion for Fees; email to L Wolff regarding Reply; review Notice from Supreme Court; review Response to Motion to Respond to Amicus Brief (filed by Foley)	0.10 260.00/hr	26.00
6/25/2018	- LJW	Review Pleadings; emails to and from W Smith regarding Motion	0.05 260.00/hr	13.00
6/26/2018	- KBC	Conference with W Smith regarding Fees Motion, Appeal Brief, Consolidation and Client conference for Instructions	0.05 260.00/hr	13.00
	- WJS	Review Notice from Supreme Court regarding Docketing of Notice of Appeal; review Record Transmitted by District Court; conference with K Christensen; email to Clients	0.23 260.00/hr	58.50
6/27/2018	- LJW	Review Opposition; preparation of Reply to Opposition	0.18 260.00/hr	45.50
6/28/2018	- LJW	Research Arbitration Requirement and CC&Rs; preparation of Reply to Opposition	0.73 260.00/hr	188.50
	- WJS	Review Notice from District Court; review Disman's Motion for Summary Judgment; emails to and from L Wolff	0.08 260.00/hr	19.50
6/29/2018	- LJW	Preparation of Reply to Opposition to Motion for Attorney's Fees	0.38 260.00/hr	97.50
7/2/2018	- LJW	Preparation of Reply to Opposition to Motion for Attorney's Fees; Research NRS 38.310	1.18 260.00/hr	305.50
	- KBC	Review Disman's Motion for Summary Judgment; conference with Clerk; calendar Hearing	0.10 260.00/hr	26.00
7/3/2018	- LJW	Preparation of Reply to Opposition to Motion for Attorney's Fees; preparation of Affidavit for Reply	0.85 260.00/hr	221.00
7/5/2018	- WJS	Email from and telephone calls to and from L Wolff regarding Arguments for Reply Brief; review and revise Reply on Motion for Fees and Costs; Research; emails to and from L Wolff	0.45 260.00/hr	117.00

Gerry R. Zobrist and Jolin G. Zobrist Family Trust

Page 4

			<u>Hrs/Rate</u>	<u>Amount</u>
7/5/2018 -	LJW	Preparation of Reply to Opposition to Motion for Attorney's Fees; preparation of Affidavit for Reply; telephone call to W Smith; email to Clerk regarding filing; Research Liens and Possessor Interests; Research Lytles Defenses regarding recording Liens	0.83 260.00/hr	214.50
7/6/2018 -	LJW	Review Order; calendar Hearing Date	0.03 260.00/hr	6.50
	- WJS	Review Notice from Court regarding Rescheduled Hearing; emails to and from R Haskin and C Wang regarding Hearing Date	0.05 260.00/hr	13.00
7/20/2018 -	LJW	E-mails to and from W Smith regarding Transcript; Research on Appellate Rules and Transcripts; email to opposing counsel	0.38 260.00/hr	97.50
7/23/2018 -	WJS	Review Notice from Supreme Court; review Order Denying Motion to Respond to Amicus Brief	0.08 260.00/hr	19.50
7/24/2018 -	WJS	E-mail from Counsel for Lytle; review Hearing Transcripts	0.10 260.00/hr	26.00
7/25/2018 -	WJS	Review Motions, Oppositions, Replies and Exhibits related to Fees and Costs; prepare for Hearing on Motion	0.45 260.00/hr	117.00
7/26/2018 -	WJS	Prepare for, attend and present Oral Argument at Hearing on Motion for Attorney's Fees and Costs; conference with C Wang regarding Disman Motion for Summary Judgment; review Docket and Opposition; conference with E James regarding Hearing; telephone call from C Wang	1.03 260.00/hr	266.50
7/27/2018 -	KBC	Review Hearing Notice; calendar Hearing on Motion for Summary Judgment; conference with W Smith	0.03 260.00/hr	6.50
7/30/2018 -	LJW	Review Case Statement; emails to and from opposing counsel; emails to W Smith; review Orders and Motions	0.15 260.00/hr	39.00
8/2/2018 -	LJW	Review and download Pleadings filed by Dismans and Lytles	0.13 260.00/hr	32.50
8/6/2018 -	LJW	E-mails to and from W Smith	0.03 260.00/hr	6.50
	- WJS	Review Court Notices and Reply Brief from Dismans; emails to and from L Wolf regarding Hearing	0.23 260.00/hr	58.50

Gerry R. Zobrist and Jolin G. Zobrist Family Trust

Page 5

			<u>Hrs/Rate</u>	<u>Amount</u>
8/7/2018	- WJS	E-mails to and from L Wolff and D Foley regarding Boulden & Lamothe Fee Motion; review Transcripts; preparation for Hearing	0.33 260.00/hr	84.50
	- LJW	Review Court Record regarding Attorney's Fees Motion; Research ruling in Boulden/Lamothe Case; emails to and from W Smith; Research Special Damages Cases	0.40 260.00/hr	104.00
8/8/2018	- LJW	Review emails from Counsel for Boulden; emails to and from W Smith	0.03 260.00/hr	6.50
8/9/2018	- WJS	Preparation for Hearing; attend Hearing on Fees and Costs Motion and Dismans Motion for Summary Judgment; file notes regarding Court Decision; conference with D Foley and C Wang at Courthouse regarding outcome of Hearing, Appeal Issues and strategy; conference with K Christensen regarding Court Order; Research Supersedeas Bonds; email to L Wolff regarding Summary of Court Decision and draft Order; telephone call from L Wolff regarding draft Order	0.80 260.00/hr	208.00
	- KBC	Conference with W Smith; review Order, Entry and Recording Procedures	0.05 260.00/hr	13.00
	- LJW	Telephone call to W Smith regarding Hearing and Case; preparation of Order	0.08 260.00/hr	19.50
8/10/2018	- LJW	Preparation of proposed Order	0.18 260.00/hr	45.50
8/13/2018	- LJW	Preparation of proposed Order; texts to and from W Smith	0.50 260.00/hr	130.00
8/14/2018	- LJW	Preparation of proposed Order; review Motion; Research applicable NRS Statutes; email to W Smith	0.58 260.00/hr	149.50
8/15/2018	- LJW	E-mails to and from W Smith	0.03 260.00/hr	6.50
	- WJS	E-mails from and to R Haskin; review and revise draft Order on Fees and Costs	0.35 260.00/hr	91.00
8/16/2018	- WJS	Emails to and from R Haskin regarding draft Fee Order	0.025 260.00/hr	6.50
8/20/2018	- WJS	Email from R Haskin; review and analyze redlines to draft Order; redline revisions to draft Order; emails to and from R Haskin; prepare draft Order; email to all Counsel	0.23 260.00/hr	58.50
8/21/2018	- DEM	Conference with W Smith	0.08 260.00/hr	19.50
	- WJS	E-mails to and from R Haskin and D Foley	0.03 260.00/hr	6.50

Gerry R. Zobrist and Jolin G. Zobrist Family Trust

Page 6

			<u>Hrs/Rate</u>	<u>Amount</u>
8/28/2018	- LJW	Review and download Order; review Rules regarding Appeal Statement; email to W Smith	0.08 260.00/hr	19.50
9/12/2018	- WJS	Review Order; conference with Clerk regarding filing	0.03 260.00/hr	6.50
9/13/2018	- WJS	Review Order; conference with Clerk; review draft Notice of Entry of Order; review Notices from Court regarding filing Order and Notice of Entry; review Notice from NV Supreme Court regarding Submission of Boulden/Lamothe Appeal for Decision without Oral Argument; conference with K Christensen	0.08 260.00/hr	19.50
9/14/2018	- LJW	Review Notice of Appeal and Order regarding Hearing; emails to and from W Smith	0.10 260.00/hr	26.00
9/18/2018	- WJS	Review Amended Docketing Statement of Appeal	0.05 260.00/hr	13.00
	- LJW	Review Pleading Statement	0.10 260.00/hr	26.00
9/21/2018	- WJS	Review Notices from Supreme Court regarding Attorney's Fees Appeal; review Notice from District Court regarding Order Denying Disman Motion for Summary Judgment; telephone call from C Wang	0.15 260.00/hr	39.00
9/24/2018	- KBC	Conference with Attorney; review Research; telephone call to Client regarding Fees Order Recordation	0.08 260.00/hr	19.50
	- LJW	Review and download Case Appeal and other Pleadings	0.08 260.00/hr	19.50
	- WJS	Email from R Haskin; Research Judgment, Appeal, Stay and Supersedeas Bond Statutes and Caselaw; emails to and from and conference with K Christensen; review Judgment Lien and Recording Procedures; draft Affidavit for Recording Judgment; conference with Clerk regarding Certified Judgment; review Certified Judgment and prepare for Recording	0.65 260.00/hr	169.00
10/1/2018	- WJS	Research and draft Response to Motion to Stay and Post Supersedeas Bond; prepare for filing; review Notice from Court; review Appeal Statement	0.50 260.00/hr	130.00
	- LJW	Review Pleadings and Orders filed	0.03 260.00/hr	6.50
	- ELJ	Review Opposition to Motion to Stay Judgment and Deposit Bond	0.05 260.00/hr	13.00
10/2/2018	- WJS	Review Notices from Court; emails to and from L Wolff regarding Appeal Deadlines; email from C Wang; review draft Order Denying Disman's Motion for Summary Judgment; email to C Wang with Comments	0.30 260.00/hr	78.00

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			<u>Hrs/Rate</u>	<u>Amount</u>
10/3/2018	- WJS	Telephone call from C Wang regarding draft Order on Disman Motion for Summary Judgment; Research Case impact; telephone call and email from Haskin's Office; review Stipulation to Continue Hearing on Stay and Bond; emails to and from Court; review Filings	0.15 260.00/hr	39.00
	- LJW	Review all Appellate Proceedings; Research and calendar Due Dates for Briefing Schedules; emails to and from W Smith	0.25 260.00/hr	65.00
10/4/2018	- KBC	Review Order regarding Settlement Program Exemption; calendar Appeal Brief Due Date; conference with W Smith	0.05 260.00/hr	13.00
10/8/2018	- KBC	Conference with W Smith regarding Appeal Consolidation Issues	0.05 260.00/hr	13.00
	- LJW	E-mails to and from W Smith; review filed Pleadings	0.08 260.00/hr	19.50
	- WJS	Draft email to Clients regarding update on Case; emails to and from L Wolff regarding Appeal Issues and potential Consolidation or Stay of later Appeals; conference with K Christensen	0.25 260.00/hr	65.00
10/9/2018	- LJW	E-mails to and from W Smith; review Pleadings	0.03 260.00/hr	6.50
	- WJS	Revise and send email to Clients regarding Case update and Recommendation on Appeals	0.05 260.00/hr	13.00
	- KBC	Review Appeal Options and email	0.05 260.00/hr	13.00
10/17/2018	- WJS	Review Notices from Supreme Court; review Motions to Consolidate Cases from Haskin; emails to and from Haskin to clarify Motion to Consolidate Request and Briefing; review Docketing Statement for Case	0.20 260.00/hr	52.00
10/18/2018	- WJS	Emails to and from R Haskin regarding Motion to Consolidate; emails to and from and telephone call from D Foley regarding Opposition to Motion to Consolidate	0.08 260.00/hr	19.50
	- LJW	Review Docketing Statement and Motion to Consolidate; emails to and from W Smith	0.10 260.00/hr	26.00
10/19/2018	- WJS	Review Notice from Court; review Opposition to Motion to Consolidate filed by D Foley	0.08 260.00/hr	19.50
10/23/2018	- WJS	Preparation for Hearing; Appearance at Hearing; present Argument in Opposition to Motion to Stay Case pending Appeal; Research; review Nevada State Court Case regarding Fees and Costs Awards; telephone call from Counsel for Disman; conferences with L Wolff and K Christensen; Research regarding Advisory Opinions and Legal Advice from a Judge; review draft Opposition to Motion to Consolidate; review Notices from Court; review Joinder filed by Disman	0.85 260.00/hr	221.00