Case No. 87237

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.

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 9
PAGES 2001-2250

DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
ABRAHAM G. SMITH (SBN 13,250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Appellants

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42	Reply in Support of Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees	07/06/23	9	2136–2234
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15	Notice of Withdrawal of Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees	07/06/20	6	1276–1278
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14	Reply to Defendant Lytle Trust's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	06/29/20	3 4 5 6	712–750 751–1000 1001–1250 1251–1275
12	Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees	06/11/20	2	476–494
32	Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees	05/12/23	7	1542–1559
51	Satisfaction of Judgment	10/19/23	10	2367–2369
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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

11/29/2022	Initial receipt and review of correspondence from the September Trust Plaintiffs' counsel W. Smith re NV Supreme Court oral argument. Telephone conference with Mr. Smith re same. Continue preparing for same. Initial receipt, review and respond to multiple correspondences from Mr. Smith re same.	2.60	$468.00
11/30/2022	Initial receipt and review of the Lytles' counsel J. Henriod's notice of appearance for NV Supreme Court oral argument. Initial receipt, review and respond to multiple correspondences from the September Trust Plaintiffs' counsel W. Smith re his notice of appearance. Initial receipt and review of Mr. Smith's file-stamped notice of appearance. Exchange multiple correspondences with legal assistant L. Engelman re [redacted] Prepare notice of appearance. Prepare correspondence to claims counsel D. Chien re same. Exchange multiple correspondences with client R. Disman re same.	1.90	$342.00
12/01/2022	Initial receipt and review of correspondence from claims counsel D. Chien re [redacted] Continue to prepare for same. Initial receipt and review of correspondence from client R. Disman re [redacted]	1.70	$306.00
12/06/2022	Continue to prepare for NV Supreme Court oral argument. Prepare correspondence to the September Trust Plaintiffs' counsel W. Smith re same. Attend same. Initial receipt and review of multiple correspondences from IHL counsel N. Lehman re [redacted] Telephone conference with Ms. Lehman re same.	5.80	$1,044.00
12/07/2022	Initial receipt and review of correspondence from client R. Disman re [redacted] Telephone conference with Mr. Disman re same. Exchange multiple correspondences with claims counsel D. Chien re same.	1.60	$288.00
12/08/2022	Initial receipt, review and respond to correspondence from claims counsel D. Chien re [redacted] Telephone conference with Ms. Chien re same.	1.30	$234.00
01/03/2023	Initial receipt, review and detailed legal analysis of NV Supreme Court order affirming the district court's contempt order and denying the Lytles' writ petition. Initial receipt, review and respond to correspondence from the September Trust Plaintiffs' counsel W. Smith re same. Exchange correspondences with client R. Disman re same. Telephone conference with Mr. Smith re case status and next steps.	1.70	$306.00
01/04/2023	Initial receipt, review and respond to multiple correspondences from client R. Disman re [redacted] Prepare correspondence to managing counsel P. Davis re same.	0.90	$162.00
01/06/2023	Initial receipt, review and respond to multiple correspondences from managing counsel P. Davis re [redacted]	1.60	$288.00
01/09/2023	Telephone calls from and to client R. Disman re [redacted] Prepare correspondence to Mr. Disman re same.	0.30	$54.00

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01/10/2023	Telephone conference with client R. Disman re [redacted]. Initial receipt and review of multiple correspondences from Mr. Disman re same.	2.10	$378.00
01/18/2023	Initial receipt and review of order granting the Lytles an extension to file petition for rehearing of affirmance order.	0.10	$18.00
01/23/2023	Prepare correspondence to claims counsel D. Chien re [redacted]	0.10	$18.00
01/25/2023	Initial receipt and review of correspondence from client R. Disman re [redacted]	0.10	$18.00
02/01/2023	Initial receipt and detailed review of the Lytles' petition for rehearing re NV Supreme Court order affirming the district court's finding of contempt against them. Review appellate rules governing petitions for rehearing. Initial receipt, review and respond to multiple correspondences from legal assistant L. Engelman re same. Prepare correspondence to claims counsel D. Chien re same. Prepare correspondence to the September Trust Plaintiffs' counsel W. Smith re same. Initial receipt and review of correspondence from Mr. Smith re same. Telephone conference with Mr. Smith re same. Enter status update in Legal Files.	2.50	$450.00
02/08/2023	Initial receipt and review of the September Trust Plaintiffs' status report to the Court.	0.10	$18.00
02/13/2023	Initial receipt and review of NV Supreme Court order denying the Lytles' petition for rehearing. Initial receipt, review and respond to multiple correspondences from the September Trust Plaintiffs' counsel W. Smith re same.	0.50	$90.00
02/14/2023	Initial receipt and review of correspondence from the September Trust Plaintiffs' counsel W. Smith re NV Supreme Court order denying the Lytles' petition for rehearing. Telephone conference with Mr. Smith re same. Prepare correspondence to claims counsel D. Chien re same. Initial receipt, review and respond to correspondence from Ms. Chien re same. Prepare status update in Legal Files.	1.30	$234.00
02/24/2023	Initial receipt and review of NV Supreme Court order granting the Lytles an extension to file petition for en banc reconsideration of order affirming the district court's finding of contempt against them. Exchange correspondences with legal assistant L. Engelman re same. Initial receipt, review and respond to correspondence from the September Trust Plaintiffs' counsel W. Smith re same.	0.50	$90.00
03/20/2023	Initial receipt, review, and detailed legal analysis of the Lytles' petition for en banc reconsideration of order affirming the district court's finding of contempt against them. Initial receipt and review of multiple correspondences from legal assistant L. Engelman re same.	0.50	$90.00
03/27/2023	Initial receipt and review of NV Supreme Court order denying the Lytles' petition for en banc reconsideration of its order affirming the district court's finding of contempt against them. Exchange multiple correspondences with the September Trust Plaintiffs' counsel W.	0.90	$162.00

	Smith re same. Prepare correspondence to claims counsel D. Chien re same. Initial receipt, review and respond to correspondence from Ms. Chien re same.		
04/27/2023	Initial receipt and review of correspondence from legal assistant L. Engelman re [redacted] Exchange multiple correspondences with attorney W. Smith re same.	0.60	$108.00
04/28/2023	Initial receipt and review of the Lytles' memorandum of costs and disbursements in the receiver action. Telephone conference with attorney W. Smith re same.	0.40	$72.00
05/01/2023	Initial receipt and review of correspondence from client R. Disman re [redacted]	0.10	$18.00
05/02/2023	Initial receipt and review of correspondence from claims counsel D. Chien re [redacted]	0.10	$18.00
05/03/2023	Prepare correspondence to claims counsel D. Chien re [redacted] Conduct legal research and prepare motion for attorney's fees. Exchange correspondences with attorney W. Smith re same. Telephone conference with Mr. Smith re same. Initial receipt, review and respond to correspondence from Mr. Smith re same. Exchange correspondences with legal assistant L. Engelman re same.	3.10	$558.00
05/04/2023	Continue to conduct legal research and prepare motion for attorney's fees. Initial receipt, review and respond to correspondence from legal assistant L. Engelman re same.	2.70	$486.00
05/11/2023	Continue to conduct legal research and prepare motion for attorney's fees and affidavit in support of motion. Exchange multiple correspondences with legal assistant L. Engelman re same.	3.40	$612.00
05/12/2023	Review/revise/finalize motion for attorney's fees and accompanying documents. Exchange multiple correspondences with legal assistant L. Engelman re same.	1.20	$216.00
TOTAL:			**$27,196.00**

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Steven D. Grierson
CLERK OF THE COURT

EXH

DAN R. WAITE, ESQ.
Nevada Bar No. 4078
DWaite@lewisroca.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Telephone: 702-949-8200
Facsimile: 702-949-8398

Attorneys for Defendants, 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, et al.,

Plaintiff,

v.

TRUDI LEE LYTLE, et al.,

Defendants,

SEPTEMBER TRUST, DATED MARCH 23, 1972, et al.,

Plaintiffs,

v.

TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST, et al.,

Defendants.

AND ALL RELATED MATTERS

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

Consolidated:

Case No.: A-17-765372-C
Dept. No.: 16

EXHIBIT "F" TO

DEFENDANTS' OPPOSITION TO ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR ATTORNEY'S FEES

DATE OF HEARING: July 13, 2023

TIME OF HEARING: 9:05 A.M.

TRANSCRIPT OF CONTENTS

Exhibit F to Defendants' Opposition to Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees" consists of the two hour, fifty-four minute, thirty second audio/video recording of the June 6, 2023, hearing in the companion Receivership Action (Case No. A-18-775843-C).

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Dated this 13th day of June, 2023.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Dan R. Waite*
Dan R. Waite (SBN 4078)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Defendants, Trudi Lee Lytle and John Allen Lytle as Trustees of the Lytle Trust

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this day, I caused a true and correct copy of the following ***"EXHIBIT F TO DEFENDANTS' OPPOSITION TO ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR ATTORNEY'S FEES" "*** to be e-filed and served via the Court's E-Filing System and served on the following parties via United States Mail, postage prepaid, at Las Vegas, Nevada.

Christina H. Wang
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, NV 89113
Attorneys for Counter-Defendants/Cross-Claimants
Robert Z. Disman and Yvonne A. Disman

Wesley J. Smith
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Ave.
Las Vegas, NV 89117
Attorneys for September Trust,
Zobrist Trust, Sandoval Trust and Dennis & Julie Gegen

Daniel T. Foley
FOLEY & OAKES, PC
1210 S. Valley View Blvd., #208
Las Vegas, NV 89102
Attorneys for Marjorie Boulden Trust and Linda
and Jacques Lamothe Trust

Dated this 13th day of June, 2023

/s/ Luz Horvath
An Employee of Lewis Roca Rothgerber Christie LLP

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EXHIBIT F

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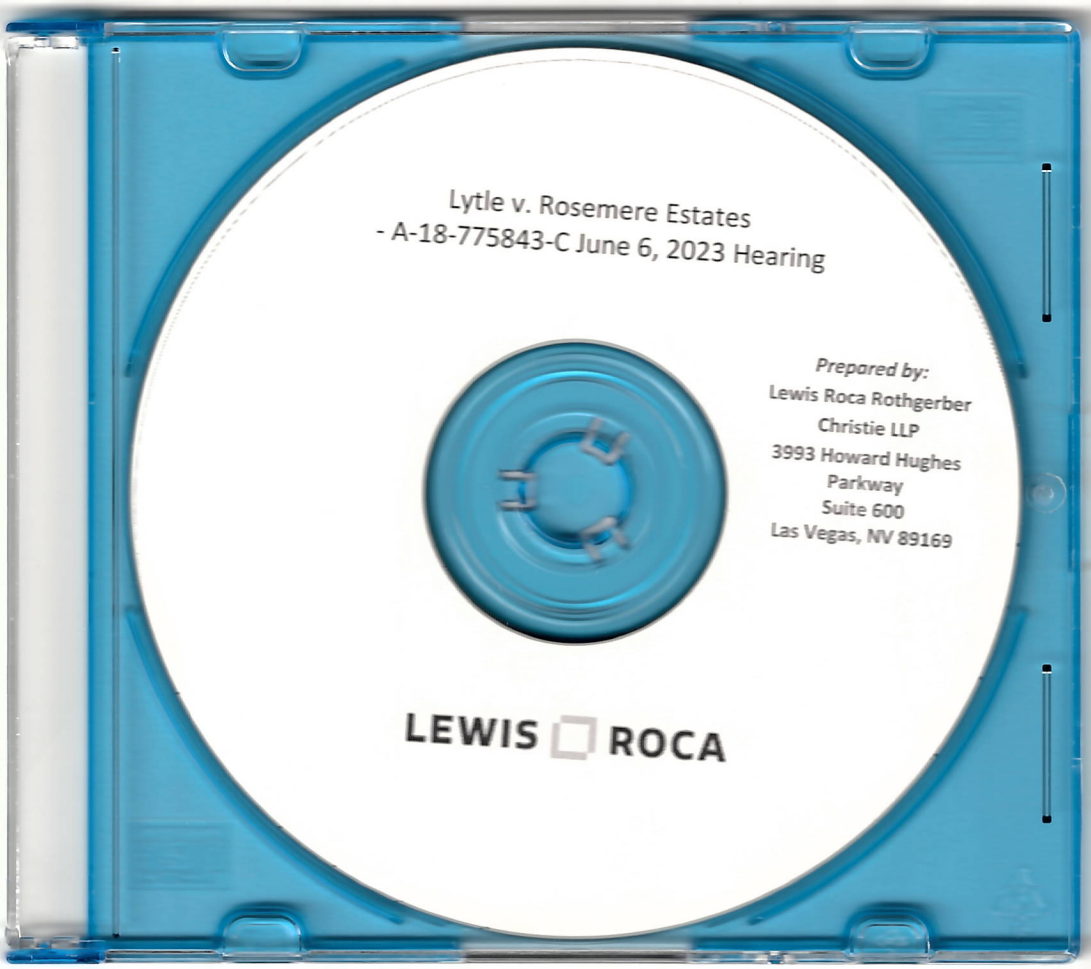
EXHIBIT F



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Steven D. Grierson
CLERK OF THE COURT

OPPM
DAN R. WAITE, ESQ.
Nevada Bar No. 4078
DWaite@lewisroca.com
JOEL D. HENRIOD, ESQ.
Nevada Bar No. 8492
JHenriod@lewisroca.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Telephone: 702-949-8200
Facsimile: 702-949-8398

Attorneys for Defendants, 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, et al., Plaintiff, v. TRUDI LEE LYTLE, et al., Defendants, SEPTEMBER TRUST, DATED MARCH 23, 1972, et al., Plaintiffs, v. TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST, et al., Defendants. AND ALL RELATED MATTERS	Case No.: A-16-747800-C Dept. No.: 16 Consolidated: Case No.: A-17-765372-C Dept. No.: 16 **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS** **DATE OF HEARING: July 13, 2023** **TIME OF HEARING: 9:05 A.M.**

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I.
INTRODUCTION

The Lytle Trust recognizes this Court has already ruled on many things in this case and, although disappointed, also respects the Nevada Supreme Court's affirmance of this Court's rulings. Thus, this Lytle Trust Opposition will not respond to everything in the Plaintiff's Motion for Attorney's Fees and Costs. Instead, focus will be given to those areas that have not been resolved, including areas that the Plaintiffs seem to think have been resolved but in reality have not.

Indeed, the Lytle Trust does not dispute that Plaintiffs are entitled to an additional award of fees and costs. However, the Lytle Trust very much disputes whether the CC&Rs allow this Court to render the award. Additionally, the Lytle Trust disputes some of the bases for that award and most certainly disputes the amount. In other words, by analogy, Plaintiffs shoot four different arrows all at the same target. They claim that, whether under the CC&Rs Sect. 25, NRS 22.100(3), NRS 18.010(2)(b), or EDCR 7.60, they are entitled to the same award of fees. The Lytle Trust recognizes that an award is appropriate even if under only one of those bases. Nevertheless, the Lytle Trust does not concede an award is available under all requested bases.

Further, as to the amount requested, in what can only be considered an unusual effort to peg the Court's attention artificially high with a throw-away argument, Plaintiffs ask this Court to substantially ***increase*** their counsel's rates by almost double ***above*** the rates billed to Plaintiffs. Based on United States Supreme Court precedent and common sense, such an enhancement is not allowed in this case.

In short, the Lytle Trust does not oppose Plaintiffs' request for $3,896.51 in costs; but, without conceding that this Court cannot contractually render any award of fees, the Lytle Trust suggests a fee award in the amount of $65,000 is fair and reasonable in the circumstances of this case.

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LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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II.

LEGAL ARGUMENTS

A. THE FEES REQUESTED BY PLAINTIFFS CANNOT BE AWARDED HERE UNDER SECTION 25 OF THE CC&Rs

Plaintiffs have already been awarded (and been paid) their attorney's fees through April 30, 2020. Their pending Motion seeks subsequently incurred fees for an appeal and writ petition to the Nevada Supreme Court. Plaintiffs seek their post-April 30, 2020 fees based on Section 25 of the CC&Rs. The clear and unambiguous language of that provision, however, is fatal to Plaintiffs' request.

Section 25 provides for an award of fees against the losing party "in such amount **as may be fixed by the court in such proceeding**." (*See* CC&Rs at Sect. 25, attached hereto as Ex. A, emphasis added). Here, Plaintiffs state they seek "fees and costs incurred related to the Lytle Trust's appeal from the Contempt Order and Second Fees Order and the Petition for Writ of Mandamus." (Mtn. at 12:11-13). Thus, since Plaintiffs admit their requested fees relate to proceedings in the Nevada Supreme Court, the express contractual language requires the Plaintiffs to seek their fees from the Supreme Court. Their failure to do so is fatal to their request here. They cannot obtain an award of fees related to appellate proceedings except as fixed "by the court in such proceeding," which is not this Court.

Plaintiffs try to get ahead of the issue by adhering to the maxim—when the dispositive issue is against you, reframe the issue. Accordingly, Plaintiffs devote substantial attention to an issue that is NOT disputed. Their Motion, at pages 10-12, includes a section arguing a general proposition: "fees and costs incurred on appeal are awardable by the District Court." (Mtn. at 10:19). The Lytle Trust does not dispute this general principle.

However, the issue is NOT whether, in the absence of a contract specifying otherwise, the district court can award fees and costs incurred on appeal. Of course it can, based on all the cases cited by Plaintiffs. Rather, the issue here is whether, with the existence of a contract specifying otherwise, the district court can award fees and costs incurred on appeal. It cannot.

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None of the cases cited by Plaintiffs in their motion included a contract provision anything like Section 25 of the CC&Rs. The issue is NOT whether the district court can *ever* award costs for an appeal. Of course, it can. The issue IS whether the district court can do so in this case. It cannot—at least, not without disregarding the clear and unambiguous language of the governing contract.

Basic tenets of Nevada contract law include the following:

1. Courts "will not rewrite contract provisions that are otherwise unambiguous." *See Farmers Insur. Group v. Stonik*, 110 Nev. 64, 67, 867 P.2d 389, 391 (1994); *accord*, *Harrison v. Harrison*, 132 Nev. 564, 570, 376 P.3d 173, 177 (2016) ("We do not rewrite parties' contracts"); *Federal Insur. Co. v. Coast Converters, Inc.*, 130 Nev. 960, 965, 339 P.3d 1281, 1285 (2014) ("This court will not rewrite contract provisions that are otherwise unambiguous . . . .) (quoting *Farmers Insur. Group*); *Physicians Insur. Co. of Wisconsin, Inc. v. Williams*, 128 Nev. 324, 331, 279 P.3d 174, 178 (2012) (same); *Griffin v. Old Republic Insur. Co.*, 122 Nev. 479, 483, 133 P.3d 251, 254 (2006) (same); *United Nat'l Insur. Co. v. Frontier Insur. Co.*, 120 Nev. 678, 684, 99 P.3d 1153, 1157 (2004) (same).

2. When the Court attempts to rewrite an unambiguous contract term, it "risks trampling the parties' intent. . . . As [the courts] are not advocates, it is not our role to partake in drafting." *See Harrison v. Harrison*, 132 Nev. 564, 570, 376 P.3d 173, 177 (2016).

3. Rewriting a contract for the parties "would be virtually creating a new contract for the parties, which they have not created or intended themselves, and which, under well settled rules of construction, **the court has no power to do**." *Reno Club, Inc. v. Young Inv. Co.*, 64 Nev. 312, 323, 182 P.2d 1011, 1016 (1947) (emphasis added).

4. "A court is not at liberty to revise an agreement while professing to construe it. Nor does it have the right to make a contract for the parties—that is, a contract different from that actually entered into by them. Neither abstract justice nor the rule of liberal construction justifies the creation of a contract for the parties which they did not make themselves." *Reno Club*, 64 Nev. at 324, 182 P.2d at 1016.

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5. A court cannot disregard the contract the parties made for themselves even if it "operate[s] harshly or inequitably as to one of the parties." *Id.* Indeed, "courts have no right . . . to relieve one of them from disadvantageous terms which he has actually made." *Id.*

6. If "there is no ambiguity or uncertainty in the meaning of the language employed," there is "no room for judicial construction." *Id.*, 64 Nev. at 325, 182 P.2d at 1017.

7. "Courts are bound by language which is clear and free from ambiguity and cannot, using the guise of interpretation, distort the plain meaning of an agreement." *Watson v. Watson*, 95 Nev. 495, 496-97, 596 P.2d 507, 508 (1979).

8. "The judicial function of a court of law is to enforce the contract as it is written." *Pioneer Title Insur. & Trust Co. v Cantrell*, 71 Nev. 243, 245-46, 286 P.2d 261, 263 (1955) (quoting *Caruso v. John Hancock Mut. Life Insur. Co.*, 57 A.2d 359, 360-61 (N.J. Ct. Err. & App. 1948)).

Here, even though Plaintiffs anticipated the Lytle Trust's argument, they did not assert that Section 25's language ("as may be fixed by the court in such proceeding") is ambiguous. Indeed, it is clear and unambiguous. Therefore, respectfully, this Court has no role but to enforce the contract as it is written. If Plaintiffs want an award of fees incurred in the appellate court proceedings, they must petition "the court in such proceeding."

In short, we are not dealing here with a situation where the contract is silent about who fixes an award of fees and, therefore, whether the district court has the power to award fees incurred in an appeal. The Plaintiffs are correct—that general proposition of law has been settled. However, a specific contract provision exists here (Sect. 25 of the CC&Rs) that unambiguously answers that question. Thus, the general proposition advocated at length by Plaintiffs in the Motion is neither disputed nor applicable here.

To enforce the contract (CC&Rs at Section 25), the Court should invite Plaintiffs to seek an award of their appellate fees from the appellate court. Such makes sense since the Supreme Court was the court who reviewed the briefs and other written and oral submissions and is in the best position to evaluate a reasonable fee, if any. Any other result impermissibly frustrates the clear and unambiguous language of the governing CC&Rs/contract.

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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B. RULINGS BY THE NEVADA SUPREME COURT AND JUDGE KISHNER CONFIRM THAT NO BASIS EXISTS UNDER NRS 18.010(2)(b) TO AWARD FEES HERE

Plaintiffs also rely on NRS 18.010(2)(b) as a basis for awarding fees here. (Mtn. at 14:8-16:3). However, basing a fee award on that punitive statute is not warranted here.

1. Judge Kishner Recently Ruled That No Basis Existed Under NRS 18.010(2)(b) to Award Fees to Plaintiffs Here (Intervenors There)

Very recently, on June 6, 2023, Judge Kishner held a hearing in the Receivership Action where she considered the Lytle Trust's and Intervenors' (Plaintiffs here) cross-motions for attorney's fees and costs. Intervenors argued there the same thing they (as Plaintiffs) argue here—namely, that an award of fees was warranted under NRS 18.010(2)(b) given the Lytle Trust's allegedly frivolous and groundless actions in that action, which also form the underlying basis for Plaintiffs' request here for fees under NRS 18.010(2)(b).

However, Judge Kishner denied the Intervenors' motion for fees (and granted fees and costs to the Lytle Trust instead). Additionally, however, Judge Kishner expressly ruled that even if the Lytle Trust had not been the prevailing party, she would not have awarded fees to the Intervenors under NRS 18.010(2)(b)—**"The Court still would not find that Intervenor has met 18.010; has not shown that this was vexatious or harassment. . . . I can't find that it meets the standards of 18.010."** (*See* audio/video of June 6, 2023, hearing in the Receivership Action (Case No. A-18-775843-C) at approx. 2:23:45-2:24:45, attached hereto as Ex. B). Judge Kishner further evaluated the Lytle Trust's actions and found, in the words of NRS 18.010(2)(b), that the Lytle Trust neither brought nor maintained the Receivership Action without reasonable cause or to harass. Again, she denied Intervenors' (Plaintiffs here) motion for fees because "I can't find that it meets the standards of 18.010." (*Id.*)

As Plaintiffs note in their Motion, the factual basis here for an award under NRS 18.010(2)(b) is that "the Lytle Trust commenced the Receivership Action . . ., starting anew another groundless claim or defense that NRS 18.010(2)(b) was intended to discourage." (Mtn. at 15:8-12). Plaintiffs' present request for fees (as opposed to their prior request for fees which was granted for an earlier period) is that the Lytle Trust commenced the Receivership Action. In other

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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words, Plaintiffs' motion is inextricably intertwined with the Lytle Trust bringing and maintaining the Receivership Action. Yet, as noted above, Judge Kishner heard all the evidence and arguments in the Receivership Action and ruled that the strictures of NRS 18.010(2)(b) had not been satisfied.

Analogous to the doctrine of comity, this Court should give deference and respect to Judge Kishner's ruling that NRS 18.010(2)(b) did not provide a basis for an award of fees to Intervenors there (Plaintiffs here). *See Mianecki v. Second Jud. Dist. Ct., In & For Washoe Cnty.,* 99 Nev. 93, 98, 658 P.2d 422, 424–25 (1983) ("In general, comity is a principle whereby the courts of one jurisdiction may give effect to the . . . judicial decisions of another jurisdiction out of deference and respect."). After all, Judge Kishner's court is where everything played out that underlies Plaintiffs' fee motion. If she did not find the Lytle Trust's claims were baseless, frivolous, vexatious, or harassing—despite being urged otherwise by the same parties who are urging such here—neither should this Court. Different departments of this same court should not issue inconsistent, and even contradictory, rulings with the same parties.

As further evidence that the Lytle Trust's positions were not baseless (as if it isn't enough that Judge Kishner ruled they were not baseless), the receiver in the Receivership Action retained counsel to advise him regarding the law and his responsibilities. More specifically, the receiver retained Patricia Lee who at the time was a partner at the law firm of Hutchison Steffen and is now a Nevada Supreme Court Justice. After Plaintiffs here intervened into the Receivership Action and advised Judge Kishner (and the receiver and his counsel) about this Court's orders, and accused the Lytles of many nefarious things, the receiver (through Patricia Lee) nevertheless agreed with the Lytle Trust's legal positions and filed papers advocating those same positions. (*See* Receiver's Mtn for Instructions and Proposed Order (filed 3/16/20 in Case No. A-18-775843-C (the "Receivership Action")) at 2:19-3:6, a copy of which is attached to the Lytle Trust's contemporaneously filed Opposition to the Dismans' Motion for Fees ("Opp. to Dismans' Fee Mtn." at Ex. A). Indeed, the receiver advised Judge Kishner that "the Receiver considers the Owners' arguments untenable," (*id.* at 4:21), and argued at length why the proceedings in the Receivership Action did not violate this Court's Orders. (*Id.* at 5:2-10:2). In the referenced filing, the receiver concluded by stating, in harmony with the Lytle Trust, that "the Receiver maintains

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LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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that the Court properly vested him with authority to impose special assessments to satisfy the Judgments." (*Id.* at 10:4-5).

In response, the Plaintiffs in this Consolidated Case (who are Intervenors in the Receivership Action) opposed the receiver's motion for instructions and filed a countermotion asking Judge Kishner to completely set aside the order appointing receiver and to dismiss the Receivership Action. (*See* Opp. to Dismans' Fee Mtn. at Ex. B). In reply, the receiver argued (again, consistent with the Lytle Trust's position) that "[e]ach of these positions are untenable" and "wholly unsubstantiated." (*See* Opp. to Dismans' Fee Mtn. at Ex. C, at 2:19, 3:12). Indeed, the receiver vigorously argued (again through his counsel who has now ascended to a seat on the Nevada Supreme Court—i.e., no legal slouch) that "[n]ow that the Receiver has been made aware of, and educated about, the ancillary litigation referenced by the Intervenors [i.e., the proceedings here], **he is more confident now than ever that this Court [i.e., in the Receivership Action] was well within its rights to appoint him as a Receiver and doing so is not at all in conflict with the permanent injunction issued in an unrelated matter [i.e., this Consolidated Case] . . . ."** (*Id.* at 3:26-4:1, emphases added). The receiver concluded that "the Receiver maintains that the [Receivership Action] Court properly vested him with authority to impose special assessments to satisfy the [Lytle Trust's] Judgments." (*Id.* at 11:5-6).

Notably, Judge Kishner declined to grant either form of relief the Plaintiffs here (Intervenors there) requested—she neither set aside the order appointing receiver nor did she dismiss the Receivership Action. (*See* Opp. to Dismans' Fee Mtn. at Ex. D).

In short, even though the Supreme Court ultimately disagreed with the Lytle Trust here, any suggestion that the Lytle Trust's arguments were frivolous is tantamount to suggesting that a court-appointed (and neutral) receiver, guided by counsel who is now a Supreme Court Justice and who independently came to the same conclusions as the Lytle Trust, also advocated frivolous positions.

No basis exists under NRS 18.010(2) to award the Plaintiffs any fees.

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LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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2. The Nevada Supreme Court Order (12/29/22), While Affirming This Court's Contempt Order on Narrow Grounds, Validated Some of the Lytle Trust's Actions Sufficient to Negate an Award of Fees Under NRS 18.010(2)(b)

Plaintiffs have said much regarding the Nevada Supreme Court's Order (12/29/22) affirming this Court's order holding the Lytle Trust in contempt for violating the May 2018 Order. However, a careful review of the Supreme Court's Order reveals that it affirmed on a very specific ground and even validated some of the actions taken by the Lytle Trust.

More specifically, contrary to what the Plaintiffs previously argued here and to Judge Kishner, the Supreme Court expressly ruled that "**nothing** in the plain text of the May 2018 Order prohibited [the Lytle Trust] from seeking the appointment of a receiver over the Association." (Nev. S. Ct. Order (12/29/22) at fn. 4, emphasis added, attached hereto as Ex. C). Thus, even though the Supreme Court affirmed this Court's contempt order, it wasn't because the Lytle Trust sought the appointment of a receiver in the Receivership Action. So, why then did the Supreme Court affirm the contempt order? The answer is clear in the Supreme Court's order:

> The Lytles informed [Judge Kishner] in the receivership action that the **Amended CC&Rs** had been declared *void ab initio* in earlier litigation but nonetheless argued the Association had the authority to make assessments against individual homeowners **under the Amended CC&Rs**. . . . We conclude the May 2018 Order clearly and unambiguously prohibited the Lytles' future reliance on the Association's powers **under the Amended CC&Rs**. . . . We further conclude that the Lytles disobeyed the order of the district court in the [Judge Williams] actions when applying for the receiver in the receivership action **by arguing that under the Amended CC&Rs**, "the Association has the power and authority to assess each 'Lot' or unit for the total amount of any judgments against the Association in proportion to ownership within the Association."

Id. at 3-5 (emphasis added).

In short, the Supreme Court affirmed this Court's contempt order (1) NOT because the Lytle Trust obtained a receiver in the Receivership Action, and (2) NOT because the Lytle Trust requested that the receiver be vested with power to assess the property owners to pay the Association's obligations, but rather (3) because the Lytle Trust relied upon the void Amended CC&Rs for that power.[1] Unfortunately for the Lytle Trust, the record before the Supreme Court

[1] Indeed, over vigorous argument from the Intervenors, Judge Kishner ruled that the Association has the right and power to assess its members, including the Plaintiffs here, to pay the Association's obligations. As Judge Kishner declared in the judgment she recently entered in the Receivership Action:

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in the writ proceeding regarding this Court's contempt order did not include Judge Kishner's May 25, 2021, Decision and Order, where she ruled that "**Appointment of the Receiver was not based on the amended CC&Rs** . . . ." (*See* Opp. to Dismans' Fee Mtn. at Ex. D, at 3:30-22, 6:4-10 (emphasis added)).

So, the Supreme Court affirmed this Court's contempt order because of an argument that was proffered to Judge Kishner in the Receivership Action, but which she expressly stated she did not rely upon. Nothing in the Supreme Court's order supports a finding that the Lytle Trust's claims in the Receivership Action were groundless. Just because the Supreme Court ultimately affirmed this Court's contempt order on the narrow ground it did does not mean the Lytle Trust's claims were frivolous. *See Temecula Valley Unified Sch. Dist. v. Housman,* 2020 WL 4355505, at *4 (C.D. Cal. Apr. 24, 2020) ("a court's ultimate rejection of claims does not mean they were frivolous"); *In re Parental Resps. Concerning D.P.G.*, 472 P.3d 567, 573 (Colo. Ct. App. 2020) ("Although the magistrate, the district court, and we have rejected her argument, that does not mean it was frivolous."); *Haley v. Hume*, 448 P.3d 803, 814 (Wash. Ct. App. 2019) ("That the trial court ultimately rejected that argument does not mean it was frivolous or baseless."); *Implicit Networks, Inc. v. F5 Networks, Inc.*, 2013 WL 1915179, at *2 (N.D. Cal. May 8, 2013) ("That the Court rejected Implicit's attempts does not mean Implicit's litigation was baseless, in bad faith, or constituted litigation misconduct.").[2]

> As a result of the Association's incorporation as a non-profit corporation on February 25, 1997, pursuant to NRS 82, the Association has been and remains vested with the power to impose assessments upon its members (a) pursuant to NRS 82.131(5), and (b) as implied by necessity as provided in the Restatement (Third) of Property: Servitudes ("Restatement Servitudes"), particularly in Chapter 6 of the Restatement Servitudes. Additionally, since May 27, 2021, when the statute was amended, the Association has been and remains vested with the power to impose assessments upon its members as implied by NRS 116.3116 and its application to limited purpose associations pursuant to NRS 116.1201(2)(a)(3)(V).

Unlike here, where the Association has never been a party, Judge Kishner had jurisdiction over the Association in the Receivership Action. Thus, the issue regarding the Association's powers was properly before and correctly decided by her.

[2] In reply, the Plaintiffs will likely argue here (because they argued to Judge Kishner in response to a similar argument offered there by the Lytle Trust) that the Supreme Court completely affirmed this Court's contempt order, and the argument that the Supreme Court's Order (12/29/22) affirmed this Court on narrow grounds regarding the Amended CC&Rs is

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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Importantly, even after the Intervenors fully advised Judge Kishner of everything they wanted her to know about the Lytle Trust's acts and omissions, and why such required the Order Appointing Receiver to be set aside in its entirety, Judge Kishner nevertheless affirmed her Order Appointing Receiver. (*See* Minute Order (3/12/20) in Receivership Action ("Court advised its prior order still stands."), attached hereto as Ex. D). The inflammatory information that Plaintiffs like to repeat did not phase Judge Kishner; neither should it impact this Court.

Bottom line, even though this Court's orders precluded the Lytle Trust from offering one ground for Judge Kishner to rule as she did, such does not mean that all alternatively offered grounds were meritless. As set forth above, the Supreme Court's Order (12/29/22) and Judge Kishner's rulings are in harmony—nothing in this Court's May 2018 Order precluded the Lytle Trust from seeking the appointment of a receiver over the Association. The Lytle Trust's actions in the Receivership Action were not groundless. No basis exists to award fees to the Plaintiffs under NRS 18.010(2)(b).

C. EDCR 7.60(b) ADDS NOTHING TO THE ANALYSIS HERE

Plaintiffs also base their request for fees on EDCR 7.60(b). However, that local rule adds nothing more to the analysis. Indeed, Plaintiffs describe EDCR 7.60(b) as "similar grounds for awarding fees to the Plaintiffs." (Mtn. at 16:5-6).

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meritless. However, if Plaintiffs argue such, they will disregard a bedrock principle of judicial restraint. More particularly, "[a]n appellate court should decide cases on the narrowest possible ground; often the most important thing we can decide is not to decide." *State v. Adams*, 845 S.E.2d 217, 222 (S.C. Ct. App. 2020); *accord*, *State of Wis. Dept. of Justice v. State of Wis. Dept. of Workforce Development*, 875 N.W.2d 545, 552 (Wis. 2015) ("We are generally obliged to decide our cases on the narrowest possible grounds."); *People v. Hankin*, 667 N.Y.S.2d 890, 893 (N.Y. Crim. Ct. 1997) ("it is well settled that courts ought to decide cases on the narrowest possible grounds"); *Boddicker v. Esurance, Inc.*, 770 F. Supp.2d 1016, 1021 (D. S.D. 2011) ("Courts generally decide issues on the narrowest possible grounds."). Under this doctrine, "issues not essential to a disposition of the case should not be addressed." *De Rubio v. Rubio Herrera*, 541 S.W.3d 564, 572 (Mo. Ct. App. 2017) (quoting *Int'l Div., Inc. v. DeWitt & Assoc., Inc.*, 425 S.W.3d 225, 233 (Mo. Ct. App. 2014)). In short, deciding cases on the narrowest possible grounds is a proper exercise of judicial restraint, which is sometimes referred to as "judicial minimalism." *See Harbourside Place, LLC v. Town of Jupiter, Fla.*, 958 F.3d 1308, 1322 (11th Cir. 2020) ("judicial minimalism" is when the court "decide[s] no more than what is necessary to resolve [the issues].").

Thus, when the Nevada Supreme Court affirmed this Court's contempt order expressly because the Lytle Trust impermissibly relied on the void Amended CC&Rs, such was the narrowest possible ground the Court needed to affirm. Reading anything more into the Supreme Court's order than what it said would be error.

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Plaintiffs rely on *Detwiler v. Eighth Jud. Dist. Ct.*, 137 Nev. 202, 486 P.3d 710 (2021), and suggest that "EDCR 7.60(b) is broader than under similar rules or statutes" because the *Detwiler* Court declared that "unlike NRS 22.100(3) [which Plaintiffs also rely upon, see *supra*], the text of EDCR 7.60(b) does not contain an express causation requirement. Instead, it requires the sanction to be reasonable under the facts of the case." (Mtn. at 16:12-5, quoting *Detwiler*, 137 Nev. at 214, 486 P.3d at 721). However, Plaintiffs stop quoting *Detwiler* too soon. The next two sentences provide: "However, we conclude that in the context of a sanction for contempt based on the violation of a specific order, it is reasonable to impose only those fees that are directly caused by the particular failure or refusal to comply. **This harmonizes the rule with the statute** and is consistent with our caselaw . . . ." *Id.* (emphasis added).

Thus, regardless of a difference in language between NRS 22.100(3) and EDCR 7.60(b), the *Detwiler* Court found they were the same in effect. Indeed, the Supreme Court specifically declared that "EDCR 7.60(b) does not authorize attorney fees in excess of those authorized by NRS 22.100(3)." *Id.* at n.8.

Thus, EDCR 7.60(b) adds nothing to the analysis here.

D. ANY AWARD OF FEES MUST BE SIGNIFICANTLY REDUCED UNDER THE LODESTAR ANALYSIS

For the most part, Plaintiffs correctly identify the lodestar analysis. Thus, such will not be repeated here. However, Plaintiffs' application of that analysis is flawed. Accordingly, if the Court awards Plaintiffs any fees, such must be significantly reduced for the reasons that follow:

1. No Basis Exists for an Enhancement to the Hourly Rates Plaintiffs' Counsel Actually Charged Plaintiffs

Plaintiffs and their counsel negotiated an hourly rate of $265 for counsel's services. That is the rate Plaintiffs' counsel billed (as reflected in the billing statements) and the rate that Plaintiffs presumably paid. Now, however, Plaintiffs request an upward adjustment even though they were never billed nor paid those enhanced rates. This is punitive against the Lytle Trust and works an improper windfall to Plaintiffs' counsel in the amount of $42,215.60.[3]

[3] Plaintiffs seek an award of 380.76 hours. (Mtn. at 8:14-18). Thus, 380.76 hours at the billed rate of $265/hr results in a fully compensating fee of $100,901.40, instead of the enhanced amount of $143,117.00 that is sought. The difference is $42,215.60.

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a. This is not a "rare" and "exceptional" case warranting an enhanced fee

The United States Supreme Court has many decisions regarding enhancements of an attorney's hourly rate under the lodestar framework. According to our nation's highest court, an enhancement of the lodestar fee is warranted only "in some cases of exceptional success," (*Blum v. Stevenson*, 465 U.S. 886, 897 (1984)), but that those cases will be "rare and exceptional," (*Pennsylvania v. Delaware Valley Citizens' Counsel for Clean Air*, 478 U.S. 546, 565 (1986)) (*Delaware Valley I*). *Accord*, *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 560 (2010) (J. Kennedy, concurring) ("extraordinary cases are presented only in the rarest circumstances").

Indeed, the United States Supreme Court declared that, since its original decision in *Blum*, "our jurisprudence . . . has charted a decisional arc that bends decidedly against enhancements." *Perdue*, *supra*, 559 U.S. at 561 (J. Thomas, concurring). By way of emphasis, the Court noted that it "has **never sustained an enhancement of a lodestar amount for performance**." *Id.*, 559 U.S. at 543, emphases added. And, in a dissenting opinion rendered more than 30 years earlier, three Justices prophetically opined that the Court "heightens the showing required to [obtain an enhancement] to the point where it may be virtually impossible for a plaintiff to meet." *Delaware Valley I*, 478 U.S. at 569 (J. Blackmun, J. Marshall, and J. Brennan, dissenting).

Nothing about this case suggests it is exceptional to bring it within the rarified air warranting a fee enhancement. More specifically, nothing about this case from and after May 1, 2020 (which is all that is at issue in Plaintiffs' motion) is exceptional. Indeed, Plaintiffs' simultaneous arguments that the Lytle Trust's appeal/writ was (1) frivolous and easily decided, and yet (2) exceptional, are contradictory. Even if the "matter may have been difficult, wearing, and time-consuming, . . . that kind of effort has [already] been recognized in the lodestar award." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 730 (1987) (*Delaware Valley II*).

b. Plaintiffs previously represented their counsels' rate of $260/hour was reasonable and this Court agreed—an enhancement of $165-$210/hour impermissibly works a windfall to Plaintiffs' counsel

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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As this Court knows, the pending motion for fees is not Plaintiffs' first motion for fees in this case. On May 26, 2020, Plaintiffs filed a motion for fees. In that motion, Plaintiffs represented that "[t]he law firm's hourly rates of $260.00 per hour are reasonable" and that "the hourly rate of $260.00 would also be considered reasonable considering the experience and skill of Plaintiffs' counsel." (Plaintiffs' Mtn for Fees (5/26/20) at 21:2, 12-13). This Court awarded fees at that rate, thereby finding it the reasonable hourly rate for Plaintiffs' counsel's services, as reflected in the Court's order dated April 30, 2021.

In February or March 2021, Plaintiffs' counsel increased their billing rates by $5 per hour, which the Lytle Trust does not contest. (Mtn. at Ex. 1, Bates page 4). In short, the $265 per hour rate negotiated between Plaintiffs and their counsel is the same rate (less $5 per hour) already represented by Plaintiffs to be the reasonable hourly rate for their counsel, and already approved by this Court as reasonable in this case for Plaintiffs' counsel. There is no evidence that Plaintiffs ever paid their counsel any rate higher than $265 per hour. There is no evidence that Plaintiffs' counsel ever charged any client in any case the rates they now request. Indeed, the only evidence before this Court (i.e., the billing records and counsel's declaration) is that the most Plaintiffs' counsel have ever charged anyone is the $265 per hour charged to Plaintiffs in this case. In short, there is no evidence that Plaintiffs' counsel has EVER charged more than $265 per hour to ANY client in ANY case. No doubt, had they done so, counsel's declaration would have stated such. It doesn't. Now, however, Plaintiffs ask this Court to require the Lytle Trust to "reimburse" the Plaintiffs their fees at hourly rates far in excess of any rate they themselves ever paid.

Awarding the requested rates will work a windfall to either Plaintiffs or their counsel. Fee-shifting statutes were never intended to achieve that result. *See Blum v. Stenson*, 465 U.S. 886, 897 (1984) ("a reasonable attorney's fee is one that is adequate to attract competent counsel, but . . . that does not produce windfalls to attorneys.") (internal quotation marks and citations omitted); *Delaware Valley I*, 478 U.S. at 565 (fee-shifting statutes "were not designed as a form of economic relief to improve the financial lot of attorneys"); *City of Burlington v. Dague*, 505 U.S. 557, 563 (1992) (same).

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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Although a court can deviate from the contracted rates negotiated between attorney and client, the contracted rates "must be given considerable weight." *See Chromalloy American Corp. v. Alloy Surfaces Co.*, 353 F. Supp. 429, 431 (D. Del. 1973).[4] Indeed, courts frequently and reasonably conclude that "the actual rates at which counsel billed Plaintiff" constitute "[t]he hourly rates [that] are reasonable." *See e.g.*, *DLJ Morg. Capital, Inc. v. Sunset Direct Lending, LLC*, 2008 WL 4489786, at *11 (S.D.N.Y. 2008); *Cobb v. Snohomish Cnty*, 935 P.2d 1384, 1392 (Wash. Ct. App. 1997) ("where R/L's attorney was paid on an hourly basis throughout the litigation, the trial court did not abuse its discretion in determining that the actual rate charged was reasonable."). As some courts reason, "in determining the reasonable hourly rate, the actual fee charged, while clearly not dispositive of what constitutes a reasonable fee, is a factor to be considered in determining market place value as it is reflective of competition within the community for business and typical fees demanded for similar work." *Smith v. Home-Owners Insur. Co.*, 2022 WL 3009715, at *4 (Mich. Ct. App. July 28, 2022) (unpublished disposition). As stated by another court: "The parties negotiated an hourly rate, which presumably took into account the various factors which would otherwise define the relevant market for legal services and the factors bearing on their value," and, therefore, considering such to be "strong evidence of what was reasonable under the circumstances," the court found that the prevailing market rate "for plaintiff's counsel are the rates actually charged for them in this case." *Great Southwestern Constr., Inc. v. Asplundh Brush Control Co.*, 2016 WL 3029967, at *2 (W.D. Okla. May 25, 2016).

In short, Plaintiffs give special emphasis to what "one District Court Judge in Las Vegas found" in a different case involving different parties, different counsel (with undisclosed skills, experience, etc.), and regarding undisclosed facts and claims. (Mtn. at 22:1-10). There is nothing in Plaintiffs' reference that allows this Court to evaluate whether the rates awarded therein constitute a prevailing market rate with **any** relevant application to this case. As the United States

[4] Even Plaintiffs recognize that the actual rate charged is highly relevant when determining the prevailing market rate. They cite *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.C. 1983), rev'd in part on other grounds, and they quote that case as including the declaration that "the attorney's actual billing rate is **highly relevant proof** of the prevailing community rate . . . ." (Mtn. at 21:3-6, emphasis added).

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Supreme Court cogently pronounced almost 40 years ago: "[T]here is no such thing as a prevailing market rate for the service of lawyers in a particular community. The type of services rendered by lawyers, as well as their experience, skill and reputation, varies extensively —even within a law firm." *Blum*, *supra*, 465 U.S. at 895, n.11.

Despite the laudable but elusive effort to ascertain the "prevailing market rate" for an attorney's services, the Lytle Trust suggests the best evidences of the prevailing market rate for Plaintiffs' counsel's services here are (1) what a ready, willing, and able client was willing to pay Plaintiffs' counsel as negotiated between them, and (2) counsel's own prior admissions that their charged rates were reasonable and this Court's adoption of such. As noted above, both confirm that $265 per hour is the reasonable rate for Plaintiffs' counsel's services.

Further, it is worth noting that the Dismans also have a pending motion for attorney's fees. Their counsel (Christina Wang) seeks an award for similar services at the rates of $180-$200 per hour. Ms. Wang has approximately four years more experience than Plaintiffs' lead counsel, Mr. Wesley Smith. Thus, since both Ms. Wang and Mr. Smith represented similarly situated property owner plaintiffs, Ms. Wang's approximate $190 blended hourly rate and Mr. Smith's (and other Plaintiffs' counsel's) hourly rate of $265 are comparable, especially given the *Blum* Court's realistic acknowledgement that "there is no such thing as a prevailing market rate for the service of lawyers in a particular community. The type of services rendered by lawyers, as well as their experience, skill and reputation, varies extensively —even within a law firm." *Blum*, *supra*, 465 U.S. at 895, n.11.

There is no reason to speculate (and no reason has been offered) why the rate Plaintiffs and their counsel negotiated at the start of the representation, and as increased over the period of the representation, does not reflect the prevailing market rate for these very attorneys representing these very clients in this very case. The contracted rate of $265 per hour is reasonable, as this Court previously found (as augmented now due to the passage of time).

c. An enhancement of $165-$210/hour is punitive and impermissibly works a windfall to Plaintiffs' counsel

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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"Because deterrence is already factored in by the award of attorney fees in the first place, . . . it is not an appropriate consideration in determining the amount of a reasonable attorney fee." *Lumen View Technology LLC v. Findthebest.com, Inc.*, 811 F.3d 479, 484-85(Fed. Cir. 2016) (emphasis in original omitted). "Nor should a fee enhancement be imposed for the purpose of punishing the losing party." *Ketchum v. Moses*, 17 P.3d 735, 746 (Cal. 2001). That is, when a court renders a fee award "that goes beyond making the parties whole," such "borders on a punitive award, which is not the intent of [fee-shifting statutes]." *Van Elslander v. Thomas Sebold & Assoc., Inc.*, 823 N.W.2d 843, 861 (Mich. Ct. App. 2012).

Here, the contracted rate between Plaintiffs and their counsel of $265 per hour satisfies the expectations between those parties—they each received the benefit of their bargain. Thus, charging more in the process of shifting fees to the Lytle Trust is no different than awarding punitive damages against the Lytle Trust under the guise of attorney's fees. Punishing the Lytle Trust is exactly the desired effect Plaintiffs hope to accomplish. Concluding such does not require any speculation.

The only declaration supporting Plaintiffs' Motion for Fees is from their counsel. (*See* Mtn. at Declaration of Counsel in Support of Plaintiffs Motion for Attorney's Fees and Costs ("Smith Declaration" or "Smith Decl."). In that sworn declaration, Mr. Smith states exactly why they are seeking "the full amount of the fees **claimed**," as opposed to the full amount of the fees billed and paid. (*Id.* at 8:17, emphasis added). There, he represents under penalty of perjury:

> The Plaintiffs are respectfully seeking this Court's Order awarding the full amount of the fees claimed, **in the hope that a substantial fee will deter the Lytle Trust** from continuing to engage in unreasonable, harassing, frivolous, and vexatious behavior, both in and out of court, that directly violated existing court directives and orders.

(*Id.* at 8:16-20, emphasis added).

First, Plaintiffs' accusation of harassing and frivolous conduct by the Lytle Trust has already been addressed above and is refuted by Judge Kishner's recent rulings. Again, in denying Plaintiffs' request for attorney's fees under NRS 18.010(2)(b), Judge Kishner found nothing in the Receivership Action was vexatious or harassing. (*See* Section II(B)(1), *supra*). Second, to the extent the foregoing accusation is intended to relate to anything other than this Court's contempt

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order and the Lytle Trust's actions in the Receivership Action, such was already resolved in prior fee awards in favor of the Plaintiffs and subjecting them to liability again would constitute a double recovery for Plaintiffs. Third, however, the Smith Declaration's admission that deterrence is the purpose for Plaintiffs' request for "the full amount of the fees claimed," in excess of the amount actually charged, is clearly impermissible.

Every client hates paying their own attorney, to say nothing of paying their opponent's attorney too. It is a steep price to pay for losing in a system that presumes (under the American Rule) that—win, lose, or draw—each side will bear their own fees and costs. Thus, deterrence is already accomplished by making the losing party pay opposing counsel's fees too. Enhancing opposing counsel's fee beyond those paid by his own client thus adds a penalty to a penalty. Again, in the context of this case, if the requested fees are awarded, the enhancement alone (the portion above the contracted fee of $265 per hour) is no different in effect than if the Court imposed punitive damages against the Lytle Trust in the amount of $42,215.60. (*See* footnote 3, *supra*). Clearly, the Court cannot do so. Accomplishing the same result under the guise of an enhanced fee award is equally unavailable and contrary to the purposes of fee shifting.

d. Plaintiffs' cases are distinguishable

The Lytle Trust does not dispute the general principle that a court has the power to enhance an award of fees beyond the actual rate charged in the "rare" and "exceptional" case. However, (1) this is not that case, and (2) the cases Plaintiffs rely on for that unremarkable proposition are easily distinguished on their facts or support the Lytle Trust's position here.

1. *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973 (9th Cir. 2008) (Mtn. at 20:15-18). First, although the quoted proposition is not found in this case (at least, not as quoted), the Lytle Trust does not disagree that the lodestar analysis requires a determination of the prevailing market rate in the relevant legal community (Las Vegas) for similar services by lawyers of reasonably comparable skills, experience, and reputation. (Mtn. at 20:15-18). Nevertheless, *Camacho* assists the Lytle Trust because it demonstrates that "the burden is on the fee applicant to produce satisfactory evidence—in addition to the attorney's own affidavits—that the requested rates are in line with those prevailing" in the local market. 523 F.3d at 980. Additionally, the

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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Camacho court gave deference to the "hourly rates charged by Camacho's three attorneys" in concluding that such "were consistent with" the prevailing market rates for attorneys of comparable skill, qualifications, experience, and reputation. *Id.*

2. *Blanchard v. Bergeron*, 489 U.S. 87 (1989) (Mtn. at 20:18-20). First, that case involved a contingency fee agreement. Thus, when the Court stated, as quoted in part by Plaintiffs, that "[s]hould a fee agreement provide less than a reasonable fee calculated in this manner [i.e., in context of a contingent fee agreement], the defendant should nevertheless be required to pay the higher amount," it was clearly speaking about a contingent fee agreement. This case does not involve a contingent fee agreement. Second, the Court noted that "[w]e express no opinion . . . on the reasonable hourly rate for the work involved here." 489 U.S. at 89, n. 2. Thus, anything that Plaintiffs try to glean about reasonable hourly rates from *Blanchard* is dicta. Third, helpful to the Lytle Trust, the *Blanchard* Court noted that "[t]he presence of a pre-existing fee agreement may aid in determining reasonableness. The fee quoted to the client . . . is helpful in demonstrating attorney's fee expectations when he accepted the case." 489 U.S. at 93 (quoting *Delaware Valley II*, 483 U.S. at 723). Here, Plaintiffs and their counsel negotiated the rate for counsels' services. Those expectations were presumably set in a fee agreement. Making an upward adjustment frustrates those expectations, to the sole detriment of the only party in the equation (the Lytle Trust) who was not a part of those negotiations or contract.

3. *Barjon v. Dalton*, 132 F.3d 496 (9th Cir. 1997) (Mtn. at 20:20-21). Plaintiffs rely on this case for the proposition that "attorney's fees [are] to be calculated using prevailing market rate regardless of actual fee." (Mtn. at 20:21). Again, the Lytle Trust does not dispute this general proposition. However, in *Barjon* the prevailing plaintiffs' attorney charged a fixed fee of $1 to each of two clients for her services in the case. Obviously, a $1 fee would not represent a prevailing market rate for a prevailing plaintiff's counsel in any circumstance. As the *Baron* court noted, "[a]scertaining a reasonable award is sometimes complicated when a client is not charged his attorney's customary hourly rate." 132 F.3d at 500, emphasis added. Yet, here, we don't have that unusual situation where the attorney charged an unusually low rate in a particular case and then requested an award at her higher customary rate. Instead, here, we have a situation where

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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counsel charged their customary rate but request a rate that is much higher than customarily (or ever) charged.

4. *Schwarz v. Sec. of HHS*, 73 F.3d 895 (9th Cir. 1995) (Mtn. at 20:21-23). Plaintiffs' reliance on this case is curious because the trial court exercised its "discretion to *reduce* the lodestar" in the case, and the Ninth Circuit affirmed. 73 F.3d at 898 (emphasis added). The issue there was which "community" applied for purposes of establishing the lodestar, i.e., the out-of-state community where lead counsel lived and worked, which commanded higher rates, or the community where the trial was held, which yielded lower rates. The Ninth Circuit held, as is almost universally the rule, that the relevant prevailing market rates are those in the community where the trial was held. Thus, in *Schwarz*, rates lower than those contracted for by the client had to be used for purposes of determining the lodestar. Again, that unique situation does not exist here because Plaintiffs' counsel works in the same community where this case is pending and Plaintiffs are seeking rates higher than those contracted for by the clients.

5. *Southerland v. Int'l Longshoreman's & Warehousemen's Union, Local 8*, 834 F.2d 790 (9th Cir. 1987) (Mtn. at 20:23-25). First, Plaintiffs' reliance on this case is probably inadvertent since it is "red flagged" by Westlaw and was superseded by *Southerland v. Int'l Longshoremen's & Warehousemen's Union, Local 8*, 845 F.2d 796 (9th Cir. 1988). Even so, the mistake is not meaningful because the stated proposition is also stated in the superseding opinion. Second, the Lytle Trust does not dispute the stated general proposition, i.e., the prevailing market rate is often regarded as a reasonable hourly rate. The issue here is whether the rate negotiated and charged by Plaintiffs' counsel constitutes the prevailing market rate. As noted above, Plaintiffs have previously represented that their charged rates were the reasonable rate to use for purposes of the lodestar calculation, and this Court agreed in its prior Order (4/30/21) granting them fees.

d. Summary

For all the foregoing reasons, the rate charged by Plaintiffs' counsel ($265 per hour), and which was paid by Plaintiffs in this case, is the applicable rate to use here. Thus, Plaintiffs' request for fees in the amount of $143,117.00 must be reduced by $42,215.60—to $100,901.40—in the first instance before applying other appropriate reductions.

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2. The Lytle Trust's Response to the Plaintiffs' Fee Tasks

Here, many problems exist with the time entries recorded by Plaintiffs' counsel, which require a substantial reduction in fees. Some of those problems include (1) excessive and duplicative work, (2) entries that are so vaguely described that it is impossible to evaluate whether the efforts were reasonable and necessary for this case, (3) research of rules that Plaintiffs' counsel should either already be familiar with or should not be learned at the expense of the opposing party, and (4) non-compensable clerical tasks.

a. Excessive and duplicate work is neither reasonable nor necessary

When this Court issued its post-judgment contempt order, the Lytle Trust knew it needed to have the order reviewed by the Nevada Supreme Court. Procedurally, however, it was unclear whether the order was appealable or more properly reviewed by way of a writ petition. Appeals have short and firm deadlines; writ petitions have neither. Accordingly, the safe approach was to file a notice of appeal. There was a good faith basis to do so (as evidenced by the Nevada Supreme Court's initial denial of Plaintiffs' motion to dismiss the appeal). In the Lytle Trust's opening brief, it noted the procedural issue and represented that "[t]he Lytle Trust is prepared to contest the subject order holding them in contempt via writ petition if necessary." (*See* Appellants' Opening Brief (3/15/21) in Case No. 81390 at xi n.2).

This was not the first time the Lytle Trust advised the Plaintiffs of its intent to have this Court's contempt order reviewed by writ petition, if necessary. That is, on October 29, 2020, Plaintiffs filed their motion to dismiss the appeal. In response, the Lytle Trust also noted that, even if it was in the wrong procedural door, it was in the right house (the Nevada Supreme Court) and it intended to have the contempt order reviewed by writ petition if the appeal was deemed procedurally improper. More specifically, the Lytle Trust's opposition to the motion to dismiss appeal stated on page 1: "The Lytles are prepared to contest the subject order holding them in contempt via writ petition if necessary." (*See* Appellants' Opposition to Respondents' Motion to Dismiss (11/30/20) at 1).

In short, when the Nevada Supreme Court denied the motion to dismiss the appeal, subsequently required merits briefing, and then ultimately issued its order concluding it did not

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have jurisdiction because the contempt order was not appealable, it should have come as no surprise to Plaintiffs that the Lytle Trust was going to seek review via the twice promised writ petition.

The Supreme Court issued its order dismissing appeal on February 18, 2022. Instead of waiting for the writ petition to be filed (and resolved so the parties would know who the prevailing party was), Plaintiffs immediately started work on their motion for attorney's fees—even though such was premature and **was, indeed, denied by this Court as premature**. (*See* Order (4/18/22) at 2:12). Thus, the Plaintiffs needlessly expended tremendous effort at significant expense that should not have been incurred.

Attached hereto as Ex. E are Plaintiffs time entries (highlighted in blue) associated with Plaintiffs prior motion for fees, which this Court denied on April 18, 2022. In total, Plaintiffs seek reimbursement for 44.20 hours from the Lytle Trust in the amount of **$11,713.00** associated with Plaintiffs' premature motion. Stated differently, Plaintiffs' current motion for fees includes $11,713.00 in fees incurred in a prior failed motion for fees. Plaintiffs also seek fees associated with the present motion for fees (Mtn. at 23:8-13), which results in a request for fees (for the current motion) on top of fees (for the prior motion), on top of fees (for the underlying appeal/writ). Such is patently unfair and unreasonable.

Additionally, duplicative work must be excluded from the lodestar calculation. *E.g.*, *Herrington v. City of Sonoma*, 883 F.2d 739, 747 (9th Cir. 1989). As the Ninth Circuit taught, "courts ought to examine with skepticism claims that several lawyers were needed to perform a task . . . ." *Democratic Party of Wash. State v. Reed*, 388 F.3d 1281, 1286 (9th Cir. 2004) (internal citations omitted). Here, Plaintiffs employed the services of the law firm of Christensen James & Martin. During the period covered by the instant motion for fees, no less than three partners and a senior associate (who, herself, has more than 20 years' experience) billed on this case. "A party is certainly free to hire and pay as many lawyers as it wishes, but cannot expect to shift the costs of any redundancies to its opponent." *Asia Pacific Agr. & Forestry Co. v. Sester Farms, Inc.*, 2013 WL 6157263, at *4 (D. Or. Nov. 22, 2013).

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"An example of duplicated effort [is] . . . when attorneys hold a telephone or personal conference with another attorney. . . . Good billing judgment mandates that only one participant in the conference should bill that conference to the client." *Taylor v. Albina Community Bank*, 2002 WL 31973738, at *4 (D. Or. 2002). And, in today's age of technology, "[r]eading an e-mail is simply another method of holding a conference." *Id.*

Plaintiffs' counsel's billing records exhibit numerous intraoffice conferences in person or through emails. Attached hereto as Ex. F are Plaintiffs time entries (highlighted in green) associated with these numerous oral and written intraoffice conferences where more than one attorney billed for such. These charges total 14.65 hours for a total fee of $3,869.25. Cutting that amount in half (since only one attorney should have billed for these intraoffice conferences, results in a reduction of **$1,934.63**. Notably, this reduction does NOT include any reduction for the numerous times that Plaintiffs' counsel's attorneys worked on the same motion, etc. A further reduction for inefficiency and duplication (i.e., failure to efficiently divide labor) should be applied.

If the Court is inclined to grant Plaintiffs any award of fees, the award should be reduced the $11,713.00 that Plaintiffs seek for their prior denied motion for fees, further reduced by the $1,934.63 associated with intraoffice conferences, and further reduced significantly for the duplication of effort exhibited by the billing records.

b. Vague entries render it impossible to determine whether the work was reasonable and necessary, and must be disallowed

Several of the claimed time entries are so lacking in detail that it is impossible to determine whether the described tasks were reasonable and necessary. Indeed, those entries are so deficient in description that the Court cannot determine whether the hours were "reasonably expended" or reflect "poor billing judgment." *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). Those hours must be disallowed. *Id.*, 461 U.S. at 437; *Neil v. Comm'r of Soc. Sec.*, 495 F. App'x 845, 847 (9th Cir. 2012) (district court appropriately cut time "that was vague and inadequately explained").

For example, other courts have found time entries described simply as (which are similarly described here) as "research" are too vague and must be disallowed. *See e.g.*, *Beautyman v. Spirit*

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Airlines, Inc., No. CV 12-2011, 2012 WL 12897907, at *2 (E.D. Pa. May 30, 2012) ("With respect to the time spent on 'research,' we find that 'research' is too vague for us to conclude that this time was [reasonably and necessarily] incurred . . . ."); *In re Michigan Gen. Corp.*, 102 B.R. 554, 559 (Bankr. N.D. Tex. 1988) ("The Court disallows time entries labeled simply 'Lexis research' as being indefinite . . . ."); *In re Michigan Gen. Corp.*, 102 B.R. 554, 559 (Bankr. N.D. Tex. 1988) ("Examples of such impermissibly vague entries include 'research' . . . ."

Based on the foregoing, if this Court awards Plaintiffs any fees, the award must not include the following:

Date	Attorney	Task Description	Time Incurred	Amount
10/23/20	Wesley Smith	"Research"	0.90	$234.00
10/29/20	Wesley Smith	"Research Case Law"	0.90	$234.00
12/7/20	Wesley Smith	"Research"	0.20	$52.00
4/1/21	Wesley Smith	"…and Research"	0.20	$53.00
4/5/21	Wesley Smith	"Research Case Law"	2.00	$530.00
4/22/21	Laura Wolff	"Research Case Law"	0.80	$212.00
5/5/21	Wesley Smith	"Research"	0.60	$159.00
5/6/21	Wesley Smith	"Research"	0.60	$159.00
5/13/21	Daryl Martin	"Research"	0.30	$79.50
5/3/22	Wesley Smith	"Research"	1.20	$318.00
5/24/22	Wesley Smith	"Research"	3.80	$1,007.00
5/25/22	Wesley Smith	"Research"	0.10	$26.50
7/5/22	Daryl Martin	"Research"	0.30	$79.50
7/6/22	Daryl Martin	"Research"	0.20	$53.00
7/7/22	Wesley Smith	"Research"	1.30	$344.50
		TOTALS	**12.40**	**$3,541.00**

Other entries are too vague for a different reason, but equally evade review for reasonableness and necessity. As another court described, "the billing records contain numerous vague time entries throughout, generally referring to tasks, meetings or communications, such as 'Meeting with GM,' 'emails,' 'Conference with Co–Counsel,' 'Consult with DH,' 'reviewed correspondence,' 'research,' and 'telephone call with JC,' without any indication of the general subject matter of such communications or tasks, the number of communications or tasks, or any explanation to justify the time devoted to those tasks and communications." *Potter v. Blue Cross Blue Shield of Michigan*, 10 F. Supp. 3d 737, 764–65 (E.D. Mich. 2014); *accord*, *Dardar v. T&C Marine, L.L.C.*, No. CV 16-13797, 2018 WL 3950396, at *8 (E.D. La. May 3, 2018), report and recommendation adopted, No. CV 16-13797, 2018 WL 3927501 (E.D. La. Aug. 16, 2018) ("a few

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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entries are too vague to permit meaningful review, including, for example: September 1, 2016, 'telephone call with D. Meeks;' December 21, 2016, 'phone call with client' . . . .")

Based on the foregoing, if this Court awards Plaintiffs any fees, the award must not include the following:

Date	Attorney	Task Description	Time Incurred	Amount
10/23/20	Laura Wolff	"emails to and from W. Smith"	0.10	$26.00
3/17/21	Wesley Smith	"email to L Wolff"	0.20	$53.00
3/26/21	Laura Wolff	"email to W Smith"	0.10	$26.50
3/29/21	Wesley Smith	"email to L Wolff"	0.10	$26.50
3/29/21	Wesley Smith	"email from C Wang"	0.10	$26.50
4/1/21	Laura Wolff	"telephone call to W Smith"	0.70	$185.50
4/12/21	Laura Wolff	"Telephone call with W Smith"	0.10	$26.50
4/13/21	Wesley Smith	"conference with L Wolff"	0.20	$53.00
4/13/21	Laura Wolff	"Telephone call with W Smith"	0.10	$26.50
4/16/21	Laura Wolff	"telephone call to Clerk"	0.10	$26.50
4/16/21	Laura Wolff	"telephone call to opposing counsel"	0.10	$26.50
4/27/21	Laura Wolff	"telephone with W Smith"	0.50	$132.50
4/29/21	Laura Wolff	"Telephone conference with W Smith"	0.10	$26.50
5/3/21	Wesley Smith	"telephone call to L Wolff"	0.10	$26.50
5/3/21	Laura Wolff	"Telephone call with W Smith"	0.20	$53.00
5/12/21	Wesley Smith	"Emails to and from L Wolff and Clerk"	0.20	$53.00
5/12/21	Daryl Martin	"Telephone call from W Smith"	0.20	$53.00
5/13/21	Daryl Martin	"conference with W Smith"	0.30	$79.50
5/14/21	Laura Wolff	"emails to and from W Smith"	0.60	$159.00
5/28/21	Wesley Smith	"email from L Wolff"	0.10	$26.50
5/28/21	Laura Wolff	"email to W Smith"	0.10	$26.50
2/18/22	Wesley Smith	"emails to and from L Wolff and K Christensen"	0.10	$26.50
2/21/22	Laura Wolff	"E-mails to and from W Smith"	0.10	$26.50
3/9/22	Wesley Smith	"email to L Wolff"	0.20	$53.00
3/10/22	Wesley Smith	"Email from L Wolff"	0.10	$26.50
3/10/22	Wesley Smith	"email to L. Wolff"	0.10	$26.50
3/11/22	Wesley Smith	"Emails from L Wolff"	0.10	$26.50
4/1/22	Wesley Smith	"emails to and from L Wolff"	0.20	$53.00
4/14/22	Wesley Smith	"email to K Christensen and L Wolff"	0.10	$26.50
4/14/22	Wesley Smith	"emails to and from C Wang"	0.10	$26.50
4/14/22	Wesley Smith	"emails to and from L Wolff"	0.10	$26.50
4/14/22	Kevin Christensen	"email from Attorney"	0.05	$13.25
4/20/22	Wesley Smith	"review, revise and send email to Clients"	0.20	$53.00
4/20/22	Wesley Smith	"telephone calls and emails to Clients"	0.30	$79.50
4/25/22	Wesley Smith	"emails to and from K Christensen and L. Wolff"	0.20	$53.00
4/28/22	Wesley Smith	"emails to and from K Christensen"	0.10	$26.50
5/12/22	Wesley Smith	"email to K Christensen and L Wolff"	0.10	$26.50

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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5/25/22	Kevin Christensen	"preparation for and conference with Clients"	0.70	$185.50
5/25/22	Wesley Smith	"conference with K Christensen	0.20	$53.00
5/25/22	Wesley Smith	"preparation for Meeting; conference with Client"	1.40	$371.00
5/25/22	Wesley Smith	"conference with K Christensen"	0.20	$53.00
6/29/22	Wesley Smith	"email to D Martin"	0.10	$26.50
7/6/22	Daryl Martin	"email to W Smith"	0.10	$26.50
7/7/22	Wesley Smith	"email to and telephone call from D Martin"	0.20	$53.00
7/7/22	Daryl Martin	"Emails from W Smith"	0.10	$26.50
7/7/22	Daryl Martin	"telephone call to W Smith"	0.20	$53.00
7/12/22	Daryl Martin	"Conference with W Smith"	0.40	$106.00
11/10/22	Wesley Smith	"email to Client"	0.20	$53.00
11/10/22	Wesley Smith	"emails to and from L Wolff"	0.20	$53.00
11/23/22	Wesley Smith	"review Judges Information"	0.30	$79.50
11/28/22	Wesley Smith	"review files"	0.40	$106.00
11/29/22	Wesley Smith	"emails to and from D Martin"	0.10	$26.50
11/29/22	Daryl Martin	"review file"	0.10	$26.50
11/30/22	Daryl Martin	"Conference with W Smith"	0.40	$106.00
11/30/22	Wesley Smith	"emails to and from C Wang"	0.20	$53.00
11/30/22	Wesley Smith	"telephone call from D Martin"	0.40	$106.00
12/6/22	Wesley Smith	"conference with C Wang"	0.70	$185.50
12/6/22	Wesley Smith	"conference with K Christensen"	0.30	$79.50
12/29/22	Wesley Smith	"emails to and from Clients"	0.10	$26.50
1/4/23	Wesley Smith	"Review and revise notes"	0.60	$159.00
1/6/23	Wesley Smith	"Email from L Wolff"	0.05	$13.25
1/6/23	Wesley Smith	"email to L Wolff"	0.05	$13.25
1/19/23	Wesley Smith	"email to Clients"	0.10	$26.50
1/25/23	Wesley Smith	"conference with D Martin and E James"	0.10	$26.50
2/1/23	Wesley Smith	"email to Clients"	0.50	$132.50
2/13/23	Wesley Smith	"emails to and from C Wang"	0.10	$26.50
2/13/23	Wesley Smith	"conference with D Martin"	0.10	$26.50
2/24/23	Wesley Smith	"emails to and from C Wang"	0.10	$26.50
2/24/23	Wesley Smith	"emails to and from and telephone call from L Wolff"	0.10	$26.50
3/13/23	Wesley Smith	"emails to and from L Wolff"	0.10	$26.50
3/14/23	Laura Wolff	"email to W Smith"	0.10	$26.50
3/27/23	Wesley Smith	"email to Clients"	0.10	$26.50
4/24/23	Wesley Smith	"review Statutes"	0.20	$53.00
4/28/23	Wesley Smith	"emails to and from L Wolff"	0.10	$26.50
		TOTALS	**15.95**	**$4,226.25**

c. Research to familiarize with rules of procedure is not compensable

Litigating attorneys are expected, as part of their professional competence, to know the rules that govern their practice. To the extent they need to learn or re-familiarize themselves with the rules (which all attorneys admittedly must do from time to time), such is not billable to a client, to say nothing of requiring one's opponent to pay for such self-education through a fee-shifting

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3993 Howard Hughes Parkway, Suite 600
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statute. In other words, the issue is NOT whether an attorney should, from time to time, refamiliarize him/herself with the applicable rules—the issue IS whether the attorney can bill for such (or, more relevant to the present setting, whether those tasks are compensable when attempting to shift fees to one's opponent). *See Dormeyer v. Comerica Bank-Illinois*, No. 96 C 4805, 1999 WL 608771, at *4 (N.D. Ill. Aug. 6, 1999), aff'd, 223 F.3d 579 (7th Cir. 2000) ("The improper claims fall into five categories. The first category are items which are **never compensable**, such as the billed hours for Plaintiff's attorneys reacquainting themselves with the rules.") (Emphases added); *In re St. Pierre*, 4 B.R. 184, 186 (Bankr. D.R.I. 1980) ("[P]art of the time spent on this case was to review and familiarize himself generally with the new Bankruptcy Code. We feel that time spent in this manner cannot be billed to a particular client and should probably be considered a cost of doing business.")

Plaintiffs' counsel are experienced trial lawyers and hold themselves out as having much appellate experience. (*See* Smith Decl. at 3:20-21 ("I am also admitted to practice before the United States Supreme Court and Ninth Circuit Court of Appeals.); 4:2-5 ("I routinely handle all aspects of appeals before the Nevada Supreme Court and the Ninth Circuit Court of Appeals on a variety of matters. I also co-authored an amicus brief to the United States Supreme Court."); 4:14-16 (Mr. Christensen "has . . . argued multiple cases before the Nevada Supreme Court."); 5:3-6 ("Mr. Martin has experience handling appeals before the Nevada Supreme Court and the Ninth Circuit Court of Appeals. He is admitted to practice before [the] United States Supreme Court.")). Yet, several time entries reflect efforts to learn or re-familiarize themselves with various rules of procedure—a total of 6.2 hours ($1,627.50) to learn or re-learn rules of procedure. Even if Plaintiffs' counsel convinced their clients to pay for this self-education (which, presumably, can be used in future cases), the cost of such cannot be shifted to the Lytle Trust (or anyone).

Based on the foregoing, if this Court awards Plaintiffs any fees, the award must not include the following:

Date	Attorney	Task Description	Time Incurred	Amount
7/2/20	Laura Wolff	"Research Appellate Rules regarding Settlement Program"	0.40	$104.00

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3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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8/3/20	Wesley Smith	"Review NRAP"	0.30	$78.00
8/10/20	Wesley Smith	"Review Notice from Supreme Court, Docketing Statement and NRAP"	0.40	$104.00
10/21/20	Wesley Smith	"review NRAP"	0.30	$78.00
10/28/20	Wesley Smith	"Research timing requirements"	1.10	$286.00
12/1/20	Wesley Smith	"Research Rules"	0.40	$104.00
12/1/20	Wesley Smith	"review Deadlines for Merits Briefs"	0.10	$26.00
12/1/20	Wesley Smith	"review Rules for Timing Requirements"	0.10	$26.00
4/5/21	Wesley Smith	"Research and review NRAP"	0.50	$132.50
2/18/22	Wesley Smith	"review Case Strategy, NRCP, NRS and NRAP"	0.60	$159.00
4/14/22	Wesley Smith	"review Civil Practice Manual and NRAP 21"	0.20	$53.00
6/8/22	Wesley Smith	"check NRAP requirements"	0.20	$53.00
11/30/22	Wesley Smith	"review NRAP and Supreme Court Rules regarding Oral Argument"	0.40	$106.00
1/3/23	Wesley Smith	"review NRAP and NRCP regarding Costs and Fee Motions and Procedural Matters"	0.60	$159.00
1/25/23	Wesley Smith	"review NRAP regarding En Banc Reconsideration"	0.20	$53.00
1/31/23	Wesley Smith	"review NRAP 40 regarding Motion for Rehearing"	0.20	$53.00
3/14/23	Laura Wolff	"review Appellate Rules regarding En Banc"	0.20	$53.00
		TOTALS	**6.20**	**$1,627.50**

d. Paralegal tasks are not compensable at partner rates

Plaintiffs' counsel apparently either do not have or choose not to use paralegal services, and to instead have services performed by partners that would normally be performed by paralegals. If compensable at all, the rate should be at rates for paralegals, i.e., the Lytle Trust should not be penalized because Plaintiffs' counsel chooses to either not employ paralegals or to have paralegal tasks performed by partners. The tasks falling into this paralegal category include the following, which are not compensable at all unless Plaintiffs satisfy their burden regarding prevailing rates for paralegals:

Date	Attorney	Task Description	Time Incurred	Amount
5/12/21	Wesley Smith	"preparation of Table of Authorities and Table of Contents"	2.40	$636.00
5/12/21	Wesley Smith	"preparation of Certificate of Compliance"	0.20	$53.00
5/13/21	Wesley Smith	"revise Table of Authorities and Table of Contents"	0.40	$106.00
6/8/22	Wesley Smith	"preparation of Table of Authority"	0.40	$106.00

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
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6/8/22	Wesley Smith	"preparation of Certificates of Compliance"	0.30	$79.50
		TOTALS	**3.70**	**$980.50**

e. Clerical tasks are not compensable

"Purely clerical or secretarial tasks, that is, non-legal work, should not be billed . . . regardless of who performs the work." *Adkins v. Commissioner of Social Security*, 393 F. Supp.3d 713, 720 (N.D. Ohio 2019). That's because "[c]osts associated with clerical tasks are typically considered overhead expenses reflected in an attorney's hourly billing rate and are not properly reimbursable." *Lemus v. Timberland Apartments, LLC*, 876 F. Supp.2d 1169, 1179 (D. Or. 2012). Indeed, as the United States Supreme Court declared: The "dollar value [of a clerical task] is not enhanced just because a lawyer does it." *Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989).

In a prior motion for fees filed by Plaintiffs, this Court ruled: "The Court will not award fees for work described in the briefing as clerical work, which the Court has determined totals $23,374.00." (Order (5/4/21) at 8:10-11). Despite this ruling and prior reduction, Plaintiffs again seek an award for their attorneys (partner-level attorneys) to perform clerical tasks, albeit not to the same extent as before. The Court's prior ruling is law of the case and need not be re-visited.

"[F]iling records in a drawer [or on a computer] are secretarial tasks and not compensable." *Dimatteo v. Sec'y of Health & Hum. Servs.*, No. 10-566V, 2014 WL 1509320, at *7 (Fed. Cl. Mar. 27, 2014) (citing *Vickery v. Sec'y of Health & Human Servs.,* No. 90–997V, 1992 WL 281073 (Fed.Cl.Spec.Mstr. Sep. 24, 1992)); *accord*, *Montoya v. Colvin*, No. 14-CV-0836 LH/SMV, 2015 WL 13651170, at *1 (D.N.M. Dec. 16, 2015), *report and recommendation adopted*, No. CV 14-0836 LH/SMV, 2016 WL 10592306 (D.N.M. Jan. 11, 2016) ("clerical work—such as electronic filing—is not compensable at all").

Similarly, "[t]asks considered clerical include . . . calendaring dates . . . ." *McKenzie Flyfishers v. McIntosh* 158 F. Supp.3d 1085, 1096 (D. Or. 2016); *accord*, *Knudson v. Barnhart*, 360 F. Fupp.2d 963, 977 (N.D. Iowa 2004) (clerical tasks include "calendar briefing . . . and are not compensable . . . at any rate."); *I.T. ex rel. Renee T. v. Dep't of Educ., Hawaii*, 18 F. Supp.3d 1047, 1062 (D. Haw. 2014) (non-compensable clerical tasks include "calendaring dates").

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Based on the foregoing authorities and this Court's prior rulings, if it awards Plaintiffs any fees, the award must not include the following:

Date	Attorney	Task Description	Time Incurred	Amount
10/22/20	Wesley Smith	"file notes"	0.30	$78.00
12/7/20	Wesley Smith	"preparation for filing Reply"	0.40	$104.00
5/14/21	Wesley Smith	"preparation for filing"	0.10	$26.50
4/19/22	Wesley Smith	"file notes"	0.60	$159.00
5/25/22	Kevin Christensen	"file notes regarding Instructions"	0.10	$26.50
5/25/22	Wesley Smith	"file notes"	0.40	$106.00
7/19/22	Wesley Smith	"preparation for filing"	0.05	$13.25
10/6/22	Wesley Smith	"file notes regarding Hearing and Status Report Requirements"	0.10	$26.50
10/14/22	Wesley Smith	"file notes regarding Status Check and Hearing Date"	0.10	$26.50
11/10/22	Wesley Smith	"file notes regarding Hearing Date"	0.10	$26.50
11/28/22	Wesley Smith	"file notes regarding Oral Argument"	0.20	$53.00
11/29/22	Wesley Smith	"file notes"	0.60	$159.00
1/3/23	Wesley Smith	"file notes regarding Case Strategy"	0.90	$238.50
2/9/23	Wesley Smith	"file notes regarding new Hearing Date"	0.05	$13.25
4/24/23	Wesley Smith	"file notes regarding Fees Motion"	0.60	$159.00
4/25/23	Wesley Smith	"File notes regarding Case Status and possible Fees Motion related to Appeals"	0.80	$212.00
4/26/23	Wesley Smith	"calendar Clients regarding Fee Motion for Department 16 before Judge Williams; file notes"	0.30	$79.50
4/26/23	Wesley Smith	"File notes regarding Case Status and possible Fees Motion related to Appeals"	0.80	$212.00
		TOTALS	**6.50**	**$1,719.00**

f. Tasks associated with the Receivership Action are not compensable

Plaintiffs seek reimbursement here for a task performed by their counsel on May 23, 2022 by partner Kevin Christensen and described as "Conference with W Smith regarding Receiver Fee Orders and Hearing." This task reflects 0.20 hours for a fee of **$53.00**. This entry should have been billed under the Receivership Action (where Judge Kishner denied Plaintiffs' (Intervenors') motion for fees), not billed here.

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LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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III.

CONCLUSION

For all the foregoing reasons, Plaintiffs' motion for fees should be DENIED in its entirety (Plaintiffs' request for costs is not opposed). Alternatively, if the Court is inclined to render some award of fees to Plaintiffs, the requested fee must be reduced for the following:

Reduction to rates actually charged:	**$42,215.60**
Reduction for excessive/duplicative work:	**$11,713.00**
Reduction for intraoffice conferences:	**$1,934.63**
Reduction for "research" entries:	**$3,541.00**
Reduction for other vague entries:	**$4,226.25**
Reduction for learning rules of procedure:	**$1,627.50**
Reduction for paralegal tasks performed by partners:	**$980.50**
Reduction for clerical tasks performed by partners:	**$1,719.00**
Reduction for entry related to Receivership:	**$53.00**
TOTAL REDUCTION	**$68,010.48**

Additionally, a further substantial reduction should be made to account for the overlap of multiple attorneys working on the same motions, briefs, etc.

Dated this 13th day of June, 2023.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: *Dan R. Waite*

Dan R. Waite (SBN 4078)
Joel D. Henriod (SBN 8492)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Defendants, Trudi Lee Lytle and John Allen Lytle as Trustees of the Lytle Trust

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this day, I caused a true and correct copy of the following ***"DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS"*** to be e-filed and served via the Court's E-Filing System.

Wesley J. Smith
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Ave.
Las Vegas, NV 89117
Attorneys for Intervenors September Trust, Zobrist Trust, Sandoval Trust and Dennis & Julie Gegen

Daniel T. Foley
FOLEY & OAKES, PC
1210 S. Valley View Blvd., #208
Las Vegas, NV 89102
Attorneys for Marjorie Boulden Trust and Linda and Jacques Lamothe Trust

Christina H. Wang
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, NV 89113
Attorneys for Counter-Defendants/Cross-Claimants Robert Z. Disman and Yvonne A. Disman

Dated this 13th day of June, 2023

/s/ Luz Horvath
An Employee of Lewis Roca Rothgerber Christie LLP

LEWIS ROCA
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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EXHIBIT A

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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, 1994 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 antennas or other device for the transmission or reception of television or radio signals 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.

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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.

6. 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 lot owners and the private sewer system within the Private Drive and easement area 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

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

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

(this area for official seal)

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

FRANCES DEANE OF
CLARK COUNTY, NEVADA
CERTIFIES THIS IS A
TRUE COPY OF PRESSED
WITH OUR OFFICIAL SEAL

2006 APR 26 A 11:43

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Deane

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 B

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EXHIBIT B

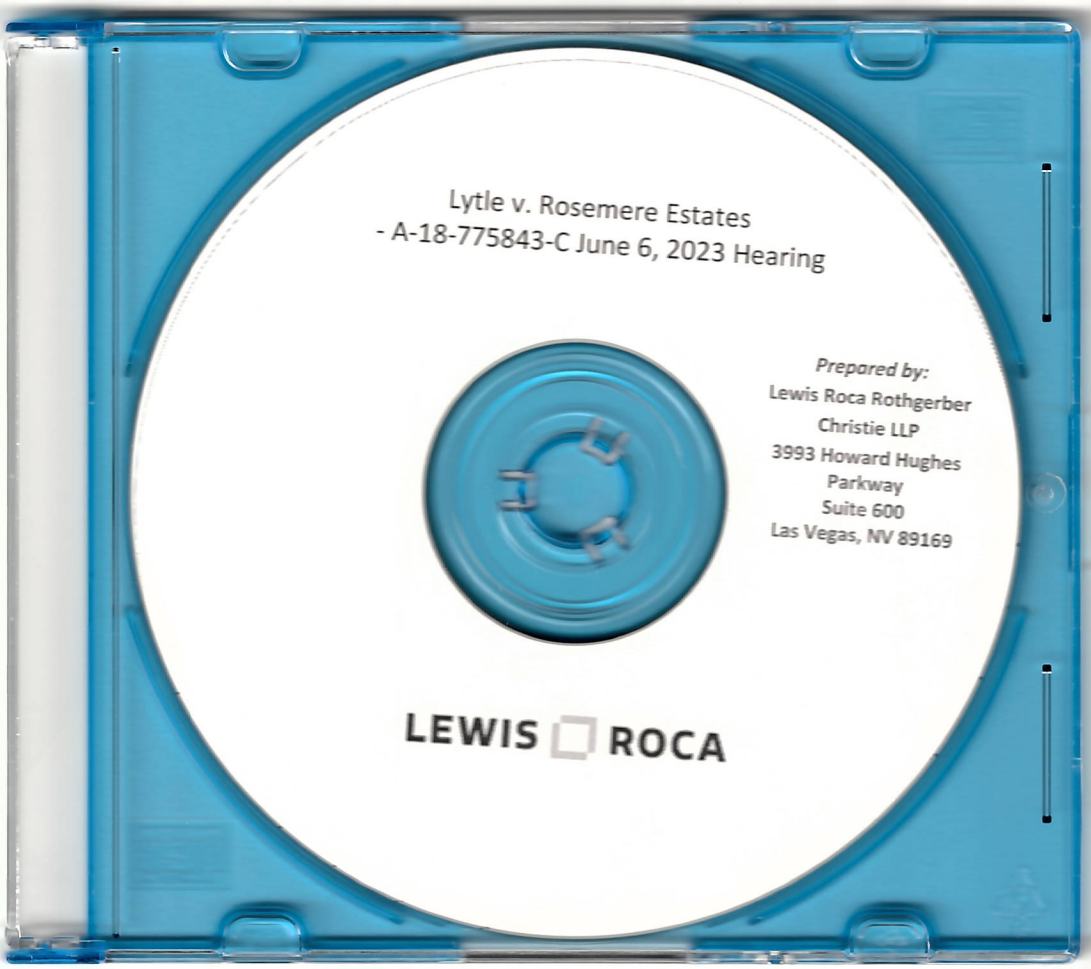

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EXHIBIT C

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EXHIBIT C

IN THE SUPREME COURT OF THE STATE 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.	No. 81689
TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST, Petitioners, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT JUDGE, Respondents, and SEPTEMBER TRUST, DATED MARCH 23, 1972; GERRY R. ZOBRIST AND	No. 84538

FILED

DEC 29 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

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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; ROBERT Z. DISMAN; AND YVONNE A. DISMAN,
Real Parties in Interest.

ORDER AFFIRMING IN DOCKET NO. 81689 AND DENYING PETITION FOR A WRIT OF MANDAMUS IN DOCKET NO. 84538

Docket No. 84538 is an original petition for a writ of mandamus or, alternatively, prohibition challenging a contempt order in a real property action. It is consolidated with Docket No. 81689, an appeal challenging an award of attorney fees and costs relating to the contempt order. Petitioners/appellants, Trudi and John Lytle as trustees of the Lytle Trust ("the Lytles"), and real parties in interest/respondents ("Property Owners") own homes that are part of non-party Rosemere Estates Property Owners Association ("Association"). After extensive litigation against the Association over assessments recorded against the Lytles' property under an amended version of the CC&Rs, the Amended CC&Rs were declared *void ab initio* and the Lytles were awarded judgments totaling more than $1.4 million.[1] Importantly, the original CC&Rs do not allow for the Association to impose assessments on property owners. The Lytles' attempts to collect

[1]The Property Owners were not parties to the cases awarding judgments against the Association.

led them to record abstracts of judgments and *lis pendens* against the Property Owners' homes. The Property Owners brought separate cases, which were later consolidated, seeking to strike the recorded judgments and enjoin future collection attempts against them (the "resident actions"). In May 2018, the district court in the resident actions permanently enjoined the Lytles from "recording or enforcing" judgments obtained against the Association against the Property Owners' homes or "taking any action in the future directly against" the Property Owners or their homes in relation to the judgments ("May 2018 Order").[2]

The Lytles then commenced a new action (the "receivership action") seeking the appointment of a receiver over the Association to facilitate payment of the prior judgments. The receivership action was randomly assigned to a different district court department than the one handling the resident actions. In the receivership action, the Lytles specifically requested that the receiver have the power to "[i]ssue a special assessment upon all owners within the Association, except the Lytle Trust, to satisfy (or, at least, partially satisfy) the Lytle Trust's judgments against the Association." The Lytles informed the district court in the receivership action that the Amended CC&Rs had been declared *void ab initio* in earlier litigation but nonetheless argued the Association had the authority to make assessments against individual homeowners under the Amended CC&Rs. The Lytles also did not inform the district court in the receivership action of the injunctions issued in the resident actions. Ultimately, the district

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[2]This court affirmed that order on appeal. *Lytle v. September Trust, Dated March 23, 1972*, Nos. 76198, 77007, 2020 WL 1033050 (Nev. Mar. 2, 2020) (Order of Affirmance).

court in the receivership action appointed the receiver as requested and empowered the receiver to impose assessments on the Property Owners.

After learning of the receiver's appointment, the Property Owners filed a motion for an order to show cause in the resident actions why the Lytles should not be held in contempt for violating the May 2018 Order entered in those cases. The district court in the resident actions granted the motion, holding the Lytles in contempt and ordering the Lytles to pay attorney fees and costs to the Property Owners.

Because the district court did not manifestly abuse its discretion by holding the Lytles in contempt, we deny the requested writ relief.[3] *See Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000) (providing that contempt orders may be challenged through a writ petition, but mandamus is typically only available to control a "manifest abuse of discretion" and "[w]hether a person is guilty of contempt is generally within the particular knowledge of the district court, and the district court's order should not lightly be overturned"). We conclude the May 2018 Order clearly and unambiguously prohibited the Lytles' future reliance on the Association's powers under the Amended CC&Rs.[4] *See Mack-Manley v. Manley*, 122 Nev. 849, 858, 138

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[3]While the Lytles alternatively seek a writ of prohibition, we conclude mandamus relief is proper because they do not assert that the district court exceeded its jurisdiction by entering the contempt order. *See* NRS 34.320.

[4]While we conclude that the Lytles were prohibited from enforcing the powers in the Amended CC&Rs, nothing in the plain text of the May 2018 Order prohibited them from seeking the appointment of a receiver over the Association. *See U.S. Bank Nat'l Ass'n v. Palmilla Dev. Co.*, 131 Nev. 72, 77, 343 P.3d 603, 606 (2015) (explaining that an appointed receiver is merely an officer of the court, with "no powers other than those conferred

P.3d 525, 532 (2006) ("An order on which a judgment of contempt is based must be clear and unambiguous."). The May 2018 order enjoined the Lytles "from taking any action in the future directly against" the Property Owners or their homes, and included findings of fact noting that the Amended CC&Rs had no force and effect. Further, at various stages of the Lytles' litigation, the district courts and this court issued orders that the Amended CC&Rs were *void ab initio* and the Association had no power through the original CC&Rs or NRS Chapter 116 to make assessments against the unit owners. *See Lytle v. September Trust, Dated March 23, 1972*, Nos. 76198, 77007, 2020 WL 1033050, at *2 (Nev. Mar. 2, 2020). That constitutes law of the case here. *See Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010) (stating that under the law-of-the-case doctrine when an appellate court decides a principle or rule of law either expressly or by necessary implication, "that decision governs the same issues in subsequent proceedings in that case"); *LoBue v. State ex rel. Dep't of Highways*, 92 Nev. 529, 532, 554 P.2d 258, 260 (1976) ("The law of the first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same." (internal quotation marks omitted)).

We further conclude that the Lytles disobeyed the order of the district court in the resident actions when applying for the receiver in the receivership action by arguing that under the Amended CC&Rs, "the Association has the power and authority to assess each 'Lot' or unit for the total amount of any judgments against the Association in proportion to ownership within the Association." A district court may hold a party in contempt for their "[d]isobedience or resistance to any

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upon him by the order of his appointment" (internal quotation marks omitted).

lawful . . . order . . . issued by the court." NRS 22.010(3). In holding the Lytles in contempt, the district court relied, in part, on their having argued that the Association, through the receiver, could make special assessments on the Property Owners for the purpose of paying the judgments when the Association had no power to do so under the original CC&Rs. Discerning no manifest abuse of discretion in the district court's ruling, we deny the Lytles' petition for a writ of mandamus.

Additionally, the Lytles appeal of the attorney fee award was premised solely only on their argument that the fee award must be reversed if their petition was granted. Because we deny the petition, we necessarily affirm the attorney fees awarded as a result of the contempt order. *See, e.g.*, *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 494-95, 215 P.3d 709, 726 (2009) ("[I]f we reverse the underlying decision of the district court that made the recipient of the costs the prevailing party, we will also reverse the costs award."). Accordingly, we

DENY the petition in Docket No. 84538 and AFFIRM the district court order challenged in Docket No. 81689.

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_____, J.
Hardesty

_____, J.
Stiglich

_____, J.
Herndon

cc: Hon. Timothy C. Williams, District Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Christensen James & Martin
Fidelity National Law Group/Las Vegas
Eighth District Court Clerk

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EXHIBIT D

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EXHIBIT D

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A-18-775843-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Real Property | **COURT MINUTES** | **March 12, 2020**

A-18-775843-C Trudi Lytle, Plaintiff(s)
vs.
Rosemere Estates Property Owners' Association, Defendant(s)

March 12, 2020 **09:00 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Garcia, Louisa

RECORDER: Harrell, Sandra

REPORTER:

PARTIES PRESENT:

Dan R Waite	**Attorney for Plaintiff, Receiver, Trustee**
Patricia Lee	**Attorney for Receiver**
Wesley J. Smith, ESQ	**Attorney for Intervenor**

JOURNAL ENTRIES

Kevin Singer, Receiver, appeared via Court Call.

Mr. Smith stated he filed a Motion to Intervene set for April 7. Upon Court's inquiry, Mr. Wait stated he does not oppose the proposed intervention; however, they oppose the allegations. Colloquy regarding case history. Ms. Lee stated the receiver has been diligent in bringing the association current with the Secretary of State. However, the homeowner's meeting was called off due to a cease and desist letter. Pursuant to oral stipulation, COURT ORDERED, Motion to Intervene ADVANCED from April 7, 2020 and GRANTED; Stipulation and Order signed and returned in open Court. Upon Court's inquiry, counsel stated they would have to consult with their clients regarding mediation. Court advised its prior order still stands.

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EXHIBIT E

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EXHIBIT E

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			Hrs/Rate	Amount
5/13/2021	WJS	Conferences with D Martin regarding Brief and Appeal Arguments (.3); review redline and incorporate changes (1.2); preparation of and revise Answering Brief (1.6); review and insert Keycite Citations (.6); revise Table of Authorities and Table of Contents (.4); email to L Wolff regarding review of Brief (.1)	1.050 265.00/hr	278.25
	DEM	Research (.3); review Lytle Trust's Opening Brief (.4); revise Appeal Brief (1.9); conference with W Smith (.3)	0.725 265.00/hr	192.13
5/14/2021	WJS	Email from L Wolff regarding review of Answering Brief (.2); review and revise Answering Brief (1); preparation for filing (.1)	0.325 265.00/hr	86.13
	LJW	Review and revisions to final Brief in Contempt Appeal (1.4); emails to and from W Smith (.6)	0.500 265.00/hr	132.50
5/28/2021	WJS	Review Notice from Court (.1); review Disman's Answering Brief (.4); email from L Wolff (.1)	0.150 265.00/hr	39.75
	LJW	Review Brief from Disman's Counsel (.4); email to W Smith (.1)	0.125 265.00/hr	33.13
6/4/2021	WJS	Review Notices from Court and review Amended Notice of Appeal and Amended Case Appeal Statement (.4)	0.100 265.00/hr	26.50
6/28/2021	WJS	Emails to and from J Henroid regarding Extension of Reply Brief (.1)	0.025 265.00/hr	6.63
7/29/2021	WJS	Review Notice from Supreme Court, review Motion for Extension of Reply Brief filed by Lytle Trust (.2)	0.050 265.00/hr	13.25
8/9/2021	WJS	Review Notice from Supreme Court regarding Extension Order and review Order (.1)	0.025 265.00/hr	6.63
8/30/2021	WJS	Review Notice from Supreme Court regarding Motion for Extension and review Motion (.2)	0.050 265.00/hr	13.25
9/13/2021	WJS	Review Lytle's Reply Brief in Support of Contempt Appeal (.4)	0.100 265.00/hr	26.50
2/18/2022	WJS	Review Notice from Supreme Court and review Order of Dismissal (.5); emails to and from L Wolff and K Christensen (.1); review Case Strategy, NRCP, NRS and NRAP (.6); email to K Christensen regarding Recovery of Fees (.1); review Fee Statement and Summary (.2)	0.375 265.00/hr	99.38
	LJW	Review Order from Court and emails to and from W Smith (.1)	0.025 265.00/hr	6.63
2/21/2022	LJW	E-mails to and from W Smith (.1)	0.025 265.00/hr	6.63
2/25/2022	WJS	Conference with L Wolff regarding potential Motion for Fees and Costs (.2); email to Clients regarding Order Dismissing Appeal, Fees and Costs (.1)	0.075 265.00/hr	19.88

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			Hrs/Rate	Amount
3/1/2022	WJS	Review Fee Statements for Contempt Appeal (.8); prepare notes on revisions for fees Motion (.6); email to Clerk regarding preparation for Statements for Contempt Appeal Fees (.1)	0.375 265.00/hr	99.38
	LJW	Review and mark Billings regarding Contempt Appeal Fees (2.5); emails to and from W Smith regarding Fees (.3)	0.700 265.00/hr	185.50
3/2/2022	LJW	Preparation of Attorney's Fees Motion for Contempt Appeal (1.5); Research Contempt Statutes/Rules and Fees (1.4)	0.725 265.00/hr	192.13
	WJS	Telephone calls to and from C Wang regarding Supreme Court Dismissal, impact on District Court Case and Litigation Strategy (.7)	0.175 265.00/hr	46.38
3/3/2022	LJW	Preparation of Introduction for Attorney's Fees Motion for Contempt Appeal (.5); Research Contempt and Fees (.5)	0.250 265.00/hr	66.25
3/4/2022	LJW	Preparation of Points and Authorities for Attorney's Fees Motion for Contempt Appeal (1.0); Research Contempt and Fees (.4)	0.350 265.00/hr	92.75
3/7/2022	LJW	Continued Preparation of Points and Authorities for Attorney's Fees Motion for Contempt Appeal (3.1)	0.775 265.00/hr	205.38
3/8/2022	LJW	Preparation of Statement of Facts for Attorney's Fees Motion for Contempt Appeal (1.4)	0.350 265.00/hr	92.75
	WJS	Email from L Wolff regarding Motion for Fees (.1)	0.025 265.00/hr	6.63
3/9/2022	LJW	E-mails to and from Clerk regarding Billings for Motion for Contempt Appeal (.2)	0.050 265.00/hr	13.25
	WJS	Review Motion and Declaration drafts and preparation of redline revisions (2.5); email to L Wolff (.2)	0.675 265.00/hr	178.88
3/10/2022	WJS	Email from L Wolff (.1); review Fees and Statement (.2); review and revise Motion for Fees and Declaration (.8); email to L Wolff (.1)	0.300 265.00/hr	79.50
	LJW	Review and select Exhibits for Motion for Fees (1.3); revise Motion after W Smith review and prepare and revise Declaration (1.3)	0.650 265.00/hr	172.25
3/11/2022	LJW	Final revisions to Fees Motion, Declaration and Exhibits (.8)	0.200 265.00/hr	53.00
	WJS	Emails from L Wolff (.1); review final Motion and Declaration (.1)	0.050 265.00/hr	13.25
3/14/2022	LJW	Review Court Order regarding Hearing on Fees Motion (.1)	0.025 265.00/hr	6.63
	WJS	Review Motion for Fees and Hearing Notice and file notes (.1)	0.025 265.00/hr	6.63
3/22/2022	WJS	Review Notice from Supreme Court and review Remittitur (.1)	0.025 265.00/hr	6.63

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			Hrs/Rate	Amount
3/22/2022	LJW	Telephone call with W Smith regarding Hearing on Fees Motion (.1)	0.025 265.00/hr	6.63
3/28/2022	LJW	Review Opposition to Motion for Fees (.5); preparation of Reply to Opposition (.2)	0.175 265.00/hr	46.38
3/29/2022	LJW	Preparation of Reply to Opposition to Fees Motion (2.5)	0.625 265.00/hr	165.63
3/30/2022	LJW	Preparation of Reply to Opposition (1.0); Research on cases cited by Lytle Trust (2.0); telephone call to W Smith regarding Opposition (.5)	0.875 265.00/hr	231.88
	WJS	Conference with L Wolff regarding Lytle Trust Opposition to Fees Motion (.5)	0.125 265.00/hr	33.13
3/31/2022	LJW	Preparation of Points and Authorities in Reply to Opposition (2.0); Research the term Prevailing Party under Nevada Law (2.3)	1.075 265.00/hr	284.88
4/1/2022	LJW	Final Preparation of Reply to Opposition (1.0); preparation of Declaration for Reply (1.0); review Exhibits for filing and citing in Reply (1.3)	0.825 265.00/hr	218.63
	WJS	Review Reply Brief and preparation of Redline (1.6); emails to and from L Wolff (.2)	0.450 265.00/hr	119.25
4/4/2022	WJS	Review Notices from Court and review Hearing Notice (.1)	0.025 265.00/hr	6.63
4/5/2022	WJS	Review Notice from Supreme Court in Fees Appeal and review Lytle Motion to Extend Time (.2)	0.050 265.00/hr	13.25
4/8/2022	WJS	Review Notice from Court, review Order Granting Extension and file notes (.1)	0.025 265.00/hr	6.63
4/11/2022	LJW	Preparation of Oral Argument on Motion for Fees (1.9)	0.475 265.00/hr	125.88
4/12/2022	LJW	Preparation of Oral Argument on Motion for Fees; Appearance at Hearing on Fees Motion (2.0)	0.500 265.00/hr	132.50
4/13/2022	LJW	E-mails to and from opposing counsel regarding Order and Stipulation (.2); review Order and Stipulation on Fees Motion (.2)	0.100 265.00/hr	26.50
4/14/2022	LJW	E-mails to and from opposing counsel regarding Order and Stipulation (.2); telephone call to W Smith regarding Hearing and Issues (.4)	0.100 265.00/hr	26.50
	WJS	Email from D Waite regarding Settlement Offer (.1); email to K Christensen and L Wolff (.1); conference with K Christensen and review of Settlement Offer (.2)	0.100 265.00/hr	26.50
	WJS	Emails to and from L Wolff regarding Stipulation and Order on Fees Motion (.2); telephone call from L Wolff regarding Hearing and Issues (.4)	0.150 265.00/hr	39.75

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			Hrs/Rate	Amount
4/14/2022	WJS	Review Notices from Supreme Court regarding Writ Petition and review of Writ Petition (.8); review Civil Practice Manual and NRAP 21 (.2); emails to and from C Wang (.1); emails to and from L Wolff (.1)	0.300 265.00/hr	79.50
	KBC	Review Fees and Costs Settlement Offer with W Smith (.2); email from Attorney (.05)	0.063 265.00/hr	16.56
4/15/2022	LJW	Review email from Dan Waite (.1); email to W Smith regarding Settlement Proposal (.2)	0.075 265.00/hr	19.88
4/18/2022	WJS	Review Notices from District Court regarding Fees Motion (.1)	0.025 265.00/hr	6.63
4/19/2022	WJS	Review Lytle Settlement Offer (.1); preparation of email to Clients regarding Proposal and Recommendation (1.0); emails to and from and telephone call to L Wolff regarding Settlement (.2); file notes (.6); telephone calls to and from and emails to and from D Waite regarding Settlement Offer and Issues (.4)	0.600 265.00/hr	159.00
	LJW	Telephone call and email with W Smith regarding Offer (.2)	0.050 265.00/hr	13.25
4/20/2022	WJS	Email from D Waite regarding Settlement Offer (.2); review, revise and send email to Clients (.2); telephone calls and emails to Clients (.3); email to D Waite regarding Counteroffer (.3)	0.250 265.00/hr	66.25
	WJS	Review Lytle Writ Petition (1.2); review Appeal Brief (.2)	0.350 265.00/hr	92.75
4/22/2022	WJS	Email from D Waite regarding Counteroffer on Fees Appeal Settlement (.1)	0.025 265.00/hr	6.63
4/25/2022	WJS	Research (.6); review Counteroffer (.2); emails to and from K Christensen and L Wolff (.2)	0.225 265.00/hr	59.63
4/28/2022	KBC	Emails to and from Attorneys and Clients regarding Fees Negotiations (.25)	0.063 265.00/hr	16.56
	WJS	Email from D Waite regarding Settlement Offer on Fees Appeal (.1); emails to and from K Christensen (.1); email to and from Clients with Recommendation (.3); email to D Waite (.1)	0.150 265.00/hr	39.75
5/2/2022	WJS	Emails to and from D Waite regarding Settlement Offer (.1)	0.025 265.00/hr	6.63
5/5/2022	WJS	Review Notices from Supreme Court and review filed Appendix and Motion to Extend Time (.6)	0.150 265.00/hr	39.75
5/6/2022	WJS	Review Notices from Supreme Court and review Lytle Opening Brief (.5); review Order Granting Extension and Due Date (.1)	0.150 265.00/hr	39.75
5/12/2022	KBC	Review Pleadings Due Dates and Attorney email and notes regarding Due Dates (.15)	0.038 265.00/hr	9.94

EXHIBIT F

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EXHIBIT F

CHRISTENSEN, JAMES & MARTIN
ATTORNEYS AT LAW

INVOICE

7440 W. Sahara Ave.
Las Vegas, NV 89117
702/255-1718
702/255-0871 Fax
carma@cjmlv.com
Tax ID No. 88-0330040

For professional services rendered. Due upon receipt

Invoice submitted to:

Julie Marie Sandoval Gegen

May 11, 2023

Professional Services - Post Judgment and Appeals

			Hrs/Rate	Amount
6/22/2020	WJS	Review Notices from Court and review Notice of Appeal and Case Appeal Statement (.2)	0.050 260.00/hr	13.00
6/26/2020	WJS	Review Notices from NV S. Court regarding Docketing of Appeal (.1)	0.025 260.00/hr	6.50
7/2/2020	WJS	Review Notice from Supreme Court regarding Settlement Program (.1); emails to and from L Wolff regarding Procedures (.1); review Notice from Court regarding Disassociation of Counsel (.1); telephone calls to and from J Henriod regarding Cost Bond for Contempt Order Appeal (.1)	0.100 260.00/hr	26.00
	LJW	Research Appellate Rules regarding Settlement Program (.4); email to W Smith with Instructions (.2)	0.150 260.00/hr	39.00
7/7/2020	KBC	Conference with W Smith regarding Court Order and Appeal Issues (.1)	0.025 260.00/hr	6.50
7/10/2020	LJW	Preparation of Settlement Statement for Appeal (.1)	0.250 260.00/hr	65.00
	KBC	Review Nevada Supreme Court Settlement Program Notice and emails to and from Attorneys (.25)	0.063 260.00/hr	16.25
7/14/2020	WJS	Meeting with Clients regarding Supreme Court Settlement Conference (.8); email from Settlement Judge (.1); telephone call to L Wolff regarding Settlement Statement and proposed Fee Award Order (.2); emails to and from Settlement Judge (.1)	0.300 260.00/hr	78.00
7/17/2020	LJW	Review emails from Settlement Judge (.1)	0.025 260.00/hr	6.50

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			Hrs/Rate	Amount
7/23/2020	WJS	Preparation for Pre-Mediation Conference; review Case Summary and files (.4); email to Client (.1); participate in Pre-Mediation Conference call with Settlement Judge (Ishi Kunin), Joel Henroid, Christina Wang (.4); continue conference with J Henriod (.4); email from I Kunin (.05); email from J Gegan (.05)	0.350 260.00/hr	91.00
7/29/2020	WJS	Preparation for Meeting and telephone call to J Henriod regarding Settlement Program (.2)	0.050 260.00/hr	13.00
7/30/2020	WJS	Prepare for Meeting with Settlement Judge and review notes (.3); Pre-Mediation Conference with Settlement Judge (.2); email to Clients regarding end of Settlement Program and next steps (.4); conference with L Wolff regarding Analysis of Appeal Issues and Fees Order Issues (1.0)	0.475 260.00/hr	123.50
	LJW	Telephone call with W Smith regarding Case strategy and Appeals (1)	0.250 260.00/hr	65.00
8/3/2020	WJS	Review Notice from Supreme Court regarding Deadlines; review NRAP (.3)	0.075 260.00/hr	19.50
8/6/2020	LJW	Review Lytle Docketing Statement (.2)	0.050 260.00/hr	13.00
8/10/2020	WJS	Review Notice from Supreme Court, Docketing Statement and NRAP (.4)	0.100 260.00/hr	26.00
8/11/2020	KBC	Conference with W Smith regarding Appeals Issues (.35)	0.088 260.00/hr	22.75
8/28/2020	WJS	Emails to and from J Henroid; review Stipulations for Cash Bonds Pending Appeal (.2)	0.050 260.00/hr	13.00
10/21/2020	LJW	Review Case Appeal (.2)	0.050 260.00/hr	13.00
	WJS	Emails to and from L Wolff regarding Appeal-Ability of Contempt Order (.1); review NRAP (.3)	0.100 260.00/hr	26.00
10/22/2020	WJS	Caselaw Research regarding appealability of Contempt Order (1.1); file notes (.3); email to L Wolff for review (.1)	0.375 260.00/hr	97.50
10/23/2020	LJW	Research Writs and Motion to Dismiss (1.6); emails to and from W Smith (.1)	0.425 260.00/hr	110.50
	WJS	Email from L Wolff regarding appealability of Contempt Order Research (.1); Research (.9); email to L Wolff regarding Motion to Dismiss (.1)	0.275 260.00/hr	71.50
10/27/2020	LJW	Preparation of Motion to Dismiss (1)	0.250 260.00/hr	65.00
10/28/2020	LJW	Preparation of Motion to Dismiss (2.1)	0.525 260.00/hr	136.50

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			Hrs/Rate	Amount
10/28/2020	WJS	Conference with K Archibald regarding Motion to Dismiss Appeal (.2); Research timing requirements (1.1)	0.325 260.00/hr	84.50
10/29/2020	LJW	Preparation of Motion to Dismiss (3.2)	0.800 260.00/hr	208.00
	WJS	Conference with L Wolff regarding Arguments for Motion to Dismiss (.2); review and revise Motion to Dismiss (1.6); Research Caselaw (.9); preparation of Motion to Dismiss for filing (.6)	0.825 260.00/hr	214.50
12/1/2020	WJS	Review Notice from Supreme Court and review Lytle Trust Response to Motion to Dismiss Appeal of Contempt Order (.5); Research Rules (.4); emails to and from L Wolff regarding Response and Instructions for Reply Brief (.1); review Deadlines for Merits Briefs (.1); review Rules for Timing Requirements (.1); email to L Wolff regarding Deadlines and potential Motion to Extend Time or Stay Merits Briefing (.2)	0.350 260.00/hr	91.00
	LJW	Preparation of Reply to Opposition to Motion to Dismiss Contempt Appeal (.5)	0.125 260.00/hr	32.50
12/2/2020	LJW	Preparation of Reply to Opposition to Motion to Dismiss Contempt Appeal (.1)	0.025 260.00/hr	6.50
12/3/2020	LJW	Research Judicial Review (.8); preparation of Reply to Opposition to Motion to Dismiss Contempt Appeal (2.3)	0.775 260.00/hr	201.50
12/4/2020	LJW	Preparation of Reply to Opposition to Motion to Dismiss Contempt Appeal (4.2)	1.050 260.00/hr	273.00
	WJS	Review and revise Reply to Motion to Dismiss Contempt Appeal (1.9)	0.475 260.00/hr	123.50
12/7/2020	WJS	Review and revise Reply Brief on Motion to Dismiss Contempt Appeal, review Citations (.8); Research (.2); preparation for filing Reply (.4)	0.350 260.00/hr	91.00
1/13/2021	KBC	Review NV Supreme Court Order regarding Motion to Dismiss Appeal (.15)	0.038 260.00/hr	9.75
2/2/2021	WJS	Emails to and from J Henriod regarding Request for Additional Time on Contempt Appeal Brief (.1)	0.025 260.00/hr	6.50
3/16/2021	WJS	Review Notices from Supreme Court regarding Lytle's Opening Brief on Contempt Appeal (.1); telephone call to L Wolff regarding Contempt Appeal Response Brief (.2)	0.075 265.00/hr	19.88
	LJW	Telephone call with W Smith regarding Brief (.2)	0.050 265.00/hr	13.25
3/17/2021	LJW	Review Appellate Brief on Contempt (.4)	0.100 265.00/hr	26.50
	WJS	Review Lytle Trust's Opening Brief on Contempt Appeal and prepare file notes regarding Brief (6.1); email to L Wolff (.2)	1.580 265.00/hr	418.70

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			Hrs/Rate	Amount
3/18/2021	WJS	Review notes regarding Opening Brief (.4); conference with L Wolff regarding Opening Brief and outline for Response (.6)	0.250 265.00/hr	66.25
	LJW	Review Appellate Brief on Contempt (.6); telephone call to W Smith regarding outline of Brief Response (.6)	0.400 265.00/hr	106.00
3/19/2021	LJW	Preparation of Statement of Facts for Appellate Brief (1.3)	0.325 265.00/hr	86.13
3/20/2021	LJW	Preparation of Statement of Facts for Appellate Brief (.5)	0.125 265.00/hr	33.13
3/22/2021	LJW	Preparation of Statement of Facts for Appellate Brief (2.6)	0.650 265.00/hr	172.25
3/23/2021	LJW	Preparation of Introduction and Statement of Facts for Appellate Brief (2.5)	0.625 265.00/hr	165.63
3/24/2021	LJW	Preparation of Introduction and Statement of Facts for Appellate Brief (4.2)	1.050 265.00/hr	278.25
3/25/2021	LJW	Preparation of Introduction and Statement of Facts for Appellate Brief (4.2)	1.050 265.00/hr	278.25
3/26/2021	LJW	Review and revise Statement of Facts (2); preparation of Cites to Appendix (2.8); email to W Smith (.1)	1.225 265.00/hr	324.63
3/29/2021	LJW	Research Jurisdiction and preparation of Section on Jurisdiction (3.4)	0.850 265.00/hr	225.25
	WJS	Review and redline Statement of Facts for Respondents' Brief in Contempt Appeal (2); email to L Wolff (.1); email from C Wang (.1)	0.550 265.00/hr	145.75
3/30/2021	LJW	Research Jurisdiction and preparation of Section on Jurisdiction (1.5)	0.375 265.00/hr	99.38
3/31/2021	WJS	Emails from L Wolff regarding Respondents' Brief (.1); telephone call to C Wang regarding Appeal Brief (.6)	0.180 265.00/hr	47.70
4/1/2021	WJS	Conference with L Wolff regarding Argument for Respondents' Brief, Appendix documents and Research (.2)	0.050 265.00/hr	13.25
	LJW	Research Law of Case (2); preparation of Argument (1); telephone call to W Smith (.7)	0.925 265.00/hr	245.13
4/2/2021	LJW	Research Amendment of Injunctions (2); preparation of Argument (1.7)	0.925 265.00/hr	245.13
4/3/2021	LJW	Research Jurisdiction and preparation of Jurisdiction Section (3)	0.750 265.00/hr	198.75
4/5/2021	WJS	Emails to and from L Wolff regarding draft Respondents' Brief (.1); Research and review NRAP (.5)	0.150 265.00/hr	39.75

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			Hrs/Rate	Amount
4/5/2021	LJW	Research Case Law (2); preparation of Argument (2)	1.000 265.00/hr	265.00
4/6/2021	LJW	Research Amendment to Preliminary Injunction (.8); preparation of Argument (.3)	0.275 265.00/hr	72.88
4/12/2021	LJW	Telephone call with W Smith (.1); preparation of Stipulation to Extend Time to file Brief (.7)	0.200 265.00/hr	53.00
4/13/2021	WJS	Review draft Stipulation (.1); emails to and from L Wolff and J Henriod (.1); review Notices from Supreme Court (.1); review Order of Limited Remand (.1); conference with L Wolff (.2)	0.150 265.00/hr	39.75
	LJW	Telephone call with W Smith (.1); email to Clerk (.1); preparation of Stipulation to Extend Time to file Brief (.2)	0.100 265.00/hr	26.50
4/16/2021	LJW	Preparation of Stipulation (.2); telephone call to Clerk (.1); telephone call to opposing counsel (.1); preparation of Reply to Brief section on Deference to Judge's Opinion (1.9)	0.575 265.00/hr	152.38
	WJS	Review Notices from Supreme Court (.1); emails to and from L Wolff regarding Stipulation for Extension (.1)	0.050 265.00/hr	13.25
4/19/2021	LJW	Preparation of Reply Brief on Deference to Judge's Opinion (5.5)	1.375 265.00/hr	364.38
4/20/2021	LJW	Preparation of Reply to Brief on Jurisdictional Basis for Review (5.5)	1.375 265.00/hr	364.38
4/21/2021	LJW	Preparation of Reply to Brief on Deference and Discretion (2.1)	0.525 265.00/hr	139.13
4/22/2021	LJW	Preparation of Reply to Brief (2.2); revisions to Fact Section (1.2); Research Case Law (.8)	1.050 265.00/hr	278.25
4/23/2021	LJW	Preparation of Reply to Jurisdiction Issue (1.9); preparation of Issue Statement (1)	0.725 265.00/hr	192.13
4/24/2021	LJW	Preparation of Cites to Fact Section (3.2)	0.800 265.00/hr	212.00
4/26/2021	LJW	Preparation of Cites to Fact Section (1); preparation of Law of Case and Exceptions Argument (2.4)	0.850 265.00/hr	225.25
4/27/2021	LJW	Preparation of Law of the Case and Exceptions Argument (2.8); telephone with W Smith (.5)	0.825 265.00/hr	218.63
	WJS	Conference with L Wolff regarding revisions and analysis (.5)	0.125 265.00/hr	33.13
4/29/2021	WJS	Conference with L Wolff regarding Briefing Schedule on Contempt Appeal (.1)	0.025 265.00/hr	6.63

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			Hrs/Rate	Amount
4/29/2021	LJW	Telephone conference with W Smith (.1); preparation of Reply to Appellate Brief (4.3)	1.100 265.00/hr	291.50
4/30/2021	LJW	Preparation of Reply to Appellate Brief regarding Unambiguous Terms (4.7)	1.175 265.00/hr	311.38
	KBC	Review Order regarding Responsive Appeal Brief (.15)	0.038 265.00/hr	9.94
5/3/2021	WJS	Telephone call from L Wolff regarding Citations (.2); Research Respondent's Brief in Contempt Appeal (.5); telephone call to L Wolff (.1)	0.200 265.00/hr	53.00
	LJW	Telephone call with W Smith (.2); review all Cited Cases in Brief by Lytle Trust (4.8)	1.250 265.00/hr	331.25
5/4/2021	LJW	Preparation of final draft of Reply Brief (6.3)	1.575 265.00/hr	417.38
5/5/2021	LJW	Preparation of final draft of Reply Brief (4.7)	1.175 265.00/hr	311.38
	WJS	Email from L Wolff regarding draft Brief (.1); review and revise Cover Page, Jurisdictional Statement and Statement of Issues (1.2); Research (.6)	0.475 265.00/hr	125.88
5/6/2021	WJS	Review and revise Respondent's Brief for Contempt Appeal (Statement of Case, Statement of Facts, Summary of Argument, Standard of Review) (3.2); review Appendix (.6); Research (.6)	1.100 265.00/hr	291.50
5/7/2021	WJS	Research, draft and revise Statement of Jurisdiction and Arguments for Respondents' Brief (8.1)	2.025 265.00/hr	536.63
5/10/2021	WJS	Review and revise Respondent's Brief (2.3)	0.575 265.00/hr	152.38
5/11/2021	LJW	Research Appellate Brief (.5)	0.125 265.00/hr	33.13
	WJS	Review and revise Respondents' Brief (5.4); Research (4.2)	2.400 265.00/hr	636.00
5/12/2021	WJS	Emails to and from L Wolff and Clerk (.2); revise Statement of Case and Summary of Argument (1.2); review Citations (.8); preparation of Table of Authorities and Table of Contents (2.4); preparation of Certificate of Compliance (.2); review and revise Respondent's Brief (.6); telephone calls to and from D Martin regarding Brief (.2)	1.400 265.00/hr	371.00
	LJW	Research Appellate Brief (2.2)	0.550 265.00/hr	145.75
	DEM	Telephone call from W Smith (.2); revise Appeal Brief (2.2)	0.600 265.00/hr	159.00

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			Hrs/Rate	Amount
5/13/2021	WJS	Conferences with D Martin regarding Brief and Appeal Arguments (.3); review redline and incorporate changes (1.2); preparation of and revise Answering Brief (1.6); review and insert Keycite Citations (.6); revise Table of Authorities and Table of Contents (.4); email to L Wolff regarding review of Brief (.1)	1.050 265.00/hr	278.25
	DEM	Research (.3); review Lytle Trust's Opening Brief (.4); revise Appeal Brief (1.9); conference with W Smith (.3)	0.725 265.00/hr	192.13
5/14/2021	WJS	Email from L Wolff regarding review of Answering Brief (.2); review and revise Answering Brief (1); preparation for filing (.1)	0.325 265.00/hr	86.13
	LJW	Review and revisions to final Brief in Contempt Appeal (1.4); emails to and from W Smith (.6)	0.500 265.00/hr	132.50
5/28/2021	WJS	Review Notice from Court (.1); review Disman's Answering Brief (.4); email from L Wolff (.1)	0.150 265.00/hr	39.75
	LJW	Review Brief from Disman's Counsel (.4); email to W Smith (.1)	0.125 265.00/hr	33.13
6/4/2021	WJS	Review Notices from Court and review Amended Notice of Appeal and Amended Case Appeal Statement (.4)	0.100 265.00/hr	26.50
6/28/2021	WJS	Emails to and from J Henroid regarding Extension of Reply Brief (.1)	0.025 265.00/hr	6.63
7/29/2021	WJS	Review Notice from Supreme Court, review Motion for Extension of Reply Brief filed by Lytle Trust (.2)	0.050 265.00/hr	13.25
8/9/2021	WJS	Review Notice from Supreme Court regarding Extension Order and review Order (.1)	0.025 265.00/hr	6.63
8/30/2021	WJS	Review Notice from Supreme Court regarding Motion for Extension and review Motion (.2)	0.050 265.00/hr	13.25
9/13/2021	WJS	Review Lytle's Reply Brief in Support of Contempt Appeal (.4)	0.100 265.00/hr	26.50
2/18/2022	WJS	Review Notice from Supreme Court and review Order of Dismissal (.5); emails to and from L Wolff and K Christensen (.1); review Case Strategy, NRCP, NRS and NRAP (.6); email to K Christensen regarding Recovery of Fees (.1); review Fee Statement and Summary (.2)	0.375 265.00/hr	99.38
	LJW	Review Order from Court and emails to and from W Smith (.1)	0.025 265.00/hr	6.63
2/21/2022	LJW	E-mails to and from W Smith (.1)	0.025 265.00/hr	6.63
2/25/2022	WJS	Conference with L Wolff regarding potential Motion for Fees and Costs (.2); email to Clients regarding Order Dismissing Appeal, Fees and Costs (.1)	0.075 265.00/hr	19.88

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			Hrs/Rate	Amount
3/22/2022	LJW	Telephone call with W Smith regarding Hearing on Fees Motion (.1)	0.025 265.00/hr	6.63
3/28/2022	LJW	Review Opposition to Motion for Fees (.5); preparation of Reply to Opposition (.2)	0.175 265.00/hr	46.38
3/29/2022	LJW	Preparation of Reply to Opposition to Fees Motion (2.5)	0.625 265.00/hr	165.63
3/30/2022	LJW	Preparation of Reply to Opposition (1.0); Research on cases cited by Lytle Trust (2.0); telephone call to W Smith regarding Opposition (.5)	0.875 265.00/hr	231.88
	WJS	Conference with L Wolff regarding Lytle Trust Opposition to Fees Motion (.5)	0.125 265.00/hr	33.13
3/31/2022	LJW	Preparation of Points and Authorities in Reply to Opposition (2.0); Research the term Prevailing Party under Nevada Law (2.3)	1.075 265.00/hr	284.88
4/1/2022	LJW	Final Preparation of Reply to Opposition (1.0); preparation of Declaration for Reply (1.0); review Exhibits for filing and citing in Reply (1.3)	0.825 265.00/hr	218.63
	WJS	Review Reply Brief and preparation of Redline (1.6); emails to and from L Wolff (.2)	0.450 265.00/hr	119.25
4/4/2022	WJS	Review Notices from Court and review Hearing Notice (.1)	0.025 265.00/hr	6.63
4/5/2022	WJS	Review Notice from Supreme Court in Fees Appeal and review Lytle Motion to Extend Time (.2)	0.050 265.00/hr	13.25
4/8/2022	WJS	Review Notice from Court, review Order Granting Extension and file notes (.1)	0.025 265.00/hr	6.63
4/11/2022	LJW	Preparation of Oral Argument on Motion for Fees (1.9)	0.475 265.00/hr	125.88
4/12/2022	LJW	Preparation of Oral Argument on Motion for Fees; Appearance at Hearing on Fees Motion (2.0)	0.500 265.00/hr	132.50
4/13/2022	LJW	E-mails to and from opposing counsel regarding Order and Stipulation (.2); review Order and Stipulation on Fees Motion (.2)	0.100 265.00/hr	26.50
4/14/2022	LJW	E-mails to and from opposing counsel regarding Order and Stipulation (.2); telephone call to W Smith regarding Hearing and Issues (.4)	0.100 265.00/hr	26.50
	WJS	Email from D Waite regarding Settlement Offer (.1); email to K Christensen and L Wolff (.1); conference with K Christensen and review of Settlement Offer (.2)	0.100 265.00/hr	26.50
	WJS	Emails to and from L Wolff regarding Stipulation and Order on Fees Motion (.2); telephone call from L Wolff regarding Hearing and Issues (.4)	0.150 265.00/hr	39.75

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			Hrs/Rate	Amount
4/14/2022	WJS	Review Notices from Supreme Court regarding Writ Petition and review of Writ Petition (.8); review Civil Practice Manual and NRAP 21 (.2); emails to and from C Wang (.1); emails to and from L Wolff (.1)	0.300 265.00/hr	79.50
	KBC	Review Fees and Costs Settlement Offer with W Smith (.2); email from Attorney (.05)	0.063 265.00/hr	16.56
4/15/2022	LJW	Review email from Dan Waite (.1); email to W Smith regarding Settlement Proposal (.2)	0.075 265.00/hr	19.88
4/18/2022	WJS	Review Notices from District Court regarding Fees Motion (.1)	0.025 265.00/hr	6.63
4/19/2022	WJS	Review Lytle Settlement Offer (.1); preparation of email to Clients regarding Proposal and Recommendation (1.0); emails to and from and telephone call to L Wolff regarding Settlement (.2); file notes (.6); telephone calls to and from and emails to and from D Waite regarding Settlement Offer and Issues (.4)	0.600 265.00/hr	159.00
	LJW	Telephone call and email with W Smith regarding Offer (.2)	0.050 265.00/hr	13.25
4/20/2022	WJS	Email from D Waite regarding Settlement Offer (.2); review, revise and send email to Clients (.2); telephone calls and emails to Clients (.3); email to D Waite regarding Counteroffer (.3)	0.250 265.00/hr	66.25
	WJS	Review Lytle Writ Petition (1.2); review Appeal Brief (.2)	0.350 265.00/hr	92.75
4/22/2022	WJS	Email from D Waite regarding Counteroffer on Fees Appeal Settlement (.1)	0.025 265.00/hr	6.63
4/25/2022	WJS	Research (.6); review Counteroffer (.2); emails to and from K Christensen and L Wolff (.2)	0.225 265.00/hr	59.63
4/28/2022	KBC	Emails to and from Attorneys and Clients regarding Fees Negotiations (.25)	0.063 265.00/hr	16.56
	WJS	Email from D Waite regarding Settlement Offer on Fees Appeal (.1); emails to and from K Christensen (.1); email to and from Clients with Recommendation (.3); email to D Waite (.1)	0.150 265.00/hr	39.75
5/2/2022	WJS	Emails to and from D Waite regarding Settlement Offer (.1)	0.025 265.00/hr	6.63
5/5/2022	WJS	Review Notices from Supreme Court and review filed Appendix and Motion to Extend Time (.6)	0.150 265.00/hr	39.75
5/6/2022	WJS	Review Notices from Supreme Court and review Lytle Opening Brief (.5); review Order Granting Extension and Due Date (.1)	0.150 265.00/hr	39.75
5/12/2022	KBC	Review Pleadings Due Dates and Attorney email and notes regarding Due Dates (.15)	0.038 265.00/hr	9.94

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			Hrs/Rate	Amount
5/12/2022	WJS	Review Notice from Supreme Court and review Order regarding Real Parties in Interest Answers (.1); email to K Christensen and L Wolff (.1)	0.050 265.00/hr	13.25
5/23/2022	KBC	Conference with W Smith regarding Receiver Fee Orders and Hearing (.2); review Fees Negotiation emails (.15)	0.088 265.00/hr	23.19
	WJS	Preparation of Answer to Writ Petition (1.8); review Order directing Answer (.1); review Petition (1.4); Research (1.2)	1.125 265.00/hr	298.13
	WJS	Telephone call from and email to D Waite regarding Settlement of Fees Appeal (.3)	0.075 265.00/hr	19.88
5/24/2022	WJS	Preparation of Answer to Writ Petition (3.0); Research (3.8)	1.700 265.00/hr	450.50
5/25/2022	KBC	Conference with W Smith to review Appeal and Settlement Issues (.2); preparation for and conference with Clients (.7); file notes regarding Instructions (.1)	0.238 265.00/hr	62.94
	WJS	Email to D Waite regarding Settlement (.1); file notes (.4)	0.125 265.00/hr	33.13
	WJS	Preparation of notes for Meeting with Clients (1.0); conference with K Christensen (.2); preparation for Meeting; conference with Client (1.4); Research (.1); conference with K Christensen (.2)	0.725 265.00/hr	192.13
5/26/2022	WJS	Emails to and from D Waite regarding Settlement of Fees (.1)	0.025 265.00/hr	6.63
5/27/2022	WJS	Emails to and from D Waite regarding Stipulation (.2)	0.050 265.00/hr	13.25
5/31/2022	WJS	Email from D Waite regarding Stipulation (.1)	0.025 265.00/hr	6.63
6/1/2022	WJS	E-mail from D Waite (.05); review draft Stipulation regarding Appeal Bond Release (.3); preparation of Redline (.3); email to D Waite (.05)	0.175 265.00/hr	46.38
	WJS	Telephone call from and emails to and from C Wang regarding Response to Writ Petition (.6)	0.150 265.00/hr	39.75
6/2/2022	WJS	Emails to and from C Wang regarding Appendix revisions (.2); review and revise Answer to Writ Petition (1.4)	0.400 265.00/hr	106.00
	WJS	Emails to and from D Waite and review Stipulation regarding Release of Bond Funds (.1); emails to and from J Henriod regarding Joint Motion for Supreme Court (.1)	0.050 265.00/hr	13.25
6/3/2022	WJS	Preparation of Joint Motion regarding Withdrawal and Stipulation for Extension of Time (.7); emails to and from J Henriod and D Waite (.2); review Joint Motion and approve for filing (.1); review Notice from Supreme Court (.1)	0.275 265.00/hr	72.88

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			Hrs/Rate	Amount
6/7/2022	WJS	Review and revise Answer to Writ Petition (3.6)	0.900 265.00/hr	238.50
6/8/2022	WJS	Review and revise Answer to Writ Petition (1.2); preparation of Citations (.8); preparation of Tables of Authority (.4); check NRAP requirements (.2); preparation of Certificates of Compliance (.3); finalize Answer to Writ Petition (.3); emails to and from C Wang regarding coordination and Joinder (.2); email to Clerk regarding filing Instructions (.1)	0.825 265.00/hr	218.63
6/10/2022	WJS	Review Notices from Court and review Disman Answer (.8)	0.200 265.00/hr	53.00
6/20/2022	WJS	Review Court Notices regarding Extension and Amended Brief (.2); review Notice of Entry of Order regarding Release of Bond Money (.1); email to Clerk regarding Payment (.1)	0.100 265.00/hr	26.50
6/21/2022	WJS	Emails to and from Court regarding Payment from Bond (.1)	0.025 265.00/hr	6.63
	WJS	Review Notice from Supreme Court regarding Extension for Reply Brief (.1)	0.025 265.00/hr	6.63
6/22/2022	WJS	Review Notices from Supreme Court and review Appellant's Amended Opening Brief (.6); Research (.8); preparation of Respondents' Answering Brief (1.8)	0.800 265.00/hr	212.00
6/28/2022	WJS	Review and revise Response Brief on Fees Appeal regarding Contempt Fees (2.8)	0.700 265.00/hr	185.50
6/29/2022	WJS	Review and revise Response Brief (.7); email to D Martin (.1)	0.200 265.00/hr	53.00
7/5/2022	DEM	Revise Answering Brief (.8); Research (.3)	0.275 265.00/hr	72.88
7/6/2022	DEM	Revise Answering Brief (.7); Research (.2); email to W Smith (.1)	0.225 265.00/hr	59.63
7/7/2022	WJS	Email from D Martin regarding Respondent's Brief (.1); review and revise Respondent's Brief (.16); Research (1.3); email to and telephone call from D Martin (.2)	0.800 265.00/hr	212.00
	DEM	Emails from W Smith (.1); revise Appeal Brief (.4); telephone call to W Smith (.2)	0.175 265.00/hr	46.38
7/8/2022	WJS	Review Notice from Supreme Court and review Lytle's Reply in Support of Writ Petition (.4)	0.100 265.00/hr	26.50
7/12/2022	DEM	Conference with W Smith (.4)	0.100 265.00/hr	26.50

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			Hrs/Rate	Amount
11/30/2022	DEM	Conference with W Smith (.4)	0.100 265.00/hr	26.50
	WJS	Review Notice from Supreme Court (.1); review NRAP and Supreme Court Rules regarding Oral Argument (.4); preparation of Notice of Appearance for Oral Argument (.3); emails to and from C Wang (.2); review Case files (2.7); preparation of Oral Argument and notes (1.2); preparation for Oral Argument and practice (.5); revise Oral Argument Outline (.3); telephone call from D Martin (.4)	1.525 265.00/hr	404.13
12/1/2022	WJS	Review and revise Oral Argument, practice Argument (1.2); review District Court Appendix (Proceeding Records approx. 1800 pages) (3.4); revise and prepare for Oral Argument (1.5)	1.525 265.00/hr	404.13
12/3/2022	WJS	Review and mark Appendix and prepare for Oral Argument (1.7)	0.425 265.00/hr	112.63
12/5/2022	WJS	Review and mark Appendix for Oral Argument (3.2); practice Oral Argument (.4); review and revise Outline (.9); prepare notes and Record Summaries (2.7); preparation for Oral Argument and further revise Outline (.5)	1.925 265.00/hr	510.13
12/6/2022	WJS	Preparation for Oral Argument (.5); review Case Briefing (2.0); preparation of Answers to anticipated Questions (.6); revise notes and Outline; practice Oral Argument (.8); prepare for Hearing (.6); Appearance at Nevada Supreme Court Hearing, present Oral Argument (1.7); conference with Clients regarding Hearing (.2); conference with C Wang (.7); conference with K Christensen (.3)	1.850 265.00/hr	490.25
12/13/2022	WJS	Conference with Attorneys regarding Oral Argument and Case Status (.2)	0.050 265.00/hr	13.25
12/29/2022	WJS	Review Notice from Supreme Court (.1); review filed Order Denying Writ and Affirming Fees Appeal (.2); emails to and from Clients (.1)	0.100 265.00/hr	26.50
1/3/2023	WJS	Emails to and from D Waite (.1); review Supreme Court Order (.8); review NRAP and NRCP regarding Costs and Fee Motions and Procedural Matters (.6); file notes regarding Case Strategy	0.600 265.00/hr	159.00
1/4/2023	LJW	Review notes from W Smith regarding Appeal and Attorney's Fees (.4); Research Costs and Fees (.6)	0.250 265.00/hr	66.25
	WJS	Review and revise notes (.6); emails to and from L Wolff regarding Research (.3); telephone call from C Wang regarding Orders and Case (1.2)	0.525 265.00/hr	139.13
1/5/2023	LJW	Research Costs and Fees and Motion for Fees in Supreme Court (2.7); telephone call to W Smith regarding NRAP Requirements for Bill of Costs and possible Fees Motion (.5)	0.800 265.00/hr	212.00
	WJS	Telephone call to L Wolff regarding NRAP Requirements for Bill of Costs and possible Fee Motion (.5)	0.125 265.00/hr	33.13

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Steven D. Grierson
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DAN R. WAITE, ESQ.
Nevada Bar No. 4078
DWaite@lewisroca.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Telephone: 702-949-8200
Facsimile: 702-949-8398

Attorneys for Defendants, 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, et al., Plaintiff, v. TRUDI LEE LYTLE, et al., Defendants, SEPTEMBER TRUST, DATED MARCH 23, 1972, et al., Plaintiffs, v. TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST, et al., Defendants. AND ALL RELATED MATTERS	Case No.: A-16-747800-C Dept. No.: 16 Consolidated: Case No.: A-17-765372-C Dept. No.: 16 **EXHIBIT "B" TO** **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS** **DATE OF HEARING: July 13, 2023** **TIME OF HEARING: 9:05 A.M.**

TRANSCRIPT OF CONTENTS

Exhibit B to Defendants' Opposition to Plaintiffs' Motion for Attorney's Fees and Costs" consists of a two hour, fifty-four minute and thirty second audio/video of the June 6, 2023, hearing in the companion Receivership Action (Case No. A-18-775843-C).

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Dated this 13th day of June, 2023.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Dan R. Waite*
Dan R. Waite (SBN 4078)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Defendants, Trudi Lee Lytle and John Allen Lytle as Trustees of the Lytle Trust

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this day, I caused a true and correct copy of the following ***"EXHIBIT B TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COST" "*** to be e-filed and served via the Court's E-Filing System and served on the following parties via United States Mail, postage prepaid, at Las Vegas, Nevada

Daniel T. Foley
FOLEY & OAKES, PC
1210 S. Valley View Blvd., #208
Las Vegas, NV 89102
Attorneys for Marjorie Boulden Trust and Linda and Jacques Lamothe Trust

Christina H. Wang
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, NV 89113
Attorneys for Counter-Defendants/Cross-Claimants Robert Z. Disman and Yvonne A. Disman

Wesley J. Smith
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Ave.
Las Vegas, NV 89117
Attorneys for September Trust, Zobrist Trust, Sandoval Trust and Dennis & Julie Gegen

Dated this 13th day of June, 2023

/s/ Luz Horvath
An Employee of Lewis Roca Rothgerber Christie LLP

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EXHIBIT B

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EXHIBIT B

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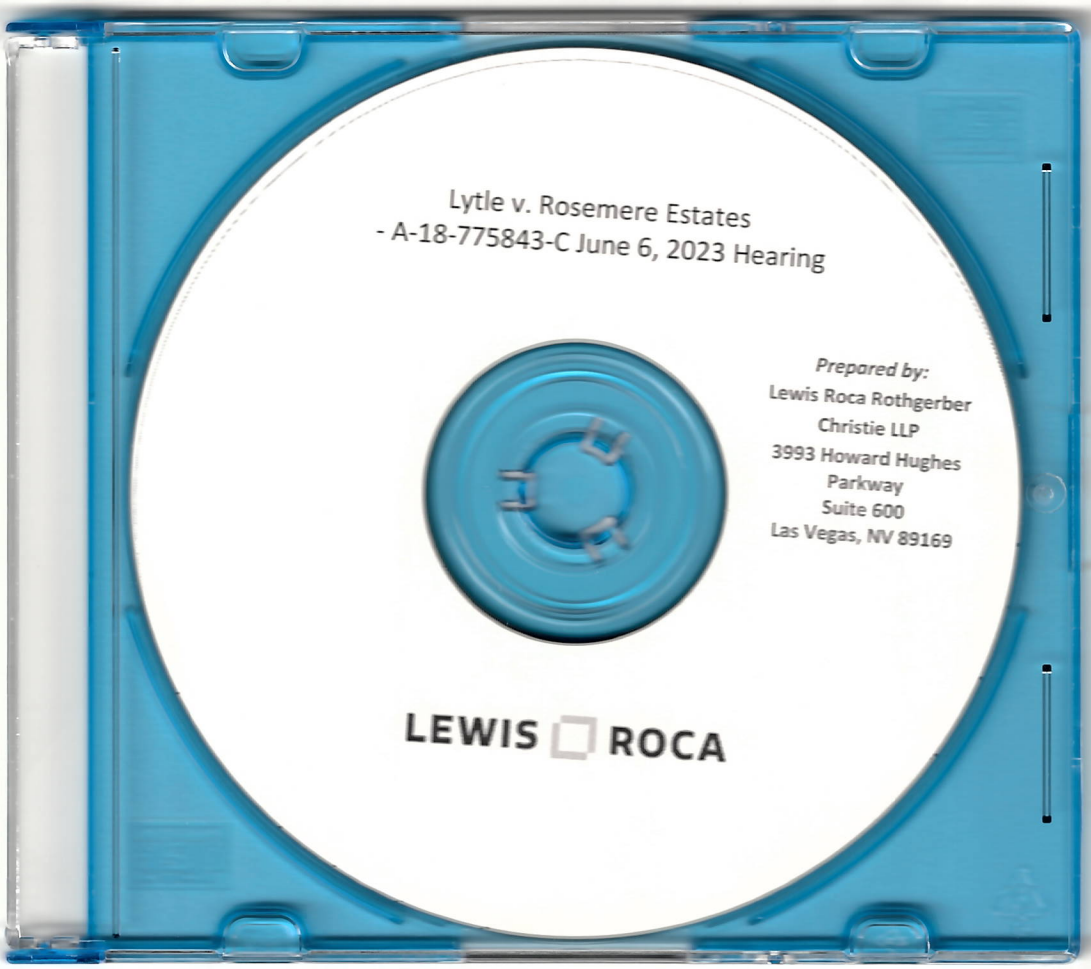

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Steven D. Grierson
CLERK OF THE COURT

NTSO
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ. (175)
WESLEY J. SMITH, ESQ. (11871)
LAURA J. WOLFF, ESQ. (6869)
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
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 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO RELEASE AND DISTRIBUTE CASH BOND**
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

PLEASE TAKE NOTICE that on June 16, 2023, a Stipulation and Order to Release and

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Distribute Cash Bond was entered by the Court, a copy of which is attached hereto.

CHRISTENSEN JAMES & MARTIN

By: */s/ Wesley J. Smith*
Wesley J. Smith (11871)
7440 W. Sahara Ave.
Las Vegas, NV 89117
Attorneys for Plaintiffs September Trust, Zobrist Trust, Sandoval Trust and Dennis & Julie Gegen

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 June 21, 2023, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO RELEASE AND DISTRIBUTE CASH BOND**, 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.

/s/ Natalie Saville
Natalie Saville

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

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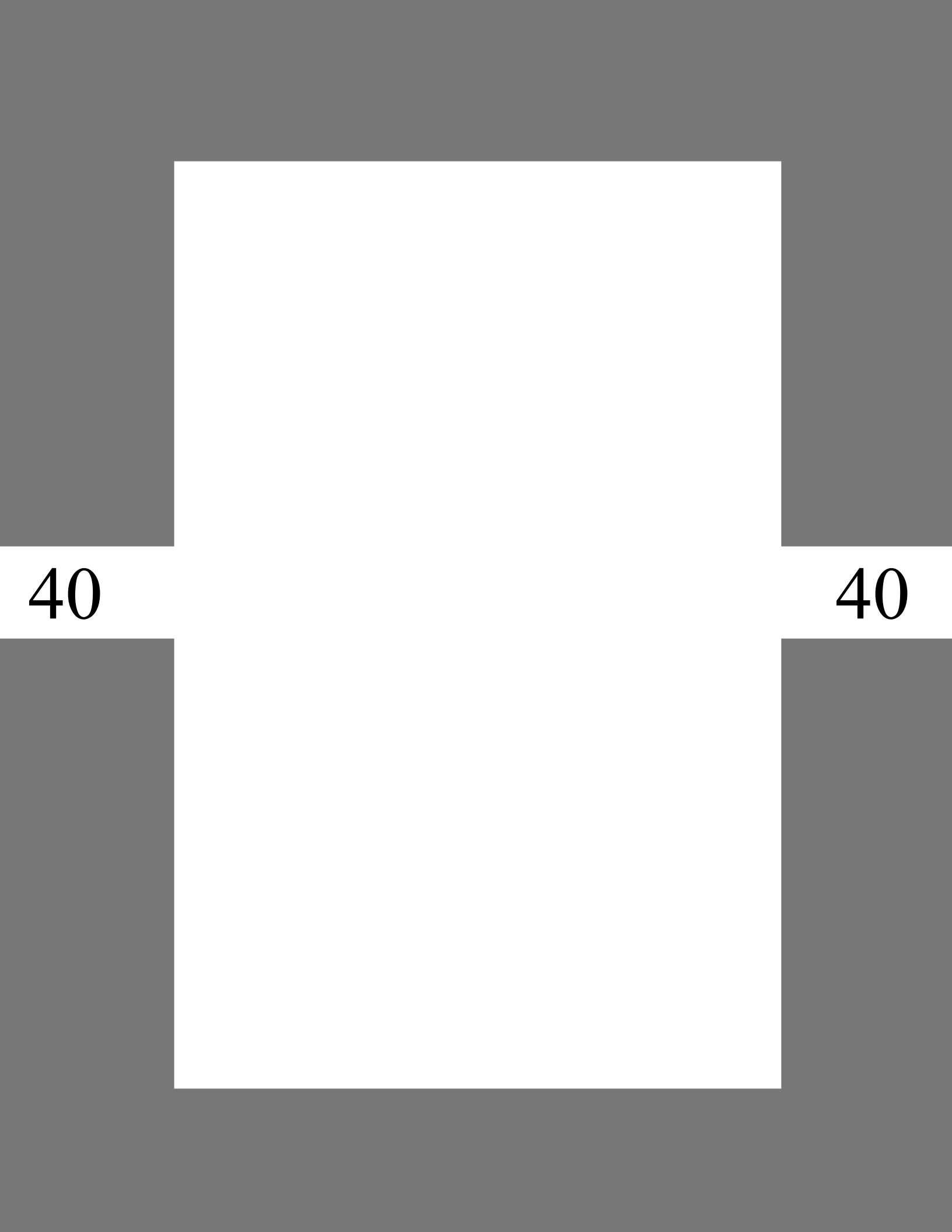
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6/30/2023 2:22 PM
Steven D. Grierson
CLERK OF THE COURT

NTSO
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KEVIN B. CHRISTENSEN, ESQ. (175)
WESLEY J. SMITH, ESQ. (11871)
LAURA J. WOLFF, ESQ. (6869)
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
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 **NOTICE OF ENTRY OF AMENDED STIPULATION AND ORDER TO RELEASE AND DISTRIBUTE CASH BOND**
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

PLEASE TAKE NOTICE that on June 30, 2023, an Amended Stipulation and Order to

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Release and Distribute Cash Bond was entered by the Court, a copy of which is attached hereto.

CHRISTENSEN JAMES & MARTIN

By: */s/ Wesley J. Smith*
Wesley J. Smith (11871)
7440 W. Sahara Ave.
Las Vegas, NV 89117
Attorneys for Plaintiffs September Trust, Zobrist Trust, Sandoval Trust and Dennis & Julie Gegen

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 June 30, 2023, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF AMENDED STIPULATION AND ORDER TO RELEASE AND DISTRIBUTE CASH BOND**, 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.

/s/ Natalie Saville
Natalie Saville

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

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SAO
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ. (175)
WESLEY J. SMITH, ESQ. (11871)
LAURA J. WOLFF, ESQ. (6869)
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
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 **AMENDED STIPULATION AND ORDER TO RELEASE AND DISTRIBUTE CASH BOND**
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

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PH: (702) 255-1718 § FAX: (702) 255-0871

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("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and Gegens, collectively, the "Plaintiffs"), by and through their undersigned counsel, and Defendants Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust (the "Lytle Trust"), by and through their undersigned counsel, stipulate and request an amended order as follows:

STIPULATION

1. On or about May 22, 2020, this Court entered its "Order Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not be Held in Contempt for Violation of Court Orders" (the "Contempt Order").

2. On or about June 22, 2020, the Lytle Trust filed its Notice of Appeal from the Contempt Order.

3. On or about August 11, 2020, this Court entered its "Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs" (the "August 2020 Fee Order").

4. On or about August 21, 2020, the Lytle Trust filed its Notice of Appeal from the August 2020 Fee Order.

5. On or about April 30, 2021, this Court entered its "Order Granting Plaintiffs' Motion to Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs Pursuant to NRCP 52(b)" (the "April 2021 Amended Fee Order"). Pursuant to the April 2021 Amended Fee Order, the Lytle Trust (a) was ordered to pay Plaintiffs a total of $80,449.75 in fees and costs, but (b) could deposit the $80,449.75 with the Clerk of the Court pending the appeal from the August 2020 Fee Order. The April 2021 Amended Fee Order awarded fees and costs to the Plaintiffs in three general areas: (a) Plaintiffs' fees and costs incurred obtaining the Contempt Order ("Contempt Proceeding Fees"), (b) Plaintiffs' fees and costs incurred since May 23, 2018 whereby the Plaintiffs successfully defended prior appeals brought by the Lytle Trust ("Appeal Fees"), and (c) Plaintiffs' fees and costs related to

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

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miscellaneous matters ("Miscellaneous Fees").

6. On or about May 14, 2021, the Lytle Trust posted a cash bond with the Clerk of the Court in the amount of $80,449.75 ("Cash Bond") to secure payment of the Contempt Proceeding Fees, the Appeal Fees, and the Miscellaneous Fees, as set forth in the April 2021 Amended Fee Order.

7. On or about June 3, 2021, the Lytle Trust filed its Amended Notice of Appeal from the August 2020 Fee Order and the April 2021 Amended Fee Order.

8. On or about June 8, 2022, this Court entered a Stipulation and Order to Partially Release and Distribute Cash Bond, ordering distribution of $59,521.40 and leaving the balance of the Cash Bond – $20,928.36 – on deposit with the Clerk of the Court as the cash bond to secure the Contempt Proceeding Fees, pending resolution of the appeal/writ petition from the Contempt Order and the April 2021 Amended Fee Order.

9. On or about December 29, 2022, the Supreme Court affirmed the April 2021 Amended Fee Order and the Contempt Order when it issued its Order Affirming In Docket No. 81689 And Denying Petition For A Writ Of Mandamus In Docket No. 84538 ("Supreme Court Order (12/29/22)") (available at *Lytle v. September Trust*, Consolidated Case Nos. 81689 & 84538, 523 P.3d 532 (Table), 2022 Nev. Unpub. LEXIS 912 (Nev. Dec. 29, 2022). The Lytle Trust's Petition for Rehearing was denied on February 13, 2023. The Lytle Trust's Petition for En Banc Reconsideration was denied on March 27, 2023. The Supreme Court's Certificate of Judgment and Remittitur was filed in this Case on April 24, 2024.

10. On or about June 18, 2023, this Court signed a Stipulation and Order ordering that the amount of $20,928.36 be released to the Plaintiffs. However, the Plaintiffs have been informed by the Court Clerk that this amount is incorrect and that actual amount remaining on the Cash Bond is $20,928.35. Therefore, the Plaintiffs are submitting this amended Stipulation and Order with the correct sum.

11. Accordingly, Plaintiffs and the Lytle Trust stipulate and respectfully request the

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

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Court to enter an order directing the Clerk of the Court, Court Administrator, or the Director of Finance for the Eighth Judicial District Court (whichever the case may be) to release the Cash Bond by issuing a check in the amount of $20,928.35 made payable to "Christensen James & Martin Special Client Trust Account" and delivered to the attention of Wesley J. Smith, Esq., Christensen James & Martin, 7440 W. Sahara Avenue, Las Vegas, NV 89117.

Dated this 29th day of June, 2023.

Dated this 29th day of June, 2023.

CHRISTENSEN JAMES & MARTIN By: *Wesley J. Smith* Wesley J. Smith, Nevada Bar No. 11871 7440 W. Sahara Ave. Las Vegas, NV 89117 (702) 255-1718 *Attorneys for Plaintiffs September Trust, Zobrist Trust, Sandoval Trust and Dennis & Julie Gegen*	**LEWIS ROCA ROTHGERBER CHRISTIE LLP** By: *Dan R. Waite* Dan R. Waite (SBN 4078) 3993 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169 (702) 949-8200 *Attorneys for Defendants, Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust*

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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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ORDER

Based upon the foregoing Stipulation and good cause shown, it is hereby

ORDERED, ADJUDGED AND DECREED that the Clerk of the Court, Court Administrator, or the Director of Finance for the Eighth Judicial District Court (whichever the case may be) is directed to release the Cash Bond by issuing a check in the amount of $20,928.35 made payable to "Christensen James & Martin Special Client Trust Account" and delivered to the attention of Wesley J. Smith, Esq., Christensen James & Martin, 7440 W. Sahara Avenue, Las Vegas, NV 89117.

Dated this 30th day of June, 2023

Honorable Timothy Williams
Department XVI

LB

10E CB6 34C5 ED4A
Timothy C. Williams
District Court Judge

Submitted by:

CHRISTENSEN JAMES & MARTIN

By: */s/ Wesley J. Smith*
Wesley J. Smith (11871)
7440 W. Sahara Ave.
Las Vegas, NV 89117
Attorneys for Plaintiffs September Trust, Zobrist Trust, Sandoval Trust and Dennis & Julie Gegen

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

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RE: September v. Lytle - SAO to Release Cash Bond

Waite, Dan R. <DWaite@lewisroca.com>

Wed 6/28/2023 7:19 PM

To:Laura Wolff <ljw@cjmlv.com>;Horvath, Luz <LHorvath@lewisroca.com>
Cc:Wesley Smith <wes@cjmlv.com>

Hello Laura,

With the same stipulation as before (i.e., that nothing related to this release will be used against the Lytle Trust in any of the fee motions—e.g., you won't argue that our agreeing to this release somehow constitutes a waiver or otherwise impacts our argument that any award of fees must be made to the Supreme Court), then, yes, please add my e-signature and submit to the Court. Thanks,

Dan

BTW, I received two emails from you two minutes apart. I reviewed the second one (the one below) figuring that if there was any difference, you'd want me to consider the latter one. If there's anything you think I need to consider in your first email, please let me know.

Dan R. Waite
Partner

dwaite@lewisroca.com
D. 702.474.2638

LEWIS ROCA

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From: Laura Wolff <ljw@cjmlv.com>
Sent: Wednesday, June 28, 2023 10:38 AM
To: Horvath, Luz <LHorvath@lewisroca.com>; Waite, Dan R. <DWaite@lewisroca.com>
Cc: Wesley Smith <wes@cjmlv.com>
Subject: Fw: September v. Lytle - SAO to Release Cash Bond

CAUTION! [EXTERNAL to Lewis Roca]

Laura J. Wolff, Esq.

Christensen James & Martin
7440 W. Sahara Ave.
Las Vegas, NV 89117
702-255-1718
702-255-0871 Fax
ljw@cjmlv.com

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IRS CIRCULAR 230 DISCLOSURE: To the extent this communication (or any attachment) addresses any tax matter, it may not be relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter herein addressed.

From: Laura Wolff <ljw@cjmlv.com>
Sent: Wednesday, June 28, 2023 10:36 AM
To: Waite, Dan R. <DWaite@lewisroca.com>; Wesley Smith <wes@cjmlv.com>
Subject: Re: September v. Lytle - SAO to Release Cash Bond

Hello Dan,

I hope you are doing well. The court clerk has informed me that the Order is one cent off, and he is requiring that we submit a new order in the corrected amount. Will you review this Amended Stipulation and Order and let me know if was can affix your signature?

Let me know if you have any questions. Thanks so much.

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Laura J. Wolff, Esq.

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Christensen James & Martin
7440 W. Sahara Ave.
Las Vegas, NV 89117
702-255-1718
702-255-0871 Fax
ljw@cjmlv.com

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From: Waite, Dan R. <DWaite@lewisroca.com>
Sent: Thursday, June 15, 2023 6:13 AM
To: Wesley Smith <wes@cjmlv.com>

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Marjorie B. Boulden Trust, Plaintiff(s) vs. Trudi Lytle, Defendant(s)	CASE NO: A-16-747800-C DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 6/30/2023

"Daniel T. Foley, Esq." .	dan@foleyoakes.com
Maren Foley .	maren@foleyoakes.com
Natalie Saville	nat@cjmlv.com
Wesley Smith	wes@cjmlv.com
Laura Wolff	ljw@cjmlv.com
Joel Henriod	JHenriod@LRRC.com
Daniel Polsenberg	DPolsenberg@LRRC.com
Dan Waite	DWaite@LRRC.com
Luz Horvath	lhorvath@lewisroca.com
Christina Wang	christina.wang@fnf.com
FNLG Court Filings	FNLG-Court-Filings-NV@fnf.com

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Jennifer Martinez	jennifer.martinez@fnf.com
Jessie Helm	jhelm@lewisroca.com
Cynthia Kelley	ckelley@lewisroca.com
Emily Kapolnai	ekapolnai@lewisroca.com
Mia Hurtado	mia.hurtado@fnf.com

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Steven D. Grierson
CLERK OF THE COURT

RIS

CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ. (175)
WESLEY J. SMITH, ESQ. (11871)
LAURA J. WOLFF, ESQ. (6869)
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
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 **REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS** **HEARING DATE: July 13, 2023** **HEARING TIME: 9:05 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, Zobrist Trust, Sandoval Trust, and the Gegens hereby submit the following Reply in Support of their Motion for Attorney's Fees and Costs (filed on May 12, 2023). This Reply is based upon the following Memorandum of Points and Authorities, the Exhibits attached hereto, the Declaration of Counsel Wesley J. Smith filed with the Motion, and the pleadings and papers on file with the Court.

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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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INTRODUCTION

The Lytle Trust's Opposition attempts to draw this Court's attention away from *this Case*, but the Court should take stock in the simple fact that the Lytle Trust is the losing party *here* and the Supreme Court has repeatedly upheld this Court's Orders. Not only did the Supreme Court previously uphold both the July 2017 Order and May 2018 Order granting permanent injunctions against the Lytle Trust,[1] but this State's Highest Court also recently affirmed the Contempt Order and the Order Denying Defendant Lytle Trust's Motion for Clarification.[2] Further, and of particular importance for this Motion, the Supreme Court upheld this Court's prior fee orders in favor of the Plaintiffs, including the First Fees Order that awarded fees to Plaintiffs based on NRS 18.010(2)(b)[3] and the Second Fees Order that awarded fees to Plaintiffs based on NRS 22.100(3).[4] While these have all been good results for the Plaintiffs, they now have attorney's fees and costs incurred since May 1, 2020. In light of the case history, the only possible conclusion to this Case is a final fees and costs award in favor of the Plaintiffs.

A. Defendants Agreed that $3,896.51 in Costs Should Be Awarded to Plaintiffs

In their Opposition, the Lytle Trust stated: "In short, the Lytle Trust does not oppose Plaintiffs' request for $3,896.51 in costs" Opposition at 2:21; and "Plaintiffs' request for costs is

[1] *See* Order of Affirmance of the July 2017 Order on December 4, 2018 ("First Order of Affirmance") (*Lytle v. Boulden*, No. 73039, 432 P.3d 167 (Table), 2018 WL 6433005, 2018 Nev. Unpub. LEXIS 1087 (Nev. Dec. 4, 2018)), and Order of Affirmance of the May 2018 Order and First Fees Order on March 2, 2020 ("Second Order of Affirmance") (*Lytle v. Sept. Tr., Dated Mar. 23, 1972*, No. 76198, 458 P.3d 361 (Table), 2020 WL 1033050, 2020 Nev. Unpub. LEXIS 237 (Nev. Mar. 2, 2020)).

[2] *See* Order Affirming In Docket No. 81689 And Denying Petition For A Writ Of Mandamus In Docket No. 84538 ("Supreme Court Order (12/29/22)") (available at *Lytle v. September Trust*, Consolidated Case Nos. 81689 & 84538, 523 P.3d 532 (Table), 2022 Nev. Unpub. LEXIS 912 (Nev. Dec. 29, 2022).

[3] *See* Second Order of Affirmance.

[4] *See* Supreme Court Order (12/29/22).

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not opposed." Opposition at 31:4. The Court should therefore enter an award of costs in the amount of $3,896.51 in favor of Plaintiffs and against the Lytle Trust.

B. Defendants Agreed that an Award of Fees to the Plaintiffs is Proper, Which May Be Granted Under NRS 22.100(3)

The Lytle Trust also agreed that the Plaintiffs are entitled to an award of fees. In their Opposition, it conceded that: "Indeed, the Lytle Trust does not dispute that Plaintiffs are entitled to an additional award of fees and costs." Opposition at 2:8-9. However, they dispute some, *but not all*, of the bases advanced by the Plaintiffs for that award. Therefore, the only question for the Court to decide is which of the bases argued by the Plaintiffs supports the award.

In their Motion, the Plaintiffs argued that a fee award was necessary and proper under NRS 22.100(3). *See* Motion at 13:3-14:7. The Lytle Trust did not oppose an award under NRS 22.100(3) anywhere in their Opposition. *See* Opposition, generally. Thus, the Defendants admit that an award under NRS 22.100(3) is proper here. *See* EDCR 2.20(e) ("Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.").

NRS 22.100(3) provides that "if a person is found guilty of contempt . . . the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt." There is no language regarding "prevailing party" in the statute nor is there any language precluding awarding fees on appeal. The statute simply states that if a party is found guilty of contempt the court has discretion to require that party to pay the reasonable expenses of the party seeking to enforce the order as a result.

The Supreme Court recently affirmed the Court's prior award under NRS 22.100(3) on December 29, 2022, making it law of the case. *See* Supreme Court Order (12/29/22) at *5-6 ("we necessarily affirm the attorney fees awarded as a result of the contempt order."). The Plaintiffs incurred fees and costs to defend the Contempt Order on appeal, which resulted in the December

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

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29, 2022 Supreme Court Order. All fees requested in this Motion were actually and necessarily incurred in this case as a "result of the contempt." Therefore, an award of further fees is necessary here under NRS 22.100(3), which the Lytle Trust concedes. Opposition at 2:8-9 ("Indeed, the Lytle Trust does not dispute that Plaintiffs are entitled to an additional award of fees and costs."). If the Court chooses to grant the Motion and award additional attorney's fees to the Plaintiffs under NRS 22.100(3), it may not be necessary for the Court to rule on any other issues raised by the Lytle Trust.

C. The Other Bases Presented by the Plaintiffs Also Support an Award of Fees.

1. An Award Under NRS 18.010(2)(b) Is Proper Here

The Lytle Trust argues that the Court cannot award fees under NRS 18.010(2)(b) because Judge Kishner already decided the issue. But Judge Kishner made no ruling concerning fees and costs incurred *here*. The motion before Judge Kishner concerned fees and costs incurred only and specifically in Department 31, Case No.: A-18-775843-C, and the specific litigation conduct that occurred in that case. In other words, the fee motion filed before Judge Kishner and the Motion filed here were and are wholly separate and independent. Judge Kishner had no jurisdiction to decide issues before this Court. Any decision by Judge Kishner simply has no bearing *here*.[5]

The only orders that control here are the Orders issued by this Court and the Nevada Supreme Court, which unquestionably support a fee award under NRS 18.010(2)(b). For

[5] The Lytle Trust also asserts that argument made by Receiver's counsel should be given weight here. Not only were those arguments not made in this case, they were advanced before the Contempt Order was issued and before the Supreme Court dismissed the direct appeal from the Contempt Order and denied the Writ Petition. Those arguments were ultimately proven wrong by the Supreme Court's Orders and have absolutely no bearing here.

Further, it is improper, if not shocking, for counsel for the Lytle Trust to suggest that an argument made by an attorney who later was appointed to the bench should have any bearing in a different case or be given special credence because of a later judicial appointment.

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7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
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instance, in the First Fee Order, the Court awarded fees to Plaintiffs based on NRS 18.010(2)(b), holding as follows:

> The Defendants had notice of the Order entered by Judge Williams in Case No. A-16-747900-C in favor of substantially similarly situated property owners as the Plaintiffs. After the Order was entered and prior to this Case being filed by the Plaintiffs, the Defendants were given opportunity to avoid this litigation and to preserve their legal arguments for appeal. As this Court has already held, Judge Williams' Order is law of the case and binding on this Court. Therefore, given the directive in NRS 18.010(b) to liberally construe the paragraph in favor of awarding attorney's fees, *the Court finds that the Defendants' defense to this action was maintained without reasonable ground*.

First Fees Order at 5:11-19 (emphasis added). The Nevada Supreme Court affirmed the First Fees Order, making it law of the case, stating:

> We previously addressed in Docket No. 73039 whether the Lytles could rely on NRS 116.3117 to record abstracts of judgment against the individual properties in Rosemere. That decision constitutes law of the case here, where the respondents' case has been consolidated with the Boulden/Lamothe case and the claims and legal issues in the two are substantially the same….
>
> Under these particular facts, therefore, we conclude the district court did not abuse its discretion by concluding *the Lytles maintained their defense without reasonable ground*, *and we affirm the award of attorney fees.*

Second Order of Affirmance at *5-6, 8 (emphasis added). If that were not enough, this Court awarded fees and costs to the Plaintiffs under NRS 18.010(2)(b) a second time, stating:

> NRS 18.010(2)(b) provides that, 'the court may make an allowance of attorney's fees to a prevailing party: . . . (b) Without regard to the recovery sought, when the court finds that the claim . . . or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party.' *This Court based the First Fees Award on NRS 18.010(2) and does so again now as a basis for awarding additional fees.*

Second Fees Order at 7, ¶ 9 (emphasis added). Everything that has happened in this Case, including all fees and costs requested here, have been a continuation of the fact that the Defendants' defense to this action was maintained without reasonable ground. The current Motion requests additional fees and costs for continuation of this Case from May 1, 2020 through April 30, 2023. An award for these fees under NRS 18.010(2)(b) is undoubtedly proper.

The Court's Orders in this Case addressing NRS 18.010(2)(b) were scrutinized and affirmed by the Nevada Supreme Court. Yet the Lytle Trust wants this Court to go against the

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law of the case to follow Judge Kishner's oral decision on a different motion involving different facts in a different case—a decision that has not been reduced to a writing and has never been the subject of appellate review.

NRS 18.010(2)(b) awards attorney's fees to parties not just for winning, "but on the specific litigation conduct of the opposing party" (emphasis added). *LVNV Funding, LLC v. Andrade-Garcia (In re Andrade-Garcia)*, 635 B.R. 509, 516 (9th Cir. BAP 2022). Analyzing NRS 18.010, the Ninth Circuit panel explained: "[T]he factual predicate for a fee award under NRS § 18.010(2)(b) is the opposing party's actions... It is not available to all prevailing parties as a matter of substantive law.... The purpose of the statute is to regulate misconduct and procedure" (emphasis added). 635 B.R. at 515. The statute itself states its purpose is "to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public."

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 Matter of Water Rights of the Humboldt River,* 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. In conjunction with these principles, the Legislature empowered the Court under NRS 18.010(2)(b): "The court shall liberally construe the provisions of [NRS 18.010(2)(b)] in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to [NRS 18.010(2)(b)] ... in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses." NRS 18.010(2)(b) (emphasis added).

When this Court held the Lytle Trust in contempt, it found that 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

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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." Contempt Order at 10:19-23. In denying the Lytle Trust's Writ Petition, the Supreme Court affirmed the Contempt Order and expressly agreed that the May 2018 Order was clear and unambiguous and "discern[ed] no manifest abuse of discretion in the district court's ruling." Supreme Court Order (12/29/22) at 4-6.

The Lytle Trust now attempts to narrow this Court's earlier Contempt Order by arguing that the Supreme Court affirmed on the narrow issue of the Amended CC&Rs. This argument has no merit for two reasons. First, the Supreme Court's Order was not as narrow as the Lytle Trust argues. Second, even if the Supreme Court's basis for affirming the Order was narrow, the Supreme Court did not narrow the scope of Contempt Order in any fashion, despite the clear opportunity to do so.

The Supreme Court Order (12/29/22) firmly states that,

> The May 2018 order enjoined the Lytles 'from taking any action in the future directly against' the Property Owners or their homes, and included findings of fact noting that the Amended CC&Rs had no force and effect. Further, at various stages of the Lytles' litigation, the district courts and this court issued orders that the Amended CC&Rs were void ab initio *and the Association had no power through the original CC&Rs or NRS Chapter 116 to make assessments against the unit owners.* [citations omitted] That constitutes law of the case here.

Supreme Court Order (12/29/22) at 4-5 (emphasis added). The Lytle Trust has ignored the second half of this final sentence holding that the Association had no power under NRS 116 to make assessments. Furthermore, the Supreme Court specifically noted that, "In holding the Lytles in contempt, the district court relied, in part, on [the Lytle Trust's] having argued that the Association, through the receiver, *could make special assessments on the Property Owners for the purpose of paying the judgments when the Association had no power to do so under the original CC&Rs.*" *Id.* at 5-6 (emphasis added). The Lytle Trust's ignores this part of the December 29, 2022 Order as well.

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The Supreme Court did not reverse the Contempt Order on *any of its parts* even though the Lytle Trust had attacked all of it. *See id.* at 6 (Court "discern[ed] no manifest abuse of discretion in the district court's ruling."). The Supreme Court affirmed both the May 2018 Order (on March 2, 2020) and the Contempt Order (on December 29, 2022) in whole. The Contempt Order therefore stands as law of the case and is not subject to revision or further review, including the following conclusion of law:

> 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.

Contempt Order at 11:1-8. Notice that this does not say anything about the Amended CC&Rs, but unequivocally found that any special assessment on the Plaintiffs' properties for the purpose of paying the Rosemere Judgments is expressly prohibited by the July 2017 Order and May 2018 Order. It must be honored here, whether the Lytle Trust likes it or not. *See Hsu v. Cty. of Clark*, 123 Nev. 625, 629, 173 P.3d 724, 728 (2007) ("The doctrine of the law of the case provides that the law or ruling of a first appeal must be followed in all subsequent proceedings, both in the lower court and on any later appeal").

The Lytle Trust argues that because the Receivership Court stated it did not rely on the Amended CC&Rs for any portion of the Order Appointing the Receiver, the Receivership Action was not baseless. This argument ignores the later conclusions of law by Judge Kishner in the Receivership Case that "enforcement of a judgment through a receiver should not have been before this Court" (Default Judgment Order at 8:1-2, attached hereto as Exhibit 2) and "Judgment Satisfaction Functions are not within the scope of this case due to the May 2018 Order, Dept. 16 Contempt Order, and Supreme Court Order (12/29/22), and the Judgment Satisfaction Functions are removed from the OAR." Discharge Order at 2:27-3:2, attached hereto

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as Exhibit 3. Thus, according to Judge Kishner, the case before her has not altered and could not alter the factual findings and the declarations of law issued by this Court.

The Lytle Trust misconstrues the Supreme Court's footnote stating that "nothing in the plain text of the May 2018 Order prohibited them from seeking the appointment of a receiver over the Association." *See* Supreme Court Order (12/29/22) at n.4. That note was clearly limited to the non-judgment collection portion of the Receivership Case, which is not at issue here. The footnote does not refute or question this Court's ruling that initiation of "an action against the Association that included a prayer for appointment of a receiver… [to] make special assessments on the Plaintiffs' and other property owners for the purpose of paying the Rosemere Judgments" was a violation of the May 2018 Order, *which the Supreme Court affirmed*. The footnote cannot be read in the way the Lytle Trust argues.

2. EDCR 7.60 Provides Additional Grounds to Award Fees to the Plaintiffs

EDCR 7.60(b) provides alternative grounds for awarding fees to the Plaintiffs in order to deter unreasonable and vexatious litigation conduct, much like NRS 18.010(2)(b), or failure to comply with a Court Order, like NRS 22.100(3). The Court may impose the Plaintiffs' attorney's fees and costs on the Lytle Trust (or its counsel) as a sanction for multiplying the proceedings without cause, or for failing to comply with the May 2018 Order. EDCR 7.60(b). A fees award under EDCR 7.60(b) is therefore appropriate.

3. An Award under the CC&Rs is Proper

a. There is no Dispute that the Plaintiffs Are the Prevailing Parties

As explained previously, the Plaintiffs have prevailed on every significant issue in this Case and have successfully defended this Court's Orders on multiple appeals to the Nevada Supreme Court. The Lytle Trust attempts to confuse the Court by arguing about what Judge Kishner stated in a recent oral ruling on competing fee motions in Department 31. However, nothing said in that case can change the fact that the Lytle Trust is the losing party in this case, as this Court has already determined on numerous occasions. *See* discussion *supra* Part C.1.

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b. There Is No Need to Relitigate Issues Already Decided

The Court previously granted fees under the CC&Rs, including fees and costs incurred on prior appeals. First, this Court awarded fees and costs to the Dismans, Boulden, and Lamothe in the Disman Fees Order entered on September 6, 2019, and Boulden Lamothe Fees Order entered on September 20, 2019, under Section 25 of the Original CC&Rs. Disman Fees Order at 8:14-20; Boulden Lamothe Fees Order at 8:6-9. The Court ruled that "Section 25 of the CC&Rs is a mandatory provision regarding the award of attorneys' fees and costs being paid by the losing party in any legal or equitable proceeding for the enforcement of or to restrain the violation of the CC&Rs or any provision thereof." Boulden Lamothe Fees Order at 8:6-9. These similarly situated property owners were awarded all their fees and costs incurred in this Case, including all fees and costs for the appeal that led to the First Order of Affirmance. *See* Disman Fees Order at 10:11-13; Boulden Lamothe Fees Order at 8:18-22; *see also* Lytle Trust's Opposition to Disman's Motion for Attorney's Fees and Costs (filed February 12, 2019) at 3:3-5 ("[the Dismans] seek to recover all of their attorneys' fees incurred in this action and in the related Nevada Supreme Court appeal from Defendants").

Second, the Second Fees Order entered on April 30, 2021, states the Court's since-affirmed conclusion that "Section 25 of the CC&Rs is such an express contractual provision that the Court has previously found it to be clear in awarding fees and costs to the other property owners, *including fees and costs incurred on appeal*" (*See* Second Fees Order at 6:18-23 (¶ 5) (emphasis added), and "Section 25 of the CC&Rs provides a basis for awarding fees to Plaintiffs, including fees and costs incurred for appeals." *Id.* at 7:14-15 (¶ 11). The Court awarded attorney's fees and costs to the Plaintiffs based on the CC&Rs, including fees and costs incurred in defending the May 2018 Order on appeal. *Id.* 3:10-13, 6:15-23, 7:1-6, and 7:14-15. There is no need to relitigate an issue that has already been decided by the Court.

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7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
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c. This is the Proceeding Where Fees May be Awarded

The Defendants seek to undo this Court's prior orders by arguing that the CC&Rs cannot be applied to fees incurred on appeal, based on the words "as may be fixed by the court in such proceeding." *See* Opposition at 3:5-18 (quoting CC&Rs at ¶ 25). They claim, without any citation to authority, that the word "proceeding" must be limited to the original action before the district court and cannot possibly extend to subsequent stages of the same litigation. But this argument is false. As shown immediately above, the Court has already ruled that the CC&Rs clearly call for fee awards "including fees and costs incurred on appeal."

In *L.V. Review-Journal v. Clark Cty. Office of the Coroner/Med. Exam'r*, 521 P.3d 1169, 1175 (Nev. 2022), the Nevada Supreme Court interpreted the meaning of the words "in the proceeding" in the attorney fee provision of NRS 239.011. The Court determined that "proceeding" included all events in a case through appeal:

> A "proceeding" is "[t]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment". *Proceeding*, Black's Law Dictionary (11th ed. 2019). The term includes "the taking of the appeal or writ of error." *Id.* (quoting Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 3-4 (2d ed. 1899)). Accordingly, pursuant to NRS 239.011(2)'s text, a prevailing requester is "entitled to recover [its] costs and reasonable attorney fees" for all the acts and events between the time of commencement and the judgment in their favor, including acts and events On appeal.

*Id. (*emphasis added). The same plain meaning to "proceeding" must be applied here. Since the proceeding here includes all events through appeal, then this Court may properly award fees incurred in the proceeding including fees on appeal.

D. The Requested Hourly Rate is Reasonable

1. Prevailing Market Rates Are Proper Instead of Actual Rates Charged

The Defendants argue that the Court cannot use the prevailing market rate to determine the lodestar figure. But that is exactly what the Nevada Supreme Court says this Court should do. *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 594 n.4, 879 P.2d 1180, 1188 (1994); *Herbst v. Humana Health Ins.*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989). The Lytle Trust attempts to

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distinguish the cases cited by Plaintiffs, but the rule stands. "After a court has determined that attorney's fees are appropriate, it then must multiply the number of hours reasonably spent on the case by a reasonable hourly rate to reach what is termed the lodestar amount." *Herbst*, 105 Nev. at 590, 781 P.2d at 764.

In *Mendenhall v. NTSB*, the Ninth Circuit was asked to review a finding that "a reasonable market rate" was the $150 per hour actually charged rather than the $ 300 per hour that prevailing party requested. 213 F.3d 464, 470 (9th Cir. 2000). In support of the fee application, the prevailing party submitted invoices from her attorney (which reflected that he charged her $150 per hour) and the attorney's affidavit. *Id.* The Ninth Circuit found that the fact finder "placed inordinate weight on the actual rates charged by Mendenhall's attorney as reflected in the invoices that Mendenhall submitted. This court has repeatedly held that the determination of a reasonable hourly rate is not made by reference to the rates actually charged the prevailing party." *Id.* at 471 (citing *Schwarz v. Sec'y of Health & Human Servs.*, 73 F.3d 895, 908 (9th Cir. 1995); *Chalmers v. Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986), *modified by* 808 F.2d 1373 (1986)). Note that *Mendenhall* was overruled on other grounds. However, it is presented here because it stands for the same proposition set forth in the Motion but does not involve a contingency fee or other issues raised by the Lytle Trust in its Opposition. As the Court stated in *Carson v. Billings Police Dep't*, 470 F.3d 889, 892 (9th Cir. 2006):

> But the "prevailing market rate," not the individual contract, provides the standard for lodestar calculations. The standard is "prevailing market rate of the relevant community." For fee-shifting purposes in this English-rule area, use of the general market rate rather than the contract rate affords some fairness, predictability and uniformity. That a lawyer charges a particular hourly rate, and gets it, is evidence bearing on what the market rate is, because the lawyer and his clients are part of the market. <u>But there is such a thing as a high charger and low charger, and the district judge is supposed to use the prevailing market rate for attorneys of comparable experience, skill and reputation, which may or may not be the rate charged by the individual attorney in question.</u>

(emphasis added). The fact that Plaintiffs' counsel charged less than prevailing market rates here may be considered by the Court, but it is not the sole factor in determining the lodestar.

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"Ultimately, a trial court must award a reasonable fee, however the method upon which a reasonable fee is determined is subject to the discretion of the court." *Tarkanian*, 110 Nev. at 594, 879 P.2d at 1188. And to "inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence – in addition to the attorney's own affidavits – that *the requested rates* are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. A rate determined in this way is normally deemed to be reasonable, and is referred to – for convenience – as the prevailing market rate." *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984).

Here, in addition to the Affidavit of Counsel, Plaintiffs provided citations (Motion at 22) to a number of cases discussing prevailing market rates in the community, none of which have been refuted or distinguished by the Defendants. The Court should exercise its discretion to award fees at the rates requested by Plaintiffs because they are the prevailing market rates as demonstrated by awards in prior cases.

2. An Award Using the Prevailing Market Rate Is Not an "Enhancement"

The Lytle Trust incorrectly conflates the lodestar hourly fee, which the jurisprudence confirms is the prevailing market rate and is presumed to be reasonable, with a fee enhancement. This is incorrect. The Ninth Circuit has explained that the "[c]alculation of attorney's fees *begins* with a lodestar figure: 'the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.'" *Miller v. L.A. Cty. Bd. of Educ.*, 827 F.2d 617, 621 (9th Cir. 1987) (emphasis added) (quoting *Penn. v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986)). "This lodestar figure can *then be adjusted* pursuant to the *Kerr* factors, although a strong presumption exists that the lodestar represents a reasonable fee." *Id.* (emphasis added) (citing *Jordan v. Multnomah Cty.*, 815 F.2d 1258, 1262-63 (9th Cir. 1987)).

An enhancement is an adjustment *after* the Court determines the prevailing market rate. The Plaintiffs have not sought any enhancement here. They have merely requested that the Court perform the first step of the analysis by determining the prevailing market rate, and "'the

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resulting product *is presumed* to be the reasonable fee" to which counsel is entitled." *Del. Valley*, 478 U.S. at 564 (1986) (quoting *Blum*, 465 U.S. at 897).

3. There Is No Windfall to Plaintiffs or their Counsel

The Motion seeks only to recover fees and costs for tasks actually performed in this Case and the appeals therefrom. It does not seek to recover fees and costs incurred in the Receivership matter in Department 31 before Judge Kishner. As the Court found, the "Lytle Trust did not inform the Receivership Court about this Case, the July 2017 Order, May 2018 Order, or the Orders of Affirmance. The Lytle Trust did not inform the Receivership Court that this Court had issued permanent injunctions against the Lytle Trust relating to enforcement of the Rosemere Judgments against the Plaintiffs, the Boulden Trust, the Lamothe Trust, the Dismans, or their properties." Contempt Order at 8:12-16; *see also* Supreme Court Order (12/29/2022) at 3 ("The Lytles also did not inform the district court in the receivership action of the injunctions issued in the resident actions."). The Plaintiffs had little choice but to intervene in the Receivership Case to inform Judge Kishner about this Court's Orders and stop the unlawful judgment collection that this Court found violated its injunctions. The Plaintiffs filed a separate fee motion in that case requesting an award of $93,713.92 in fees related only to the judgment collection portion of that case. Judge Kishner orally denied that motion on June 6, 2023. So the Plaintiffs will not recover over $93,000 in actual fees and costs caused by the Lytle's violation of this Court's Orders.[6]

E. The Tasks Performed Are Compensable

1. There Was No Excessive or Duplicative Work

The Lytle Trust argues that the Plaintiffs cannot recover fees incurred related to the fee motion filed in February 2022. The Plaintiffs filed that Motion on March 11, 2022, following the February 18, 2022 dismissal of the Lytle Trust's direct appeal from the Contempt Order. NRCP 54 requires a motion for fees to be filed within 21 days and Plaintiffs were bound to comply.

[6] The actual fees and costs incurred in the Receivership Action far exceeded this amount.

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Plaintiffs could not wait to see if the Lytle Trust would follow through on their threatened Writ Petition which had no set deadline. *Moseley v. Eighth Jud. Dist. Court*, 124 Nev. 654, 659 n. 6, 188 P.3d 1136, 1140 n. 6 (2008) (concluding laches did not bar consideration of a writ petition filed four months after contested order); *Widdis v. Second Jud.l Dist. Court*, 114 Nev. 1224, 1227–28, 968 P.2d 1165, 1167 (1998) (concluding that laches did not bar consideration of a writ petition filed seven months after the district court entered its written order).

The Plaintiffs' Motion was both timely and ripe when filed and all briefing was completed and preparations made to argue the motion. Then, the Lytle Trust filed their Writ Petition on April 11, 2022, only one day before the hearing held on April 12, 2022. The Court denied the motion without prejudice to wait and see how the Writ Petition would be resolved.

When the Writ Petition was denied, the unresolved fee motion provided the basis for the present Motion. The work was not duplicative. The motion was revised to bring the fee request current. The Plaintiffs were forced to revise the request by actions taken by the Lytle Trust. They should not be heard to complain about the consequences of their own actions. There is no basis to deny fees for the prior work that was actually and necessarily spent in this litigation.

The Lytle Trust also argues that the level of staffing was excessive or duplicative. However, the better view is that "Conferences between attorneys ... are necessary, valuable, and often result in greater efficiency and less duplication of effort, thus requiring fewer hours overall." *Avaya Inc. v. Telecom Labs, Inc.*, 2016 WL 1059007 * 33 (D.N.J., September 15, 2016) (*citing Apple Corps. v. Int'l Collectors Soc'y*, 25 F.Supp.2d 480, 488 (D.N.J. 1998)). Other courts have found that multiple attorneys billing for intra-firm conferences is reasonable. *See Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998) ("Time spent by two attorneys on the same general task is not, however, per se duplicative. Careful preparation often requires collaboration and rehearsal."); *Berberena v. Coler*, 753 F.2d 629, 631 (7th Cir. 1985) (upholding the district court's finding that "no duplication of effort or improper utilization of time" where four attorneys discussed the same case (quotation omitted)); *Nat'l Ass'n of*

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7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
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Concerned Veterans v. Sec'y of Def., 675 F.2d 1319, 1337, 219 U.S. App. D.C. 94 (D.C. Cir. 1982) ("[A]ttorneys must spend at least some of their time conferring with colleagues, particularly their subordinates, to ensure that a case is managed in an effective as well as efficient manner.").

CJ&M works in a collaborative environment, which enhances the representation of the client and the quality of its work product. CJ&M attorneys frequently conference and communicate with each other regarding the issues presented in their cases and collaborate on the drafting of court documents to ensure that well-reasoned, soundly researched, and coherent arguments are presented to the courts. Their clients and the courts benefit substantially from this practice, and it is not subject to question here. *See also Moreno v. Sacramento*, 534 F.3d 1106, 1114-15 (9th Cir. 2008) ("[T]he district court may not set the fee based on speculation as to how other firms would have staffed the case. The cost effectiveness of various law firm models is an open question.... Modeling law firm economics drifts far afield of the *Hensley* calculus and the statutory goal of sufficiently compensating counsel in order to attract qualified attorneys to do civil rights work."). The mere fact that there is more than one attorney working on a task for this matter on the same day does not prove that it was unnecessary or excessive. Similarly, the Lytle Trust has failed to provide any evidence or argument that any conference was excessive or duplicative – only that such conferences occurred. Considering the length of this case and the issues involved, it makes sense that the attorneys at CJ&M would discuss the issues in preparation for their case. They should not be punished for holding interoffice conferences or exchanging emails that are valuable and result in greater efficiency.

Also, it is not unusual for multiple attorneys to research, write, review, and revise the same pleadings and work product in a collaborative effort. "A trial court may reasonably award attorney fees that include time for work performed by several attorneys from one law firm on a single case." *Attard v. Citizens Ins. Co. of Am.*, 237 Mich.App 311, 328–330, 602 NW2d 633 (Mich. Ct. App. 1999). "With respect to the other two attorneys who worked on the appeal . . .

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The hours claimed were neither unnecessary, excessive, or duplicative. There is no support for the Commission's finding. . .that having a panel of two attorneys during a moot court session is unreasonably duplicative." *Tenants of 710 Jefferson Street, NW v. D.C. Rental Hous. Com'n,* 123 A.3d 170, 198-199 (D.C. 2015). "The Court has rejected—numerous times—the argument collaboration between two lawyers amounts to impermissible duplication of effort." *Latahotchee v. Comm'r of SSA*, No. CV-19-05668-PHX-DWL, 2021 U.S. Dist. LEXIS 136975, at *7 (D. Ariz. July 22, 2021). In the instant case, several CJ&M attorneys worked on this case together and reviewed and revised relevant pleadings to eliminate mistakes and fully flesh out arguments before they were presented to the Court. This is the normal course of action for CJ&M, which produced favorable results in this and many other cases.

2. The Descriptions Are Not Vague

The Lytle Trust argues that the descriptions related to research, emails, calls, and conferences are too vague. However, the purpose of the tasks noted by the Lytle Trust can be determined by reviewing the surrounding tasks and the context in which the task was performed. *In re Lupton Consulting LLC*, 638 B.R. 897, 915-16 (Bankr. E.D. Wis. 2022) ("Courts have recognized that a billing entry that could be considered vague if read in isolation, may not be vague when viewed in the context of the surrounding work performed."); *see, e.g., Marsh v. Grade S.*, No. 1:04-23149-HFF, 2009 U.S. Dist. LEXIS 146737, at *19 (D.S.C. May 14, 2009) ("Most of the entries that Grade South claims are too vague, though brief and concise, are clear enough to reveal to a reviewing court what those entries pertain to…. Furthermore, the specific entries cited in Grade South's brief, though arguably vague standing alone, become clear when viewed in the context of surrounding billing entries.").

For example, the Lytle Trust points to the task performed by attorney Wesley Smith on 10/23/2020 and described as "Research (.9)". However, the entire description of tasks performed that day by Mr. Smith is: "Email from L Wolff regarding appealability of Contempt Order Research (.1); Research (.9); email to L Wolff regarding Motion to Dismiss (.1)." It is clear then

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

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that Ms. Wolff emailed Mr. Smith regarding research on the appealability of the Contempt Order, Mr. Smith then conducted some additional research, and emailed back to Ms. Wolff regarding a Motion to Dismiss that was being prepared by Plaintiffs' counsel. This same exercise can be followed for each of the entries identified by the Lytle Trust. There is no need to reduce any entry for vagueness.

3. Reference to Court Rules is a Reasonable and Necessary Task for Counsel

The Lytle Trust argues that looking at the rules is not compensable, citing *Dormeyer v. Comerica Bank-Illinois*, No. 96 C 4805, 1999 WL 608771, at *4 (N.D. Ill. Aug. 6, 1999). But *Dormeyer* is an unreported case that has been questioned in its own District Court as being contrary to Circuit law:

> Defendants cite to *Dormeyer*..., where the court held that attorney time spent familiarizing oneself with the Federal Rules of Evidence are not recoverable. However, the Seventh Circuit has held to the contrary, finding that "[n]o matter how experienced a lawyer is, he has to conduct (or have conducted for him) research to deal with changes in the law, to address new issues, and to refresh his recollection." *In re Continental Illinois Sec. Litigation*, 962 F.2d 566, 570 (7th Cir. 1992); *see also Morjal* [*v. City of Chicago*], 2013 U.S. Dist. LEXIS 75023, 2013 WL 2368062, at *2 (finding that time spent ensuring compliance with local rules is compensable). The Seventh Circuit in *Securities Litigation* added that "a lawyer who tries to respond to a motion or brief without conducting fresh research is courting sanctions or a malpractice suit." 962 F.2d at 570.

Valerio v. Total Taxi Repair & Body Shop, LLC, 82 F. Supp. 3d 723, 745 (N.D. Ill. 2015) (emphasis added). And unlike the other case cited by the Lytle Trust, *In re St. Pierre*, 4 B.R. 184, 186 (Bankr. D.R.I. 1980), the Plaintiffs' time entries have nothing to do with "familiariz[ing] … generally" with the Rules. Plaintiffs' counsel reviewed Rules to determine their applicability to the facts and circumstances of this case and to act accordingly – something that is required of an attorney practicing before this Court. NRCP 1 ("These rules govern the procedure in all civil actions and proceedings in the district courts…. They should be construed, administered, and employed by the court *and the parties*…" (emphasis added)). Plaintiffs' counsel was not required to merely rely upon memory of what a particular Rule says and it is certainly within a lawyers'

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

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job function to analyze and apply rules to the facts of a particular case. There is no reduction necessary for these entries.

4. Work Performed by Counsel Was Not Paralegal Work

The Lytle's argue that work should have been done by paralegals to prepare tables of contents and tables of authorities. The issue here is not whether a paralegal could have performed the task, but whether any time spent by counsel on such tasks is compensable. The specific time entries noted by the Lytles relate to preparation and editing of mandatory components of appellate briefs – that is tables of contents, tables of authorities, and certificates – subject to requirements under the Rules of Appellate Procedure. What is not reflected in the billing is work by staff preparing preliminary versions of these documents. Indeed, the attorney did not perform basic clerical functions of building tables. The attorney time was spent revising section headings in the table of contents in conjunction with editing the same headings in the body of the brief, cite checking and editing citations in the table of contents and the body of the briefs, and verifying that certificates were compliant with the Rules. The time spent on these tasks by counsel was necessary to comply with standards of professional conduct and reasonable considering the breadth and depth of the briefing. No reduction is necessary for these tasks.

5. There Were No Clerical Tasks Performed by Counsel

The Lytle Trust argues that tasks such as "file notes" and "preparation for filing" are clerical tasks that are not compensable, but this argument misunderstands the terminology used in the billing statements. When Counsel used the phrase "file notes", that was original writing of electronic notes in the case file, including attorney analysis and work product, that would then be electronically saved in the file in a matter of seconds. The time requested does not include any clerical "filing." When Counsel used the term "preparation for filing," Counsel was describing the final review and fine tuning of the document before being sent to staff for filing. Again, no time is requested for the actual clerical filing process. The use of the word "calendar" in the entry on 4/26/23 is a transcription error. The original time entry on Counsel's time sheet shows it

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

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should read "*meet with* Clients regarding Fee Motion for Department 16 before Judge Williams." These entries do not describe clerical tasks and no reduction is necessary.

6. Agreed Reduction for Entry on May 23, 2022.

The Lytles accurately point out that the fee statement includes an entry on May 23, 2022 by partner Kevin Christensen and described as "Conference with W Smith regarding Receiver Fee Orders and Hearing." This task reflects 0.20 hours. Plaintiffs agree that this entry should have been billed under the Receivership Action, not billed here, and agree that their fee request can be reduced by 0.20 hours.

CONCLUSION

Based on the forgoing, the Plaintiffs' Motion for Attorney's Fees and Costs should be granted, less the agreed reduction of 0.20 hours. Additionally, in preparing this Reply, Plaintiffs' noticed that the table included on page 23 of the Motion and page 10 of the Declaration did not correctly sum the total Lodestar Fees (Mr. Christensen's fees were inadvertently excluded from the total). This has been corrected and the agreed reduction of 0.20 has been removed. This results in an adjusted lodestar as follows:

Initials	Name	Position	Time	Rate	Lodestar Fees
WJS	Wesley J. Smith	Shareholder	193.04	$425.00	$ 82,042.00
LJW	Laura J. Wolff	Senior Associate	174.52	$325.00	$ 56,719.00
DEM	Daryl E. Martin	Shareholder	9.68	$450.00	$ 4,356.00
KBC	Kevin B. Christensen	Shareholder	3.32	$475.00	$ 1,577.00
TOTAL TIME			380.56	$375.87	$ 144,694.00

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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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Therefore, Plaintiffs request an award of $144,694.00 in fees and $3,896.51 in costs.

DATED this 6th day of July, 2023.

CHRISTENSEN JAMES & MARTIN

By: */s/ Wesley J. Smith, Esq.*
Wesley J. Smith, Esq.
Nevada Bar No. 11871
7440 W. Sahara Avenue
Las Vegas, NV 89117
Tel.: (702) 255-1718
Fax: (702) 255-0871
Attorneys for September Trust, Zobrist Trust, Sandoval Trust, and Gegen

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 July 6, 2023, I caused a true and correct copy of the foregoing 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 8.04(c) of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

/s/ Natalie Saville
Natalie Saville

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EXHIBIT 3
Receiver Case - Default Judgment

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DJ
Dan R. Waite, Bar No. 4078
DWaite@lewisroca.com
Chad D. Olsen, Bar No. 12060
COlsen@lewisroca.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Telephone: 702-949-82001
Facsimile: 702-949-8398

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. No.: 31 **ORDER REGARDING (1) PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT, AND (2) INTERVENORS' COUNTERMOTION TO STRIKE UNLAWFUL PORTIONS OF THE COMPLAINT AND ORDER APPOINTING RECEIVER** **AND** **DEFAULT JUDGMENT** **Date of Hearing: March 22, 2023** **Time of Hearing: 9:00 a.m.**

Having reviewed and considered:

1. The Application for Default Judgment submitted by Plaintiffs Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust, and based upon NRCP 55 and EDCR 2.70, the pleadings and records on file herein, the Declaration of Trudi Lee Lytle,

2. The Intervenors' (1) Opposition to Application for Default Judgment ("Opposition"); and (2) Countermotion to Strike Unlawful Portions of the Complaint and Order Appointing Receiver ("Countermotion"),

3. The Defendant Rosemere Estates Property Owners' Association's failure to appear or otherwise participate in this litigation, and default having been previously entered against Defendant on August 30, 2018, and

4. The arguments of counsel for Plaintiff (Dan R. Waite) and counsel for Intervenors (Wesley J. Smith) at the hearing conducted on March 22, 2023,

the Court FINDS and CONCLUDES as follows:

1. Plaintiffs are the current owners of real property located in Rosemere Estates at 1930 Rosemere Court, in Clark County, Nevada, APN 163-03-313-009 (the "Property").

2. Defendant Rosemere Estates Property Owners' Association ("Association") is a common interest community comprised of nine (9) owners of single-family lots, eight of which are developed, all as more particularly described in the Declaration of Covenants, Conditions and Restrictions, dated January 4, 1994 (the "CC&Rs") for the Association, as recorded in the official records of the Clark County Nevada Recorder's office.

3. The CC&Rs and obligations sued upon herein were to be and were executed and performed in Clark County, Nevada. Further, the property at issue that gave rise to this action is located in Clark County, Nevada. As such, venue is proper in this Court.

4. Plaintiffs are members of the Association.

5. The Association is a limited purpose association pursuant to NRS 116.1201.

6. In May 2018, in consolidated cases A-16-747800-C and A-17-765372-C, pending in Department 16 before the Honorable Judge Timothy C. Williams (the "Dept. 16 Case"), a permanent injunction was entered against the Lytle Trust (the "May 2018 Order"). Previously, the Lytle Trust obtained three judgments against the Association in three separate actions (collectively, the "Judgments"). The May 2018 Order prohibited the Lytle Trust "from taking any action in the future directly against the [Rosemere Estates property owners] or their properties based upon the [Judgments]." *See* Order (5/25/21, in this case) at 2:16-22.

7. On June 8, 2018, the Lytle Trust filed its complaint in this case, asking for declaratory and other relief relating to enforcing the Association's obligations to operate and maintain the Rosemere Estates community and pay known creditors of the Association, including

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but not limited to the Lytle Trust. Some of the other relief requested in the complaint was for the appointment of a receiver over the Association to handle maintenance obligations and day-to-day activities, including the financial activities regarding assessments and creditors, until a duly constituted board could be instituted and power transitioned to the board.

8. Defendant Association failed to answer or otherwise defend the complaint. Default was entered against the Association on August 30, 2018.

9. On December 18, 2019, this Court issued its Order Appointing A Receiver of Defendant Rosemere Property Owners Association ("OAR"). The Order Appointing Receiver vested the Receiver with powers falling into two general categories: (a) Administrative Functions, and (b) Judgment Satisfaction Functions. Appointing the Receiver and vesting him with the Administrative Functions was "necessary to bring the Association into compliance with Nevada law." *Id.* at 5:14-15. Further, the Court was not aware of the May 2018 Order when it entered the OAR granting powers to the Receiver for the Judgment Satisfaction Functions.

10. On March 16, 2020, this Court entered its Order Allowing Intervention ("Order (3/16/20)") whereby four other Rosemere Estate property owners intervened into this action. The intervenors here ("Intervenors")[1] were plaintiffs in the Dept. 16 Case. The Lytle Trust was a defendant in the Dept. 16 Case. The Intervenors made the Court aware of the May 2018 Order for the first time and argued that the OAR should be rescinded or amended and the Judgment Satisfaction Functions could not proceed due to the May 2018 Order.

11. On April 23, 2020, the Lytle Trust advised this Court that Judge Williams in the Dept. 16 Case held it in contempt for violating the May 2018 Order by seeking the appointment of a Receiver here. On May 29, 2020, the Intervenors provided this Court with a written copy of Judge Williams's order entered on May 22, 2020, holding the Lytle Trust in contempt for violating the May 2018 Order ("Dept. 16 Contempt Order").

[1] The intervenors here are as follows: (1) September Trust, dated March 23, 1972, (2) Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, (3) Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. Sandoval and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992, and (4) Dennis A. Gegen and Julie S. Gegen, husband and wife.

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12. The Lytle Trust's direct appeal from the Dept. 16 Contempt Order was dismissed. Ultimately, the Lytle Trust sought review of the Dept. 16 Contempt Order by way of a writ petition to the Nevada Supreme Court (consolidated Case Nos. 81689 and 84538).

13. On November 12, 2020, this Court entered its Order Staying Action. On May 25, 2021, this Court entered its Decision and Order, which had the effect of lifting the Order Staying Action except to the extent of the Receiver's Judgment Satisfaction Functions (as defined in the Decision and Order at 8:17-24), which Judgment Satisfaction Functions were stayed pending outcome of the Nevada Supreme Court's review of the Dept. 16 Contempt Order. The May 25, 2021 Decision and Order also declined to rescind the OAR, ruling that, while the Court was not aware of the May 2018 Order when the Court issued the OAR, the Court nevertheless concluded that appointing a receiver was proper with regard to ensuring the Association was compliant with Nevada law.

14. On December 29, 2022, the Nevada Supreme Court issued its Order Affirming In Docket No. 81689 And Denying Petition For A Writ Of Mandamus In Docket No. 84538 ("Supreme Court Order (12/29/22)"),[2] stating that the Dept. 16 Contempt Order holding the Lytle Trust in contempt of the May 2018 Order was not a manifest abuse of discretion because "[t]he May 2018 order enjoined the Lytles 'from taking any action in the future directly against' the Property Owners or their homes, and included findings of fact noting that the Amended CC&Rs had no force and effect. Further, at various stages of the Lytles' litigation, the district courts and this court issued orders that the Amended CC&Rs were void ab initio and the Association had no power through the original CC&Rs or NRS Chapter 116 to make assessments against the unit owners." (Supreme Court Order (12/29/22) at 4-5). The Nevada Supreme Court further stated that "[i]n holding the Lytles in contempt, the district court relied, in part, on their having argued that the Association, through the receiver, could make special assessments on the Property Owners for the purpose of paying the judgments when the Association had no power to do so under the original CC&Rs." (*Id.* at 6).

[2] Entered in Consolidated Case No. 81689/84538. A Petition for Rehearing was denied on February 13, 2023 and a Petition for En Banc Reconsideration was denied on March 27, 2023.

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15. Since this Court appointed the Receiver and had stayed the Judgment Satisfaction Functions but not the Administrative Functions of the Receiver, this Court notes that the Supreme Court concluded in its Order (12/29/22) that, although "the Lytles were prohibited from enforcing the powers in the Amended CC&Rs, nothing in the plain text of the May 2018 Order prohibited them from seeking the appointment of a receiver over the Association." (*Id.* at 4, n. 4).

16. Plaintiffs filed their Application for Default Judgment on February 10, 2023.

17. Intervenors filed their Opposition and Countermotion on February 24, 2023.

18. Plaintiffs filed their Reply in support of Application for Default Judgment and Opposition to Intervenors' Countermotion on March 14, 2023.

19. Intervenors filed their Reply in support of Countermotion on March 20, 2023. In Intervenor's Reply, they raised for the first time a request for the default to be set aside. During the hearing on March 22, 2023, Intervenors withdrew their request for the default to be set aside.

20. Plaintiffs have demonstrated the sufficiency of the causes of action stated in the complaint. For example, at the time Plaintiffs filed the complaint, the Association was not maintaining records, a bank account, the landscaping in the exterior wall planters, the exterior perimeter and frontage, the entrance gate, or the private drive and sewer system. Nor did a Board exist to run the Association, the Association was not paying its creditors, and it was in default status with the Nevada Secretary of State and the Nevada Real Estate Division.

21. In short, the Association had not complied with Nevada statutes and rules applicable to a limited purpose association. *See* Order (5/25/21) at 3:17-19.

22. As a result of the Association's incorporation as a non-profit corporation on February 25, 1997, pursuant to NRS 82, the Association has been and remains vested with the power to impose assessments upon its members (a) pursuant to NRS 82.131(5), and (b) as implied by necessity as provided in the Restatement (Third) of Property: Servitudes ("Restatement Servitudes"), particularly in Chapter 6 of the Restatement Servitudes. Additionally, since May 27, 2021, when the statute was amended, the Association has been and remains vested with the power to impose assessments upon its members as implied by NRS 116.3116 and its application to limited purpose associations pursuant to NRS 116.1201(2)(a)(3)(V).

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Based on the above FINDINGS and CONCLUSIONS, the Court hereby orders and enters default judgment as follows:

ORDER

Plaintiffs' Application for Default Judgment is granted as set forth in the Default Judgment that follows.

Intervenors' Countermotion is denied as procedurally improper. Nevertheless, the Court considered the Intervenors' Opposition and declines to strike any portions of the Complaint filed in this action. Regarding the Order Appointing Receiver, consistent with (1) the Nevada Supreme Court's December 29, 2022 "Order Affirming In Docket No. 81689 And Denying Petition For A Writ Of Mandamus In Docket No. 84538," (2) other orders of the Nevada Supreme Court, (3) any other law of the case, whether it comes from a District Court or the Supreme Court, (4) NRS 82, and (5) NRS 116, including amendments in 2021 applicable to limited purpose associations, e.g., NRS 116.3116, the Court hereby amends its Order Appointing Receiver (filed 12/18/19) ("OAR") by removing the Judgment Satisfaction Functions (as defined in this Court's Decision and Order (filed 5/25/21) at 8:17-22). This is the Court's "further order" resolving the stay of the Receiver's Judgment Satisfaction Functions contemplated by and set forth in this Court's Decision and Order (filed 5/25/21) at 8:17-24.

DEFAULT JUDGMENT

DEFAULT JUDGMENT in favor of Plaintiffs Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust, is hereby entered against Defendant Rosemere Estates Property Owners' Association as follows:

1. As long as the Defendant Association exists as a limited purpose association, it must operate as a limited purpose association as required by the CC&Rs and Chapters 82 and 116 of the Nevada Revised Statutes. Without limiting the foregoing, the Defendant Association must: (a) maintain the landscaping in the exterior wall planters, (b) maintain the exterior perimeter and frontage, (c) maintain the entrance gate, and (d) maintain the private drive and sewer system. And based on the Association's implied powers and pursuant to NRS 82 and wholly independent of any powers vested by the CC&Rs, the Defendant Association must also (e) ensure that

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homeowners are paying their assessments, and (f) seek collection activity against any homeowners that have failed to pay their assessments, subject to Paragraph 3, below; however, the Court takes no position on the Plaintiff's Judgments or the collectability of those Judgments, but recognizes that law of the case in other actions may affect those rights. Further, the Defendant Association must (g) perform any other activity required under Nevada law, which, pursuant to this Court's Order (12/29/22), includes complying with NRS 116.31083(7), e.g., maintaining both an operating account and a reserve account at a financial institution and, once a quarter at an Association board meeting, reviewing the Association's "latest account statements prepared by the financial institutions in which the accounts of the [A]ssociation are maintained," (*see* Order (12/29/22) at 6:3-15, 8:9-10);

2. Defendant Association must comply with the CC&Rs and Nevada law with respect to the Association's maintenance obligations and day-to-day activities;

3. This judgment is intended and shall be construed so as not to conflict with (1) the Supreme Court Order (12/29/22), (2) the May 2018 Order, (3) the Department 16 Contempt Order, (4) any law of the case, whether it comes from a District Court or the Supreme Court, (5) NRS 82, and (6) NRS 116 as that Chapter applies to limited purpose associations, including amendments in 2021 applicable to limited purpose associations, e.g., NRS 116.3116, as any of the foregoing may hereafter be modified or clarified and, to that end, the Court expressly notes that references in this Default Judgment to assessments by the Defendant Association do not rely on either the CC&Rs or NRS 116 (except to the narrow extent that NRS 116.1201 was amended in 2021 to make NRS 116.3116 applicable to limited purpose associations) and, nunc pro tunc, did not apply to the Judgment Satisfaction Functions granted under the original OAR and which are removed from the OAR by this Order; and

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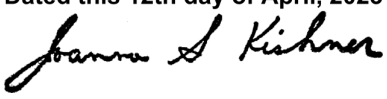
4. This Court's view of law of the case is the issue regarding the enforcement of a judgment through a receiver should not have been before this Court. The Court stayed the Judgment Satisfaction Functions to see if the Supreme Court had a different view. The Supreme Court confirmed in the Supreme Court Order (12/29/22) that the Judgment Satisfaction Functions were never before this Court. This Court follows the Supreme Court.

IT IS SO ORDERED, ADJUDGED, and DECREED.

Dated this 12th day of April, 2023



BC8 A30 E303 0049
Joanna S. Kishner
District Court Judge

Respectfully submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

/s/ Dan R. Waite
Dan R. Waite, Bar No. 4078
DWaite@lewisroca.com
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169
(702) 949-8200

Attorneys for Plaintiff

Approved as to form and content:

CHRISTENSEN JAMES & MARTIN

/s/ Wesley J. Smith
Kevin B. Christensen, Bar No. 0175
Wesley J. Smith, Bar No. 11871
Laura J. Wolff, Br No. 6869
7440 West Sahara Avenue
Las Vegas, Nevada 89117

Attorneys for Intervenors September Trust, Zobrist Trust, Sandoval Trust, and Dennis & Julie Gegen

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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From: Wesley Smith <wes@cjmlv.com>
Sent: Tuesday, April 11, 2023 1:58 PM
To: Waite, Dan R. <DWaite@lewisroca.com>
Cc: Horvath, Luz <LHorvath@lewisroca.com>
Subject: Re: Lytle Trust v. Rosemere Estates: Case No. A-18-775843-C

CAUTION! **[EXTERNAL to Lewis Roca]**

Dan,

I found 1 minor typo on page 3, line 15, "acton" should read "action" at the end of the sentence. With that change, you may submit with my electronic signature. Thanks,

Wes Smith

Christensen James & Martin
7440 W. Sahara Ave.
Las Vegas, NV 89117
Tel. (702) 255-1718
Fax (702) 255-0871
wes@cjmlv.com

** Licensed in Nevada, Washington & Utah*

From: Waite, Dan R. <DWaite@lewisroca.com>
Sent: Tuesday, April 11, 2023 1:02 PM
To: Wesley Smith <wes@cjmlv.com>
Cc: Horvath, Luz <LHorvath@lewisroca.com>
Subject: Lytle Trust v. Rosemere Estates: Case No. A-18-775843-C

Hello Wes,

All of your changes are accepted. Attached is the finalized version of the draft you sent last night ("Wes fresh redline 4.10.23 7 pm"), which includes some formatting changes once redlines were removed and addition of your signature block. Please let us know if we are authorized to affix your e-signature and submit to Judge Kishner for signature. Thanks,

Dan

Dan R. Waite
Partner

dwaite@lewisroca.com
D. 702.474.2638

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3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

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DISTRICT COURT
CLARK COUNTY, NEVADA

Trudi Lytle, Plaintiff(s) vs. Rosemere Estates Property Owners' Association, Defendant(s)	CASE NO: A-18-775843-C DEPT. NO. Department 31

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 4/12/2023

Joseph Ganley	jganley@hutchlegal.com
Natalie Saville	nat@cjmlv.com
Wesley Smith	wes@cjmlv.com
Laura Wolff	ljw@cjmlv.com
Piers Tueller	ptueller@hutchlegal.com
Dan Waite	dwaite@lrrc.com
Luz Horvath	lhorvath@lrrc.com
Kaci Chappuis	kchappuis@hutchlegal.com
Christine Davies	cdavies@hutchlegal.com

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EXHIBIT
Receiver Case - Discharge Order

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ORDG

Joseph R. Ganley (5643)
Piers R. Tueller (14633)
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
jganley@hutchlegal.com
ptueller@hutchlegal.com

Attorneys for Receiver Kevin Singer

EIGHTH JUDICIAL 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. No.: XXXI

ORDER GRANTING RECEIVER KEVIN SINGER'S MOTION FOR ORDER:

1) **APPROVING AND SETTLING THE RECEIVER'S FINAL REPORT AND ACCOUNTING;**

2) **APPROVING FINAL COMPENSATION AND REIMBURSEMENT OF EXPENSES;**

3) **EXONERATING ALL BONDS;**

4) **TERMINATING THE RECEIVERSHIP APPOINTMENT; AND**

5) **RETAINING JURISDICTION RE THIS RECEIVERSHIP APPOINTMENT**

Receiver Kevin Singer (the "Receiver") having filed his Motion for Order: (1) Approving and Settling the Receiver's Final Report and Accounting; (2) Approving Final Compensation and Reimbursement of Expenses; (3) Exonerating All Bonds; (4) Terminating the Receivership Appointment; and (5) Retaining Jurisdiction re this Receivership Appointment on March 21, 2023; Plaintiffs Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust and Intervenors September Trust, Zobrist Trust, Sandoval Trust, and Dennis & Julie Gegen having filed their respective Notices of Non-Opposition on March 24, 2023, the Court, having reviewed all of the motions and non-oppositions, and being fully apprised in the premises, and good cause appearing, the Court finds as follows:

The Receiver has completed all Administrative Functions as defined in the Order Appointing Receiver entered on December 18, 2019 ("OAR"), as clarified by the Court's Decision and Order entered on May 25, 2021 ("May 25, 2021 Order").

The Judgment Satisfaction Functions originally granted to the Receiver in the OAR, as defined in the May 25, 2021 Decision and Order at 8:17-22, were stayed as a result of the Court being informed of a permanent injunction entered against the Lytle Trust in Department 16 in May 2018 ("May 2018 Order").

The stay of the Judgment Satisfaction Functions was to remain in effect pending the outcome of the Lytle Trust's appeal, and subsequent writ petition, of Judge Williams' Contempt Order entered on May 22, 2020 in Department 16 ("Dept. 16 Contempt Order").

On December 29, 2022, the Nevada Supreme Court issued its Order Affirming in Docket No. 81689 and Denying Petition For a Writ of Mandamus in Docket No. 84538 ("Supreme Court Order (12/29/22)"), whereby the Lytle Trust's writ petition regarding the Dept. 16 Contempt Order was resolved in the Intervenors' favor.

In light of the foregoing, the Court finds the Receiver did not engage in any Judgment Satisfaction Functions in violation of the stay, the Judgment Satisfaction Functions are not within the scope of this case due to the May 2018 Order, Dept. 16 Contempt Order, and

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Supreme Court Order (12/29/22), and the Judgment Satisfaction Functions are removed from the OAR.

Therefore, it is hereby

ORDERED the Receiver's final report and accounting as presented is approved and settled.

It is FURTHER ORDERED that the Receiver's fees and expenses for services rendered from October 9, 2019, through the hearing on this Motion, with total fees in the amount of $140,565.00 and total expenses in the amount of $8,298.02 are approved.

It is FURTHER ORDERED that the Receiver's counsel's fees and expenses in the total amount of $160,828.16 are approved.

It is FURTHER ORDERED that the Receiver is to use all funds remaining in the Receiver's trust account to partially satisfy his and his counsel's outstanding balances of fees and expenses. The Receiver and his counsel will provide a courtesy credit for the then-remaining unpaid amount of his and his counsel's outstanding balances of fees and expenses.

It is FURTHER ORDERED that all bonds posted herein by the Receiver and/or the Parties to the case are exonerated.

It is FURTHER ORDERED that the Receiver is discharged and the Receivership Appointment is hereby terminated.

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It is FURTHER ORDERED that the Court retains jurisdiction over any matters or claims which may later arise in connection with the Receiver and/or the Receivership Estate.

Dated this 10th day of April, 2023

83A 5FD 68D5 5702
Joanna S. Kishner
District Court Judge

Respectfully submitted by:

HUTCHISON & STEFFEN, PLLC

/s/ Piers R. Tueller

Joseph R. Ganley (5643)
Piers R. Tueller (14633)
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Telephone: 702-385-2500
jganley@hutchlegal.com
ptueller@hutchlegal.com

Attorney for Receiver Kevin Singer

Approved as to form and content:

CHRISTENSEN JAMES & MARTIN

/s/ Wesley J. Smith

Kevin B. Christensen (175)
Wesley J. Smith (11871)
Laura J. Wolff (6869)
7440 West Sahara Avenue
Las Vegas, Nevada 89117

Attorneys for Intervenors September Trust, Zobrist Trust, Sandoval Trust, and Dennis & Julie Gegen

Approved as to form and content:

LEWIS ROCA ROTHGERBER CHRISTIE, LLP

/s/ Dan R. Waite

Dan R. Waite (4078)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Attorney for Plaintiffs, Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust

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Kaci Chappuis

From: Wesley Smith <wes@cjmlv.com>
Sent: Thursday, April 6, 2023 3:28 PM
To: Waite, Dan R.; Joseph R. Ganley; Kaci Chappuis
Cc: Piers R. Tueller; Jackson Wyche
Subject: Re: Singer - Lytle v. Rosemere - Proposed Order

I approve of this version. You may affix my signature.

[redacted]

Wes Smith

Christensen James & Martin
7440 W. Sahara Ave.
Las Vegas, NV 89117
Tel. (702) 255-1718
Fax (702) 255-0871
wes@cjmlv.com

** Licensed in Nevada, Washington & Utah*

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From: Waite, Dan R. <DWaite@lewisroca.com>
Sent: Thursday, April 6, 2023 3:02 PM
To: Wesley Smith <wes@cjmlv.com>; Joseph R. Ganley <JGanley@hutchlegal.com>; Kaci Chappuis <kchappuis@hutchlegal.com>
Cc: Piers R. Tueller <ptueller@hutchlegal.com>; Jackson Wyche <Jackson@receivershipspecialists.com>
Subject: RE: Singer - Lytle v. Rosemere - Proposed Order

All,

Attached is what I believe is the correct and finalized version of the Receiver Discharge Order. [redacted]

Kaci Chappuis

From: Waite, Dan R. <DWaite@lewisroca.com>
Sent: Thursday, April 6, 2023 3:03 PM
To: Wesley Smith; Joseph R. Ganley; Kaci Chappuis
Cc: Piers R. Tueller; Jackson Wyche
Subject: RE: Singer - Lytle v. Rosemere - Proposed Order
Attachments: Order Granting Final Accounting Motion (4.6.23) (clean)(120789616.1).docx

All,

Attached is what I believe is the correct and finalized version of the Receiver Discharge Order. [redacted] I believe this is now ready for signature. If you agree, then Joe you are authorized to affix my signature and submit.

[redacted]

Dan

Dan R. Waite
Partner

dwaite@lewisroca.com
D. 702.474.2638

LEWIS ROCA

From: Waite, Dan R.
Sent: Thursday, April 6, 2023 1:06 PM

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DISTRICT COURT
CLARK COUNTY, NEVADA

Trudi Lytle, Plaintiff(s) vs. Rosemere Estates Property Owners' Association, Defendant(s)	CASE NO: A-18-775843-C DEPT. NO. Department 31

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 4/10/2023

Joseph Ganley	jganley@hutchlegal.com
Natalie Saville	nat@cjmlv.com
Wesley Smith	wes@cjmlv.com
Laura Wolff	ljw@cjmlv.com
Piers Tueller	ptueller@hutchlegal.com
Kaci Chappuis	kchappuis@hutchlegal.com
Dan Waite	dwaite@lrrc.com
Luz Horvath	lhorvath@lrrc.com
Christine Davies	cdavies@hutchlegal.com

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7/6/2023 4:34 PM
Steven D. Grierson
CLERK OF THE COURT

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CHRISTINA H. WANG, ESQ.
Nevada Bar No. 9713
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
Tel: (702) 667-3000
Fax: (702) 938-8721
Email: christina.wang@fnf.com
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 **REPLY IN SUPPORT OF ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR ATTORNEY'S FEES** Date of Hearing: July 13, 2023 Time of Hearing: 9:05 a.m.

Counter-Defendants/Cross-Claimants ROBERT Z. DISMAN and YVONNE A. DISMAN (collectively referred to herein as, the "Dismans"), by and through their attorneys of record, the Fidelity National Law Group, hereby submit this Reply in support of their Motion for Attorney's Fees ("Motion") against Defendants/Counter-Claimants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, TRUSTEES OF THE LYTLE TRUST (collectively referred to herein as, the "Lytles").

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This Reply is made and based upon the following Memorandum of Points and Authorities, all pleadings, exhibits and documents on file with the Court in this action, such further documentary evidence as the Court deems appropriate, and any arguments of counsel at the hearing of this matter.

DATED this 6th day of July, 2023.

FIDELITY NATIONAL LAW GROUP

/s/ Christina H. Wang

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Lytles' opposition springs from and largely relies upon the premise that the Dismans were somehow not involved as parties to this Court's contempt proceedings, contempt order, or the subsequent Nevada Supreme Court appeal of the order. In fact, the Lytles go so far as to characterize the Dismans as volunteers or bystanders to the contempt proceedings whose status on appeal was akin to that of an *amicus curiae*, or a friend of the court. This premise is utterly false and like a house of cards, all of the Lytles' arguments built thereon crumbles.

The Dismans became parties to the contempt proceedings when they filed a joinder to the motion to hold the Lytles in contempt. The Dismans filed the joinder because the Lytles' actions constituting contempt directly affected the Dismans and violated this Court's injunctions pertaining to their property. Under Nevada law, a joinder is treated as its own stand-alone motion no matter what becomes of the principal motion, and by virtue of the Dismans' joinder, the resulting contempt order specifically included and afforded relief to the Dismans.

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The Lytles' subsequent appeal of the contempt order, therefore, necessarily included the Dismans as parties and not as some sort of *amicus curiae* as the Lytles now argue. Notably, the Lytles made a similar argument to the Nevada Supreme Court that the Dismans had no standing on appeal because the contempt proceedings did not really involve them. The Nevada Supreme Court, however, never even entertained that argument. That the Lytles would resort to such an argument in the first place evidences a level of cynicism that is not often seen.

Indeed, at no point did the Dismans choose to be parties to this action or the related appeals, but they were made parties by the Lytles. Nor did they choose the course of events that resulted in the contempt order. The only offending conduct that the Dismans are guilty of is purchasing their property. Since that time, they have been on the defensive, first defending their property against the Lytles' successive attempts to encumber it with judgment liens and then defending the Court's orders prohibiting such conduct in multiple appeals. Thus, the Lytles' characterization of the Dismans as merely going along for the ride has no basis in reality, and the Court should award them the entirety of the attorney's fees sought.

Fidelity National Law Group
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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II. FACTUAL AND PROCEDURAL BACKGROUND

The Lytles' opposition is replete with false statements and characterizations. The indisputable facts regarding the present inquiry are as follows.

A. The Law of the Case

1. In or about July 2017, the Court held that the Rosemere Estates Property Owners Association ("Rosemere Association" or "Association") is a "limited purpose association" as referenced in NRS 116.1201(2) and that the Lytles are permanently enjoined from recording and enforcing a judgment that they had obtained against the Association or any abstracts related thereto against various properties in Rosemere Court ("Rosemere" or "subdivision") and from "taking any action in the future against" those properties. *See* Order Granting Mot. to Alter or Amend Findings of Fact and Conclusions of Law (the "July 2017 Order"), attached to App. to Mot. as Exhibit E, at 4:12-23.

2. The July 2017 Order became the law of this case, and it was later affirmed by the Nevada Supreme Court. *See* Order of Affirmance, attached to App. to Mot. as Exhibit I.

3. On or about August 4, 2017, the Dismans purchased one of the properties that is the subject of the July 2017 Order, specifically, 1960 Rosemere Court, and by virtue of that purchase, the Lytles filed a Counterclaim against the Dismans seeking a declaration that an abstract of a second judgment that the Lytles had obtained against the Association can be recorded against the Dismans' property. *See* the Lytles' Answer to Pls.' Second Am. Compl. and Countercl., attached to App. to Mot. as Exhibit F.

4. In or about May 2018 and based upon the law of the case as contained in the July 2017 Order, the Court entered another order in a consolidated action, Case No. A-17-765372-C (the "Consolidated Action"), permanently enjoining the Lytles from recording and enforcing judgments that they had obtained against the Association or any abstracts related thereto against various other properties in Rosemere and from taking any action in the future against those properties. *See* Order Granting Mot. for Summ. J or, in the Alternative, Mot. for J. on the Pleadings and Denying Countermotion for Summ. J. (referred to herein as, the "May 2018 Order"), attached to App. to Mot. as Exhibit K, at pp. 9-10.

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8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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B. The Contempt Proceedings

5. On June 8, 2018, and in direct violation of this Court's orders, the Lytles commenced Case No. A-18-775843-C in Department 31 of the district court in an effort to enforce their judgments against the Association against the property owners within Rosemere (the "Receiver Action"). *See* Compl. for Declaratory Relief and Preliminary Injunction, attached to App. to Mot. as Exhibit L.

6. Through the Receiver Action, the Lytles obtained the appointment of a receiver over the Association to, among other things, "[i]ssue and collect a special assessment upon all owners within the Association to satisfy the Lytle[s'] … judgments against the Association." *See* January 22, 2020, Correspondence from Kevin Singer to the Dismans, attached to App. to Mot. as Exhibit M, at its Exhibit 1, p. 2, ¶ 2.

7. The Dismans first learned of the Receiver Action on or about January 22, 2020, when the receiver sent them correspondence inviting them to a meeting to share ideas on how they propose to pay the Lytles' judgments. *See id.* The receiver sent similar correspondences to the plaintiffs in the Consolidated Action (collectively referred to herein as, the "September Trust Plaintiffs").

8. On March 4, 2020, the September Trust Plaintiffs filed a motion with this Court for an order to show cause why the Lytles should not be held in contempt for violating this Court's orders and the injunctions contained therein ("Contempt Motion"). *See* Contempt Mot., attached hereto as **Exhibit U**.[1]

9. On March 6, 2020, the Dismans filed a Joinder to the Contempt Motion ("Joinder"). *See* Joinder, attached hereto as **Exhibit V**.

10. On March 19, 2020, the Lytles filed an Opposition to the Contempt Motion; however, no opposition was ever filed to the Dismans' Joinder. *See* Opp'n to Contempt Mot., attached hereto as **Exhibit W**.[2]

[1] The Contempt Motion is attached hereto without its accompanying exhibits to reduce the volume of this submission.

[2] The Opposition is attached hereto without its accompanying exhibits to reduce the volume of this submission.

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Las Vegas, Nevada 89113
(702) 667-3000

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11. Following additional briefing, this Court entered an order on May 22, 2020, granting the Contempt Motion and the Dismans' Joinder ("Contempt Order"). *See* Contempt Order, attached to App. to Mot. as Exhibit N (the "Contempt Order").

12. Based upon their violation, the Court ordered the Lytles to, among other things, pay a $500 fine to the Dismans, and provided that the Dismans "may file applications for their reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt." *Id.* at 12:9-12; 13:1-3.

13. On June 22, 2020, the Lytles filed a Notice of Appeal regarding the Contempt Order. *See* Notice of Appeal, attached hereto as **Exhibit X**.[3]

C. Settlement of the Dismans' 2020 Fee Motion

14. In the meantime, on June 11, 2020, the Dismans filed a motion against the Lytles for various attorney's fees incurred through June 9, 2020, as a result of the Lytles' contempt ("2020 Fee Motion"). *See* 2020 Fee Motion, attached hereto as **Exhibit Y**.

15. The Dismans and the Lytles subsequently reached a settlement which resolved the fees sought in the 2020 Fee Motion and the fine that was imposed in the Contempt Order. *See* Settlement Agreement Re. Fees, Costs, and Penalty, attached to App. to Mot. as Exhibit O; *see also* Supplemental Aff. of Counsel in Support of Mot, attached hereto as **Exhibit Z**, at ¶ 5.

16. The settlement, however, did not resolve any other matter related to the Lytles' contempt, including the Dismans' defense of the Contempt Order on appeal. *See id.*; *see also* Exhibit Z, at ¶ 6.

17. Specifically, because the Dismans anticipated incurring substantial fees and costs in the defense of the Contempt Order on appeal, they expressly reserved onto themselves the ability to seek recovery of those fees and costs. *See id.* The agreement thus provides:

> **2.0: Reservation of Claims:** This Settlement Agreement resolves only the attorney's fees, costs, and penalty the Lytle Trust could possibly owe the Dismans as of the date of this Settlement Agreement…. ***Nothing in this Settlement Agreement is intended nor shall anything herein be construed as a waiver, release or relinquishment of the Parties' rights, if any, to seek fees,***

[3] The Notice of Appeal is attached hereto without its accompanying exhibits to reduce the volume of this submission.

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Las Vegas, Nevada 89113
(702) 667-3000

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> ***costs, or other amounts incurred by them or owed to them <u>after</u> the date of this Settlement Agreement.***

See id., p. 2 (emphasis added).

18. If the settlement had been a complete resolution of the Lytles' contempt as between the Lytles and the Dismans, the Dismans would not have participated in the appeal of the Contempt Order. *See* Exhibit Z, at ¶ 8.

19. Indeed, the Dismans actively participated in every facet of the appeal, which included the first appeal that was dismissed by the Nevada Supreme Court, as well as the second appeal that resulted from the Lytles' Petition for Writ of Mandamus or, alternatively, Prohibition ("Writ Petition"). *See id.* at ¶ 9.

III. LEGAL ARGUMENT

A. The Dismans Were Parties to this Court's Contempt Proceedings and the Subsequent Appeals.

Rule 2.20(d) of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada ("EDCR") authorizes a nonmoving party to file a written joinder to a motion within 7 days after service of the motion. ***A joinder is treated as "its own stand-alone motion"*** such that the court may proceed to consider the joinder even if the principal "motion becomes moot or is withdrawn by the movant." *Id.* (Emphasis added). EDCR 2.20(e) goes on to provide that "[w]ithin 14 days after the service of the motion, and 5 days after service of any joinder to the motion, the opposing party must serve and file written notice of nonopposition or opposition thereto … stating facts showing why the motion and/or joinder should be denied." "Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same." *Id.*

Here, the September Trust Plaintiffs filed the Contempt Motion on March 4, 2020. *See* Exhibit U. Because the Dismans are similarly-situated to the September Trust Plaintiffs and all of the arguments raised in the Contempt Motion are equally applicable to the Dismans, the Dismans filed a Joinder to the motion on March 6, 2020, expressly adopting those arguments. *See* Exhibit V. The Joinder was filed well within the timeframe provided in EDCR 2.20(d), and although the Lytles filed an opposition to the Contempt Motion, they did not file an opposition

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8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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to the Joinder. *See* Exhibit W. Moreover, their opposition to the motion did not challenge the Dismans' Joinder. *See id.* Nonetheless, the Lytles now argue that the Dismans did not participate in the contempt proceedings and that the Contempt Motion and resulting Contempt Order did not address a violation of the July 2017 Order which pertains to the Dismans and their property.[4]

This argument is utterly untenable. While the Contempt Motion addressed a violation of the May 2018 Order, it also addressed the July 2017 Order which is the law of the case, which formed the basis for the May 2018 Order, and which is nearly identical to the May 2018 Order. *See* Exhibit U. Specifically, the May 2018 Order provides: "The Court's prior Order with respect to Boulden Trust's and Lamothe Trust's Motion for Partial Summary Judgment, Case No. A-16-747900-C, is the law of the case, to the extent applicable to Plaintiffs' claims." *See* May 2018 Order, attached to App. to Mot. as Exhibit K, at p. 7, ¶ 1. The order then goes on to restate the key components of the July 2017 Order. *See id*. Consequently, the Lytles' violation of the May 2018 Order necessarily involved a violation of the July 2017 Order, which is the law of the case. That is why the Dismans joined in the Contempt Motion rather than burden the Court with a duplicate motion.

Indeed, the resulting Contempt Order expressly details and ***incorporates by reference*** the July 2017 Order, and notes the Lytles' history of violating that order. *See* Contempt Order, attached to App. to Mot. as Exhibit N, at p. 3-4, ¶¶ 1-4. It provides:

> 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.

Id. at p. 9, ¶ 1. Pursuant to its "inherent power to enforce its decrees, orders and judgments," *id.* at p. 10, ¶ 2, the Court held as follows with respect to both the September Trust Plaintiffs ***and the Dismans***:

[4] The Lytles made the same argument to the Nevada Supreme Court, which argument held no weight there either. *See* Order Affirming in Docket No. 81689 and Den. Writ Pet., attached to App. to Mot. as Exhibit Q.

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8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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> 11. … 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.
> ….
> IT IS HEREBY ORDERED ADJUDGED AND DECREED that Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders, ***as well as the Joinders thereto filed by*** the Boulden Trust, the Lamothe Trust, and ***the Dismans***, are GRANTED.

Id. at pp. 10, 12 (emphasis added). As such, the Contempt Motion and resulting Contempt Order addressed not only the Lytles' violation of the May 2018 Order, but also the law of the case as contained in the July 2017 Order and the May 2018 Order. Further, by virtue of the Dismans' Joinder, the resulting Contempt Order specifically included and afforded relief to the Dismans. *See id.*

The Lytles' appeal of the Contempt Order, therefore, necessarily involved the Dismans as parties to the appeal and not as some sort of *amicus curiae* as the Lytles now argue. Notably, the Lytles made a similar argument to the Nevada Supreme Court that the Dismans had no standing on appeal because the Contempt Order did not really involve them. The Nevada Supreme Court, however, never entertained that argument or designated the Dismans' status as *amicus curiae* or akin to *amicus curiae*. *See* Order Affirming in Docket No. 81689 and Den. Writ Pet., attached to App. to Motion as Exhibit Q. That the Lytles would make such an argument evidences a level of cynicism that is not often seen. The Dismans never chose to be parties to this action or the related appeals, but they were made parties by the Lytles. Nor did they choose the course of events that resulted in the Contempt Order. The only offending conduct that the Dismans are guilty of is purchasing their property. Since then, they have been on the defensive, first defending their property against the Lytles' judgment liens and then defending the Court's orders in multiple Nevada Supreme Court appeals. Thus, the Lytles' characterization of the Dismans as merely going along for the ride has no basis in reality.

The Lytles further argue that even if the Dismans were considered parties to the appeal, "they still would not be entitled to an award under Section 25 of the CC&Rs for all the same reasons set forth in detail in the Lytle Trust's Opposition to Plaintiff's Motion for Attorney's Fees at Section II(A)." *See* Opp'n, at p. 4. In response to this argument, the Dismans hereby incorporate by reference, as though fully set forth herein, all of the arguments raised by the

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8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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September Trust Plaintiffs in support of their pending motion for attorney's fees, including those raised in their motion and reply, to the extent that they apply equally to the Dismans.

B. The Dismans Reserved the Right to Make the Instant Fee Request and the Lytles' Argument to the Contrary Are Violative of the Parties' Settlement Agreement.

Next, the Lytles argue that the Motion should be denied because they settled the fee issue with the Dismans. Once again, the Lytles' argument has no basis in reality. The only matters that the Dismans and the Lytles reached a settlement on was with regard to the fees sought in the Dismans' 2020 Fee Motion and the fine that was imposed in the Contempt Order. *See* Settlement Agreement Re. Fees, Costs, and Penalty, attached to App. to Mot. as Exhibit O; *see also* Exhibit Z, at ¶ 5. The parties' settlement agreement expressly provides that it does not affect the parties' rights to seek fees or costs incurred after the date of the settlement, or July 6, 2020. *See id.* Specifically, it provides:

> **2.0: Reservation of Claims:** This Settlement Agreement resolves only the attorney's fees, costs, and penalty the Lytle Trust could possibly owe the Dismans as of the date of this Settlement Agreement…. ***Nothing in this Settlement Agreement is intended nor shall anything herein be construed as a waiver, release or relinquishment of the Parties' rights, if any, to seek fees, costs, or other amounts incurred by them or owed to them after the date of this Settlement Agreement.***

See id., p. 2 (emphasis added).

At the time of the agreement, the Lytles had already appealed the Contempt Order to the Nevada Supreme Court, and the Dismans entered into the agreement expressly on the condition that it did not affect their ability to seek fees, costs, or other amounts incurred by them or owed to them after the date of the agreement and with respect to defense of the Contempt Order on appeal. *See id.* If the settlement had been a complete resolution of the Lytles' contempt, as the Lytles now argue, the Dismans would not have participated in the appeal of the Contempt Order. *See* Exhibit Z, at ¶ 8. Indeed, the Dismans actively participated in every facet of the appeal, which included the first appeal that was dismissed by the Nevada Supreme Court, as well as the second appeal that resulted from the Lytles' Writ Petition. *See id.* at ¶ 9. In asking the Court to construe the settlement agreement as prohibiting the Dismans' instant fee request, the Lytles have breached the literal terms of the agreement and contravened the spirit of the

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8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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agreement.

C. The Dismans Were Undoubtedly the Prevailing Parties in the Appeal of the Contempt Order.

A party is considered the "prevailing party" when "it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Valley Electric Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005). Moreover, "the term 'prevailing party' is a broad one, encompassing plaintiffs, counterclaimants, and defendants." *Smith v. Crown Financial Services of America*, 111 Nev. 277, 284, 890 P.2d 769, 773 (1995).

In this case, and despite the Lytles' disingenuous arguments made in opposition to the Motion, there can be no dispute that the Dismans qualify as the "prevailing party" with respect to the contempt proceedings and subsequent appeal. The Nevada Supreme Court affirmed the Contempt Order in its entirety and denied the Lytles' Writ Petition. *See* Order Affirming in Docket No. 81689 and Den. Writ Pet., attached to App. to Mot. as Exhibit Q. In so doing, it concluded that this Court's previous orders and injunctions, and the Nevada Supreme Court's affirmance of those orders and injunctions, were the law of the case and made clear "that the Amended CC&Rs were void *ab initio* and the Association had no power through the original CC&Rs or NRS Chapter 116 to make assessments against the unit owners." *Id.* at p. 5.

Specifically, the court noted that "under the law-of-the-case doctrine when an appellate court decides a principle or rule of law either expressly or by necessary implication, 'that decision governs the same issues in subsequent proceedings in that case.' " *Id.* (citing *Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010)). The court further noted that "[t]he law of the first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same." *Id.* (citing *LoBue v. State ex rel. Dep't of Highways*, 92 Nev. 529, 532, 554 P.2d 258, 260 (1976)). Based thereon, the court "conclude[d] that the Lytles disobeyed the order of the district court … when applying for the receiver in the receivership action by arguing that under the Amended CC&Rs, 'the Association has the power and authority to assess each 'Lot' or unit for the total amount of any judgments against the Association in proportion to ownership within the Association.' " *Id.*

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The Court's July 2017 Order was the first order appealed in this case, and the Nevada Supreme Court unequivocally affirmed that order. *See* Order of Affirmance, attached to App. to Mot. as Exhibit I. That order and subsequent affirmance became the law of the case that formed the basis for all of the Court's subsequent decisions, including, but not limited to, the May 2018 Order and the Contempt Order. In the appeal of the Contempt Order, the Dismans succeeded in defending the law of this case and preventing the Lytles from using the Receiver Action to collect on their judgments against the Association from the Dismans. A contrary result in the appeal would have subjected the Dismans to payment of those judgments. Consequently, the Court should categorically reject the Lytles' argument that the Dismans did not prevail on anything in the appeal.

D. The Dismans' Settlement of Their 2020 Fee Motion Has No Bearing on Their Instant Request.

NRS 22.010(3) defines an act constituting contempt as including "[d]isobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers." NRS 22.100(3) provides that "if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay ***to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt***." (Emphasis added).

Here, the Court found the Lytles guilty of contempt, and the Nevada Supreme Court affirmed the finding. *See* Order Affirming in Docket No. 81689 and Den. Writ Pet., attached to App. to Mot. as Exhibit Q. The matter of the Lytles' contempt has thus been established. Due to the Lytles' subsequent appeals of the Contempt Order, the Dismans were forced to defend the Contempt Order and incur additional attorney's fees as a result of the Lytles' contempt. The Dismans are thus entitled to the requested attorney's fees pursuant to NRS 22.100.

The Lytles argue, however, that NRS 22.100 is inapplicable because the entire matter of their contempt was resolved through the settlement of the Dismans' 2020 Fee Motion. Contrary to the Lytles' argument and as set forth in detail above, the only matter that the Dismans and the Lytles reached a settlement on was with regard to the fees sought in the 2020 Fee Motion and

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the fine imposed in the Contempt Order. *See* Settlement Agreement Re. Fees, Costs, and Penalty, attached to App. to Mot. as Exhibit O. The settlement agreement expressly provides that it does not affect the parties' rights to seek fees or costs incurred after the date of the settlement, or July 6, 2020. *See id.* at p. 2. The Court should enforce the parties' agreement as written.

E. NRS 18.010(2)(b) Provides a Further Basis for an Award of Attorney's Fees to the Dismans.

NRS 18.010(2) authorizes the Court to make an allowance of attorney's fees to a prevailing party "when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." It instructs the Court to "***liberally*** construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations." *Id.* (Emphasis added). A baseless claim is defined as one that is "not well grounded in fact or not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law." *Simonian v. Univ. & Cmty. Coll. Sys.*, 122 Nev. 187, 196, 128 P.3d 1057, 1063 (2006). In assessing the award of attorney's fees under NRS 18.010(2)(b), the Court must consider if a party had reasonable grounds for making or defending its claims, based on actual circumstances of the case. *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993).

Here, the Court's finding of contempt against the Lytles establishes that they had no reasonable grounds when they "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…." *See* Contempt Order, attached to App. to Mot. as Exhibit N, at 11:3-8. In their subsequent appeals of the Contempt Order, the Lytles maintained the same position that they could accomplish through the Receiver Action what this Court prohibited them from doing in is orders and the injunctions contained therein.

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Just because the Lytles argue that they had reasonable grounds for their actions does not make it so. The Nevada Supreme Court's affirmance of the Contempt Order demonstrates that fact. Indeed, while courts may disagree with a party's position or course of action, a finding of contempt requires a finding of willful misconduct. *See* NRS 22.010. The Lytles' argument that this Court and the Nevada Supreme Court simply disagreed with its position is utterly without merit. The Nevada Supreme Court had the opportunity to reverse the Contempt Order, but it affirmed the order instead. Given the Lytles' willful disobedience, NRS 18.010(2) provides a further basis with which to award the Dismans their requested attorney's fees.

F. The Fees Incurred by the Dismans Are Reasonable and Should Not Be Reduced.

1. <u>The Lytles' conduct in the Receiver Action necessitated the Dismans' monitoring of that action</u>.

The Lytles brought the Receiver Action to circumvent this Court's orders, and they never notified the Dismans of that action. The Dismans did not learn of the Receiver Action until approximately January 22, 2020, almost two years after the Lytles commenced the action, and by then, the court in that action had appointed a receiver over the Association to, among other things, "[i]ssue and collect a special assessment upon all owners within the Association to satisfy the Lytle[s] … judgments against the Association." *See* January 22, 2020, Correspondence from Kevin Singer to the Dismans, attached to App. to Mot. as Exhibit M, at its Exhibit 1, p. 2, ¶ 2.

While the Dismans never made an appearance in that action, the Lytles' underhanded conduct necessitated not only the Dismans' Joinder to the Contempt Motion, but also the Dismans' monitoring of the Receiver Action to ensure no further violations of this Court's orders. The Lytles, therefore, cannot be heard to complain about the fees incurred by the Dismans as a result of the Lytles' own contempt. Indeed, $1,188.00 is an infinitely reasonable amount spent in more than three (3) years of monitoring that action – from approximately January 22, 2020 to date. Bizarrely, the Lytles complain that the Dismans' monitoring of the action was done in secret and that they should have simply intervened in that action. In other words, they complain that the Dismans chose the less costly approach. Further, it is laughable

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that the Lytles attempt to portray the Dismans' actions as secretive when they filed the Receiver Action without providing notice to any of the parties in this case and without apprising the Receiver Court of this Court's orders and injunctions. The Court is very familiar with the record in this case and the long history of the Lytles' flagrant disregard for its orders. In light of such, the Court should dismiss the absurd argument that the Dismans were not justified in spending a little over a thousand dollars over the course of more than three (3) years in monitoring the Receiver Action.

2. The Court should not reduce the fees sought based on redacted time entries.

The Nevada Supreme Court instructs that when awarding attorney's fees, the district court must consider the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). *See Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 124 P.3d 530, 549 (2005) (holding that courts must consider the following *Brunzell* factors when determining the amount of fees to award: (1) the quality of the advocate; (2) the character of the work, *e.g.*, its difficulty, importance, *etc.*; (3) the work actually performed by the advocate; and (4) the result.) (citing *Brunzell*, 85 Nev. at 349, 455 P.2d at 33). Here, the Lytles request the Court to reduce the fees sought based solely on the third *Brunzell* factor – the work actually performed. Specifically, they argue that the redactions to the Dismans' billing statements make it impossible to evaluate the work actually performed.

According to the Nevada Supreme Court, while such redactions may make it difficult to evaluate the services rendered and the fees incurred, the district court may rely on other "evidence to calculate a reasonable amount for [an attorney's] services." *Katz v. Incline Vill. Gen. Improvement Dist.*, 135 Nev. 670, 452 P.3d 411 (2019) (citing *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 557-58, 429 P.3d 664, 670 (Nev. Ct. App. 2018)). In fact, "billing records are not required to support an award of attorney fees so long as the court can calculate a reasonable fee." *Id.*; *see also Shuette*, 121 Nev. at 864, 124 P.3d at 549 (emphasizing that "in determining the amount of fees to award, the court is not limited to one specific approach").

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In *Katz*, for example, the Nevada Supreme Court rejected the appellant's challenge of the district court's award of attorney's fees based on redacted billing statements, concluding it was proper that:

> … the district court relied on a sworn statement from [Respondent]'s attorney of record, Thomas P. Beko, that "Brooke's involvement was necessary to the defense of this matter, and the fees he charged are believed by Affiant to be reasonable and necessary in his capacity of official attorney for [Respondent]." The district court also relied on its familiarity with the lawyers involved in the litigation and the quality of their work. We have previously upheld awards of attorney fees based on similar evidence. *See, e.g., Herbst v. Humana Health Ins. of Nev., Inc.*, 105 Nev. 586, 591, 781 P.2d 762, 765 (1989) (holding that an affidavit documenting the hours of work performed, the length of litigation, and the number of volumes of appendices on appeal was sufficient evidence to enable the court to make a reasonable determination of attorney fees, even in the absence of a detailed billing statement); *Cooke v. Gove*, 61 Nev. 55, 57, 114 P.2d 87, 88 (1941) (upholding an award of attorney fees based on, among other evidence, two depositions from attorneys testifying about the value of the services rendered). We therefore conclude that the district court did not abuse its discretion when it awarded [Respondent] attorney fees for Brooke's services, even though [Respondent] did not provide a detailed breakdown of Brooke's fees.

Id. Thus, the Nevada Supreme Court has made clear that an attorney's billing statements are not required to support an award of attorney's fees. *Id.* They are but one form of evidence and the Court can rely on other evidence to calculate a reasonable amount for an attorney's services. *Id.*

Here, the Dismans submitted billing statements as well as the affidavit of their counsel in support of their fee request. *See* Time Sheets, attached to App. to Mot. as Exhibit A; Aff. of Counsel in Support of Mot, attached to App. to Mot. as Exhibit B. A review of the statements reveal modest redactions that in no way hinder the Court's overall ability to evaluate the work performed. *See* Time Sheets, attached to App. to Mot. as Exhibit A. The affidavit further details the work performed and attests that the fees charged were reasonable and necessary. *See* Aff. of Counsel in Support of Mot, attached to App. to Mot. as Exhibit B. The affidavit also details the *Brunzell* factors of the quality of the Disman's counsel, the character of the work, *e.g.*, its difficulty, importance, *etc.*, and the result accomplished. *See id.* The combination of the billing statements and affidavit more than support the fees sought in the amount of $27,196.00 incurred over the course of three (3) years. However, in the extent that the Court

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still has difficulty adjudging the reasonableness of the fees sought, the Dismans are more than willing to submit an unredacted copy of the billing statements for the Court's *in camera* review. Indeed, the Dismans should not be punished by a reduction of their fees for exercising caution to avoid a waiver of the attorney-client privilege.

3. The Court should not reduce the fees sought by $666.00 for dealing with an unrelated matter.

Next, the Lytles argue for a $666.00 reduction in the fees sought for a September 24, 2021, time entry on the basis that the fees were incurred for an unrelated matter, specifically, the Lytles' complaints regarding the Dismans' dog. The Dismans' counsel spent no more than 20 minutes addressing that issue with the Lytles' counsel and Mr. Disman. *See* Exhibit Z, at ¶ 13. The remainder of the time was spent on addressing this case. *See id.* at ¶ 14. The standard hourly rate of the Dismans' counsel since July 28, 2020, has been $180.00; consequently, the fees incurred in addressing the Lytles' complaints regarding the Dismans' dog were no more than $72.00 (0.4 x $180.00). *See id.* at ¶ 15. To the extent that the Court wishes to reduce the fee request by $72.00, the Dismans have no objection.

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4. The Court should not reduce the fees sought based upon purported block-billing.

Finally, the Lytles argue that the fees sought should be discounted due to block billing. While they cite to numerous decisions from other jurisdictions in support of their argument, the Nevada Supreme Court has spoken as follows on the issue:

> The courts that have addressed block billing observe that block billing makes it difficult for a court to review the reasonableness of the requested attorney fees, as compared with single task time entries…. Nevertheless, block-billed time entries are generally amenable to consideration under the *Brunzell* factors, (citations omitted), and a district court must consider block-billed time entries when awarding attorney fees. If a district court encounters difficulty considering the character of the work done or the work actually performed because of block 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.").

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(702) 667-3000

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> In this case, ***the block-billed entries submitted by Wayne's counsel contained two to four task entries. This is not an extreme example of block billing 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.

In re Margaret Mary Adams 2006 Trust, 131 Nev. 12932015 WL 1423378 (Table) *2-3 (Nevada, March 26, 2015) (emphasis added). Further, billing records are not the only evidence and are not even required. *O'Connell*, 134 Nev. at 558, 429 P.3d at 671. A court can determine a reasonable fee based on "all the facts and circumstances" after the court considered how the plaintiff's "work, thought and skill contributed" to the successful outcome. *Id.* at 670-71.

In this case, a review of the Dismans' counsel's billing statements show two to four task entries and are not extreme examples of block billing. *See* Time Sheets, attached to App. to Mot. as Exhibit A. Moreover, the challenged entries describe the "work, thought and skill contributed" to the successful outcome in this case. *See id.* Certainly, the entries do not present "difficulty considering the character of the work done or the work actually performed." This Court can adjudge the reasonableness of the fees sought in light of the *Brunzell* factors without reducing the fees sought.

IV. CONCLUSION

For the above and foregoing reasons, the Dismans respectfully request the Court to grant their Motion in its entirety and award them the fees sought. Further, because the Dismans continue and will continue to incur additional fees, including for attendance at the hearing on the Motion, the Dismans respectfully request an award of those fees as well.

DATED this 6th day of July, 2023.

FIDELITY NATIONAL LAW GROUP

/s/ Christina H. Wang

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

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CERTIFICATE OF SERVICE

The undersigned employee of Fidelity National Law Group, hereby certifies that she served a copy of the foregoing **REPLY IN SUPPORT OF ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR ATTORNEY'S FEES** 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.
Daniel M. Hansen, Esq.
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for the Lytles

Daniel T. Foley, Esq.
Foley & Oakes, PC
626 S. 8th Street
Las Vegas, Nevada 89101
Attorneys for Boulden and Lamothe

Kevin B. Christensen, Esq.
Wesley J. Smith, Esq.
Laura J. Wolff, Esq.
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for the
September Trust Plaintiffs

DATED: 07/06/2023

/s/ Lace Engelman
An employee of Fidelity National Law Group

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Fidelity National Law Group
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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EXHIBIT U

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Steven D. Grierson
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CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ. (175)
WESLEY J. SMITH, ESQ. (11871)
LAURA J. WOLFF, ESQ. (6869)
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
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

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("Gegen") (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be collectively referred to as "Plaintiffs"), by and through their attorneys, Christensen James & Martin, petition the Court for an Order to Show Cause why Defendants, Trudi Lee Lytle and John Allen Lytle, As Trustees of the Lytle Trust ("Defendants" or "Lytle Trust"), should not be held in contempt of this Court's Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment executed by the Judge on May 22, 2018 and filed with the Court on May 24, 2018 (hereafter "May 2018 Order"). This Motion is based upon the following Memorandum of Points and Authority, Exhibits, Affidavits, all other documents on file with the Court in this matter, and any argument allowed at the time of the hearing of this matter.

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

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NOTICE OF MOTION

You will please take Notice that the September Trust, Zobrist Trust, Sandoval Trust and Gegen shall bring the above and foregoing Plaintiffs' Motion for Order to Show Cause on for hearing before Department XVI on the date and time to be set by the Court and noticed to the parties registered for service through the "Clerk's Notice of Hearing" once a hearing date has been set.

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 Intervenors September Trust, Zobrist Trust, Sandoval Trust and Gegen

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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.

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II.

STATEMENT OF FACTS

On May 22, 2018, this Court signed an Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment ("May 2018 Order"). The May 2018 Order was entered by the Court on May 24, 2018. On June 19, 2018, the Lytle Trust appealed the May 2018 Order to the Nevada Supreme Court, Case No. 76198 ("Appeal"). The Supreme Court entered its Order affirming the May 2018 Order on March 2, 2020.[1]

The Plaintiffs hereby incorporate the findings of fact and conclusions of law from the May 2018 Order as if set forth fully herein. Especially significant is this permanent injunction language in the May 2018 Order:

> 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.**

May 2018 Order at 10:10-19 (emphasis added). Thus, the Lytle Trust is prohibited from taking any action against the Plaintiffs or their properties based on any judgment it has obtained against the Rosemere Association.

The May 2018 Order also contained these key findings of fact and conclusions of law:

> 2. The Association is a "limited purpose association" as referenced in NRS 116.1201(2).
>
> 3. As a limited purpose association, NRS 116.3117 is not applicable to the Association.

[1] A true and correct copy of the Order of Affirmance of the May 2018 Order is attached to the Motion as Exhibit 8.

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> 4. As a result of the Rosemere Litigation I, 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*.
>
> 5. The Plaintiffs were not parties to the Rosemere Litigation I, Rosemere Litigation II or Rosemere Litigation III.
>
> 6. The Plaintiffs were not 'losing parties' in the Rosemere Litigation I, Rosemere Litigation II or Rosemere Litigation III as per Section 25 of the Original CC&Rs.
>
> 7. Rosemere Judgments I, II and III in favor of the Lytle Trust, are not against, and are not an obligation of the Plaintiffs to the Lytle Trust.
>
> 8. Rosemere Judgments I, II and III are against the Association and are not an obligation or debt owed by the Plaintiffs to the Lytle Trust.

May 2018 Order at 7-8.

The May 2018 Order followed a prior Order issued by the Court in the lead consolidated Case (Case No. A-16-747800-C) on July 25, 2017 ("July 2017 Order") in favor of other similarly situated property owners, 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 ("Lamothe"). The Plaintiffs also incorporate the findings of fact and conclusions of law from the July 2017 Order. The Lytles appealed the July 2017 Order and the Nevada Supreme Court issued an Order of Affirmance on December 4, 2018 in Case No. 73039, *Trudi Lee Lytle v. Marjorie B. Boulden*. Exhibit 1, Order of Affirmance.

The Order of Affirmance unequivocally and absolutely holds that a judgment obtained by the Lytle Trust against the limited-purpose Rosemere Association cannot be enforced against individual owners or their properties, especially "property owners who were not parties to the Lytles' complaint against Rosemere Estates, and whose property interests had never been subject of any suit." Exhibit 1, Order of Affirmance at 6. The Order of Affirmance specifically states:

> 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.

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> 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.

Exhibit 1, Order of Affirmance at 4. In summary, the Order of Affirmance expressly states that the statutory mechanism for collecting judgments against an association under NRS 116.3117 is not available for the Lytle Trust's judgments. Exhibit 1, Order of Affirmance at 3-6.

Despite the July 2017 Order, May 2018 Order, and the Order of Affirmance, on or around January 22, 2020, the Plaintiffs each received a letter from Kevin Singer of Receivership Specialists ("Receiver Letter") regarding the appointment of Mr. Singer as a Receiver in Case No. A-18-775843-C, *Trudi Lee Lytle et al. v. Rosemere Estates Property Owners' Association* ("Receivership Action"). Exhibit 2, Receiver Letter; Affidavit of Karen Kearl ("Kearl Affidavit"); Affidavit of Gerry Zobrist ("Zobrist Affidavit"); Affidavit of Julie Marie Sandoval Gegen ("Gegen Affidavit") (hereafter Kearl Affidavit, Zobrist Affidavit and Gegan Affidavit are collectively "Plaintiffs' Affidavits"). In the Receiver Letter, Mr. Singer states that "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." *See* Exhibit 2 at 1.

The Receiver Letter included the Order Appointing a Receiver of Defendant Rosemere Property Owners Association ("Order Appointing Receiver") as an enclosure. Exhibit 3, Order Appointment Receiver. The Order Appointing Receiver directs the Receiver to "issue and collect

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a special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against the Association." *Id.* at 2.

On January 29, 2020, Plaintiffs' attorney Wesley J. Smith sent a letter to the Receiver notifying him that his actions were in direct violation of the Permanent Injunction issued in this Case, demanded that he cease and desist from any further effort to collect any judgment or take any action against the Plaintiffs, demanded that any further communication with the Plaintiffs be directed through counsel, and demanded that the Receiver, as an officer of the Court, notify the Receivership Action Court of this Court's May 2018 Order and of violation of the Permanent Injunction. Exhibit 4, Smith Letter.

On January 30, 2020, the Receiver sent a letter directly to each of the Plaintiffs explaining that he would seek additional instructions from the Receivership Action Court through his attorney based on the information obtained from Mr. Smith. Exhibit 5, January 30, 2020 Letter. As of the date of this Motion, the Receiver's attorney has not filed any paperwork regarding these issues in the Receivership Action. *See* Affidavit of Wesley J. Smith ("Smith Aff.") at ¶ 9.

The Plaintiffs have discovered that the Receivership Action was filed on June 8, 2018, just two weeks after this Court entered its May 2018 Order. The Complaint alleges that the Rosemere Estates Property Owners' Association ("Association") is not functioning, that the common elements of the community are not being maintained, and that "the Association has not paid known creditors of the Association, which includes…the Lytles, which hold multiple judgments against the Association." Exhibit 6, Complaint at ¶ 21.

In the Renewed Application for Appointment of Receiver filed on October 24, 2019 ("Application") in the Receivership Action, the Lytle Trust asserts that the main purpose in requesting a Receiver is to require the owners in the Subdivision to pay the Rosemere I, II and III Judgments. Exhibit 7, Application at 3:2-4, 5:17-18 ("Additional grounds exist because the Association is refusing to pay and refusing to assess Association members related to various

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monetary judgments awarded to the Lytles against the Association"), 13:19-28 ("a receiver may be appointed...after judgment, to carry the judgment into effect"), 14:1-2, 16-28 ("the Lytle Trust obtained judgments against the Association and a Receiver is needed to carry those judgments into effect"), 15:20-25 ("the Association has a duty...to pays its debts, including the Judgments obtained by the Lytle Trust"), 16:17-22 ("the Association is without any governing body to assess the homeowners and pay the judgments").

The Lytle Trust provides careful and selected detail about the Rosemere I, II and III cases in the Application but fails to mention either of these consolidated cases or appeals. Most importantly, the Lytle Trust failed to inform the court about the July 2017 Order, the May 2018 Order, or the Order of Affirmance. *See* Exhibit 7, Application generally.[2] The Lytle Trust did not inform the Receivership Action Court that there is a permanent injunction issued by this Court directly related to and prohibiting enforcement of Rosemere judgments against the Plaintiffs or their properties. Yet, the very purpose of the Order Appointing Receiver is to attempt to collect the Rosemere judgments from the Plaintiffs.

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III.

ARGUMENT

The Lytle Trust's attempts to appoint a Receiver to collect on the Judgments against the Plaintiffs or their properties, to use the Amended CC&Rs, and to expand the powers granted to the Association (and the Receiver) by the original CC&Rs and NRS 116.1201 are in clear violation of this Court's May 2018 Order. The relief requested in the Application and entered in the Receivership Order is blatantly calculated to ignore this Court's May 2018 Order and provides relief this Court clearly prohibited the Lytle Trust from seeking. Once improperly

[2] In a footnote at the very end of the Application, the Lytle Trust states: "The Lytle Trust is evaluating whether any of the judgments preclude enforcement, even in small part, against any or all of the Association's other members." Exhibit 7, Application at 18, n 5. This statement is meaningless. The Lytle Trust actively sought the appointment of a receiver to enforce those judgments against the property owners.

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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. <u>This Court Should Use Its Inherent Power to Enforce its May 2018 Order</u>.

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.

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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*

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Bennett, 298 F.3d 1059, 1069 (9th Cir. 2002). If the moving party meets this burden, the burden shifts "to the contemnors to demonstrate why they were unable to comply." *Id.* A party may be found in civil contempt for disobedience of a specific and definite court order if it fails to take all reasonable steps within its power to comply. *In Re Dual–Deck Video Cassette AntiTrust Lit.,* 10 F.3d 693, 695 (9th Cir. 1993). The contempt "need not be willful," and there is no good faith exception to the requirement to obey a court order. *Id.*

The permanent injunction in the May 2018 Order is specific and definite. "The Lytle Trust is permanently enjoined from recording and enforcing the Judgments obtained from the [Rosemere cases], or any other judgments obtained against the Association, against the" Plaintiffs properties. May 2018 Order at 10. Further, "the Lytle Trust is permanently enjoined from taking any action in the future directly against the Plaintiffs or their properties based upon the [Rosemere cases]." *Id.* There is no ambiguity in those direct orders to the Lytle Trust. As will discussed below, the Lytle Trust clearly violated the permanent injunction. The burden is on the Lytle Trust to demonstrate why they were unable to comply, or rather, why they took affirmative actions to violate the May 2018 Order.

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B. <u>The Order Appointing Receiver Violates the May 2018 Order.</u>

The Complaint initiating the Receivership Action was filed just two weeks after the May 2018 Order was entered in this Case. Exhibit 6, Complaint. The Lytle Trust did not seek a receiver in this case or any of the three prior cases in which it obtained judgments against the Association. Instead, the Lytle Trust initiated a brand-new case, virtually assuring that a new judge would be assigned that would not have knowledge of the prior litigation and would not be aware of this Court's Orders.

While the timing and circumstances of the new case filing are suggestive of the Lytle Trust's intent, the pleadings and motions filed in the Receivership Action demonstrate an effort to thwart this Court's Orders. The Lytle Trust purposefully and selectively presented facts to a new judge, conveniently leaving out key findings of fact and conclusions of law from the

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Rosemere I, II, and III cases, and completely ignoring this Case entirely, including failing to inform the court about the permanent injunction in the May 2018 Order (or the similar permanent injunction in the July 2017 Order). This breach of duty of candor to the Court resulted in the Order Appointing Receiver that the Lytle Trust is now trying to use to obtain payment from the Plaintiffs in clear contravention of the May 2018 Order.

The Lytle Trust made representations to the court in the Receivership Action that directly contradict the conclusions of law from this Court. The May 2018 Order prohibits "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 Plaintiffs or their properties. The Order Appointing Receiver breaches this prohibition, as follows:

> [The Receiver has the authority to] Issue and collect a special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against the Association.... The Receiver has the authority to assess all Association unit owners to pay for any operation costs or to pay for judgments against the Association. If an Association member does not pay an assessment then the Receiver may proceed to foreclose on said members ownership interest in the property.

Exhibit 3, Order Appointing Receiver at 2:19-20, 6:4-7. This language is an egregious attempt by the Lytle Trust to obtain payment on the Judgments in clear violation of this Court's May 2018 Order.

The May 2018 Order holds that "the Association is a 'limited purpose association' as referenced in NRS 116.1201(2)." May 2018 Order at 7:20-21. It also concluded that "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." *Id.* at 7:24-28. Thus, the Amended CC&R's cannot grant the Association, or any receiver appointed to act on its behalf, any authority because they have no force or effect. The only powers the Association or Receiver would be entitled to exercise are those enumerated in the original

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CC&Rs or NRS 116.1201(2) regarding a limited-purpose association created to maintain landscaping and other common elements.[3]

The Order Appointing Receiver grants the Receiver authority that exceeds the authority granted to the Association by NRS 116.1201 and the original CC&Rs. This directly contradicts the May 2018 Order. The Order Appointing Receiver supposes to grant the Receiver broad powers that the Association would not otherwise possess by statute or its enabling document. *See* Exhibit 3, Order Appointing Receiver at 2-9. A perfect example of this is the authority to "issue and collect a special assessment upon all the owners within the Association to satisfy the Lytle Trust's judgments against the Association" as discussed above. Exhibit 3, Order Appointing Receiver. The original CC&Rs do not contain any power of special assessment. Further, NRS 116.3117, which would allow judgments against an association to be liens against the individual properties in the community, is not included in NRS 116.1201's list of applicable provisions. The Nevada Supreme Court has conclusively ended any debate on that issue. *See* Exhibit 1, Order of Affirmance at 3-6.

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As discussed herein, the July 2017 Order, the May 2018 Order, or the Order of Affirmance directly contradict much of the Lytle Trusts' argument regarding application of the Amended CC&Rs and the legality of an assessment against the Plaintiffs. *Compare, e.g.,* Exhibit 7, Application at 12-13 (presenting arguments regarding *Mackintosh*) *with* Exhibit 1, Order of Affirmance at 5-6 (rejecting the Lytle Trust's *Mackintosh* arguments: "Nothing in *Mackintosh* suggests that [it] 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

[3] These include the following sections of NRS 116, *only*: NRS 116.31155 - Pay the fees imposed on the Association to pay for the costs of administering Office of Ombudsman and Commission; NRS 116.31158 - Register the Association with the Ombudsman; NRS 116.31038 - Deliver to the Association certain property held or controlled by declarant; NRS 116.31083 – Notice and hold meetings of the executive board, take minutes and periodically review certain financial and 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.

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application of NRS 116.3117."). The May 2018 Order and the Order of Affirmance specifically rejected the ability to assess the judgments against the property owners pursuant to the Amended CC&Rs or NRS 116.3117. *See* May 2018 Order at 7-8; Exhibit 1, Order of Affirmance at 4-8. Yet that is exactly Lytle Trust argues the Receiver should be able to do. *See* Exhibit 7, Application at 11:4-28 ("4. The Amended CC&Rs Grant the Association Authority to Assess Each Unit for Payment of Judgments Against the Association"), 13:1-17, 17:1-9 ("the Amended CC&Rs provide the Association with the ability to specially assess each unit owner for payment of the judgments").[4] As such, the Lytle Trust is in breach of this Court's May 2018 Order and should be held in contempt of this Court.

C. <u>The Lytle Trust Cannot Bypass the Permanent Injunction or This Court's Orders by Hiding Behind the Receiver.</u>

The permanent injunction binds the Lytle Trust, its "officers, agents, servants, employees, and attorneys; and other persons who are in active concert or participation" with the Lytle Trust. *See* NRCP 65(d)(2). The Lytle Trust had actual notice of the May 2018 Order as it was a party to this Case and appealed (and lost) the May 2018 Order to the Nevada Supreme Court. It is also clear that the Lytle Trust sought out the Receiver's services, presented him to the Court, and advanced the Receiver's costs. The Lytle Trust's counsel wrote the Order Appointing Receiver. The Receiver then acted based on the direction provided by the Lytle Trust, following a course of action set in motion by the Lytle Trust.

The Lytle Trust was unquestionably prohibited by the May 2018 Order from taking any action to collect the Rosemere judgments from the Plaintiffs or their properties. The Lytle Trust was further bound by the July 2017 Order and the Nevada Supreme Court's Order of Affirmance. The express purpose of the Lytle Trust seeking appointment of the Receiver was so that the Receiver could make assessments against the Plaintiffs' properties to satisfy the Lytle

[4] Of course, the Lytle Trust argues its own property should NOT be subject to an equal burden of assessment. Exhibit 7, Application at 17:10-28, 18:1-7 (arguing the Lytle Trust will not be made whole if it is required to pay some of the punitive damages).

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Trust's judgments against the Association. The Lytle Trust was not legally permitted to seek collection from the Plaintiffs or their properties in this manner. Passing the illegal collection effort to the Receiver cannot be used to circumvent the July 2017 Order, Order of Affirmance, or the May 2018 Order.

Further, the July 2017 Order, Order of Affirmance, and May 2018 Order set forth certain rules of law regarding the legal rights of the Association. The Order Appointing Receiver purports to give the Receiver power to act on behalf of the Association to do things that the Association had the power to do but was failing or refusing to do. The July 2017 Order, Order of Affirmance, and May 2018 Order directly impact those powers. For instance, the Amended CC&Rs are *void ab initio* and NRS 116.3117 is not applicable to the Association. Therefore, the Receiver acting in the Association's place cannot use the Amended CC&Rs or NRS 116.3117 to accomplish anything because they have no force or effect on the Association and grant it no rights. In other words, the appointment of the Receiver cannot alter legal realities or bypass the July 2017 Order, Order of Affirmance, and May 2018 Order.

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D. <u>The Receiver's Letter Violates the May 2018 Order.</u>

In May 2018, the Plaintiffs obtained a permanent injunction from this Court prohibiting the Lytle Trust 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 Plaintiffs or their properties. May 2018 Order at 10. In January 2020, the Receiver violated the May 2018 Order by threatening to "issue and collect a special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against the Association." Exhibit 3, Order Appointing Receiver at 2 (included with Receiver Letter). The January 22, 2020 letter from the Receiver specifically stated that "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

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judgments….We would like to meet with title holding members of the HOA…[to] share three ideas we have to pay these judgments." Exhibit 2 at 1. In other words, following a course of action set in motion by the Lytle Trust, the Receiver was attempting to do exactly what the May 2018 Order enjoined the Lytle Trust from doing.

E. The Lytle Trust Did Not Engage in Good Faith Compliance and Failed to Take Any Corrective Action

The Plaintiffs have established with clear and convincing evidence that the May 2018 Order has been violated. The violations are so direct and intentional, that there cannot possibly be an argument that the Lytle Trust made good faith reasonable efforts to comply with the terms of the permanent injunction and has substantially complied. Additionally, The Plaintiffs sent a letter to the Receiver, with copy to the Lytle Trust, on January 29, 2020, notifying them that the actions were in direct violation of the May 2018 Order. No corrective action has been taken in this Case or the Receivership Action. *See cf. Boink Sys., Inc. v. Las Vegas Sands Corp.*, No. 2:08-CV-00089-RLH, 2011 WL 3419438, at *3 (D. Nev. Aug. 3, 2011) (no contempt where violator made good faith reasonable efforts to comply and took immediate corrective action). Thus, contempt penalties are appropriate here.

F. The Lytle Trust and its Counsel Should be Assessed Penalties, Including Plaintiffs' Attorney's Fees and Costs, for Violating the May 2018 Order.

A $500 penalty may be assessed and imprisonment not exceeding 25 days may be ordered for each violation of the May 2018 Order. NRS 22.100(2). In addition, the court may require the Lytle Trust, its counsel, and/or the Receiver to pay to the Plaintiffs their "reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt. NRS 22.100(3); *Keresey v. Rudiak*, No. 75177-COA, 2019 WL 3967438, at *6 (Nev. App. Aug. 21, 2019) (attorney's fees for time spent preparing and arguing their motion for an order to show cause, renewed motion for an order to show cause, and for time related to the hearing associated with those motions were proper). A sanction for "[c]ivil contempt is

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characterized by the court's desire to...compensate the contemnor's adversary for the injuries which result from the noncompliance." *State, Dept. of Indus. Relations, Div. of Indus. Ins. Regulation v. Albanese*, 112 Nev. 851, 919 P.2d 1067, 1071 (1996) (*quoting Falstaff Brewing Corp. v. Miller Brewing Co*., 702 F.2d 770, 778 (9th Cir.1983)).

The Plaintiffs request that this Court assess a $500.00 penalty per Plaintiff to the Lytle Trust, its counsel, and the Receiver, as well as award all Plaintiffs' attorney's fees and costs incurred as a result of violations of the May 2018 Order, including but not limited to having to prepare, file and argue this Motion and intervene in the Receivership Action.[5]

IV.

CONCLUSION

Based on the foregoing, the Plaintiffs respectfully request this Court to issue an Order requiring Defendants to appear and show cause why they should not be held in contempt for violation of the May 2018 Order. Plaintiffs also respectfully request that a $500 fee be assessed per Plaintiff and that the Plaintiffs be awarded all of their reasonable expenses incurred as result of the Lytle Trust's violation, including without limitation the Plaintiffs' attorney's fees and costs.

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

[5] As a result of the violation of the May 2018 Order, Plaintiffs were also forced to intervene in the Receivership Action to inform the court of this Court's Orders and to amend or rescind the Receivership Order to avoid further violations of the permanent injunction. The Plaintiffs' fees and costs for those efforts should be included in the fee award in this case.

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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)
Christina Wang (christina.wang@fnf.com)
Mia Hurtado (mia.hurtado@fnf.com)
Richard E. Haskin, Esq. (rhaskin@gibbsgiden.com)
Timothy P. Elson, Esq. (telson@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)

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☒ 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

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EXHIBIT V

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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
Las Vegas, Nevada 89113
Tel: (702) 667-3000
Fax: (702) 938-8721
Email: christina.wang@fnf.com
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

Court may entertain at the time of any hearing on the Motion.

DATED this 6th day of March, 2020.

FIDELITY NATIONAL LAW GROUP

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

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Fidelity National Law Group
8363 W. Sunset Road, Suite120
Las Vegas, NV 89113
(702) 667-3000

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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 Gegn

Kevin Singer
Scott Yahraus
Receivership Specialists
7251 W. Lake Mead Blvd., Suite 300
Las Vegas, NV 89128

DATED: 3/6/2020

Dave Engelman
An employee of Fidelity National Law Group

Fidelity National Law Group
8363 W. Sunset Road, Suite120
Las Vegas, NV 89113
(702) 667-3000

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Steven D. Grierson
CLERK OF THE COURT

OPPM
DAN R. WAITE, ESQ.
Nevada Bar No. 4078
DWaite@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Telephone: 702-949-8200
Facsimile: 702-949-8398
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST, et al.,

Plaintiff,

v.

TRUDI LEE LYTLE, et al.,

Defendants,

SEPTEMBER TRUST, DATED MARCH 23, 1972, et al.,

Plaintiffs,

v.

TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST, et al.,

Defendants.

Case No.: A-16-747800-C

Dept. No.: 16

OPPOSITION TO PLAINTIFFS' MOTION FOR AN ORDER TO SHOW CAUSE WHY THE LYTLE TRUST SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF COURT ORDERS

DATE OF HEARING: APRIL 21, 2020

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I.

INTRODUCTION

This is a $1.8 million motion…and the movants understand this significance. More particularly, the movant homeowners, through the Rosemere Estate Property Owners Association (the "Association"), waged vicious battles with the Lytle Trust for more than a decade, resulting in three judgments in favor of the Lytle Trust against the Association, which have a current

combined balance of more than $1.8 million. The Association's actions against the Lytle Trust were so outrageous that the Lytle Trust's judgments include a punitive damage award in excess of $800,000. The homeowners funded the Association's litigation expenses through assessments and personal loans to the Association. However, when the judgments started rolling-in in favor of the Lytle Trust against the Association, the board members (some of these very Plaintiffs) resigned and rendered the Association defunct, failing to renew its status with the Nevada Real Estate Division or the Nevada Secretary of State.

No doubt, the homeowners assumed that, without a functioning Association, there would be no one to make an assessment to pay the judgments. Curiously, in the years after the Association was intentionally rendered defunct, it has still managed to pay its obligations to, for example, maintain the entrance gate, pay water and electricity for common areas, etc. In short, a secret Association exists to continue the Association's purposes, except to pay the judgments. The homeowner movants had no hesitation to pay tens of thousands of dollars each to an Association assessment to fund the Association's fight against the Lytle Trust. However, when the Lytle Trust prevailed again and again, the homeowners rendered the Association defunct and now vigorously fight the Lytle Trust's efforts to collect its judgments from the Association.

If the homeowner movants prevail in their motion, the Lytle Trust will likely have no way to collect their judgments from the Association. Thus, this is a $1.8 million motion.

Plaintiffs' Motion For An Order to Show Cause Why The Lytle Trust Should Not Be Held In Contempt For Violation Of Court Orders ("Motion") demonstrates an astonishing lack of understanding regarding (1) receivers, (2) the fundamental differences between judgment creditors (like the Lytle Trust) and judgment debtors (like the Association), and (3) this Court's permanent injunction and the Nevada Supreme Court's Order of Affirmance.

Indeed, judgment creditors have a *right* to *collect* judgments. Judgment debtors have an *obligation* to *pay or satisfy* judgments. The court-appointed Receiver here (Kevin Singer, appointed by Judge Kishner in Case No. A-18-775843 ("Receiver Action")) acts in the stead of the defunct Association. As such, the Receiver was empowered and acts NOT to *collect* the Lytle Trust's judgments; but rather, to *pay or satisfy* the Association's judgment liability. Indeed, the

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Receiver, an officer of the Court, acts in the shoes of and on behalf of the Association, not the Lytle Trust.

Neither this Court's permanent injunction nor the Supreme Court's Order of Affirmance purports to alter *in any manner* the Lytle Trust's rights as a judgment creditor against its judgment debtor—the *Association.* Instead, those orders address only what the Lytle Trust cannot do as it relates to the *homeowners*. More particularly, those orders recognize that the homeowners are not judgment debtors and therefore the Lytle Trust cannot enforce its judgments directly against the homeowners or their property, as the Lytle Trust previously attempted when it recorded abstracts of judgment against the homeowners' properties. However, the Lytle Trust is free to exercise its judgment creditor rights against the Association. The *Lytle Trust's actions against the Association* to *collect* its judgment cannot be confused with the *Receiver's actions on behalf of the Association* to *pay* the judgments.

The Receiver's powers in this case are not limited, as the movants suggest, to NRS 116.1201(2) and the original CC&Rs. Numerous other sources exist to empower the Receiver, as recognized in Judge Kishner's Order Appointing Receiver.

For all the reasons as will now be demonstrated, the Lytle Trust did not violate this Court's permanent injunction. The Motion must be DENIED.

II.

STANDARD OF REVIEW

A permanent injunction is *strictly construed* for purposes of a contempt proceeding. *Benefit Bank v. J.E. Wheeler Energy Co.*, 2010 WL 11561234, at n.14 (citing *FTC v. Kukendall*, 371 F.3d 745, 760 (10th Cir. 2004)).

Indeed, a violation of a permanent injunction must be demonstrated by *clear and convincing evidence*. *Bohannon v. Eighth Judicial Dist. Ct.*, 2017 WL 1080066, at *3 (Nev. 2017) ("When a contempt proceeding is civil in nature, any allegations need . . . be proven by clear and convincing evidence."); *Boink Systems, Inc. v. Las Vegas Sands Corp.*, 2011 WL 3419438, at *3 (D. Nev. 2011) ("LVS has established clear and convincing evidence that the court's permanent injunction has been violated."). The homeowners acknowledge, but fail to satisfy, this standard.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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(*See* Mtn. at 9:25-26, "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.").

III.

LEGAL ARGUMENTS

A. THE RECEIVER IS AN OFFICER OF THE COURT APPOINTED TO ACT ON BEHALF OF THE ASSOCIATION, NOT ON BEHALF OF THE LYTLE TRUST

Judgment creditors "collect" judgments. Judgment debtors "pay" or "satisfy" judgments. The Motion's fatal flaw is its failure to understand that the Receiver answers to the Court and acts on behalf of the judgment debtor Association to *pay* the judgments, i.e., the Receiver does not answer to or act on behalf of the judgment creditor Lytle Trust to *collect* its judgments.

The Motion goes astray in just the second sentence of its Introduction. There, the homeowners assert that the Lytle Trust obtained the appointment of a receiver to act "as its personal collection agent against the Plaintiffs and their properties." (Mtn. at 3:7-9). Indeed, the theme of the Motion (repeated nine times) is that the court-appointed Receiver wrongfully attempts to "collect" the Lytle Trust's judgments from the Plaintiff homeowners.[1]

The homeowners seem to think the Receiver is acting as an agent of the Lytle Trust. He is not—the Receiver is an officer and agent of the Court. *See U.S. Bank Nat'l Ass'n v. Palmilla Dev. Co.*, 131 Nev. 72, 77, 343 P.3d 603, 606 (2015) ("the receiver, for all intents and purposes, acts as a court's proxy"); *Agnes v. Crown Partnership, Inc.*, 113 Nev. 195, 201, 932 P.2d 1067, 1071 (1997) ("A receiver appointed by the court acts as an officer of the court."); *State v. Wildes*, 34 Nev. 94, 116 P. 595, 597 (1911) ("The receiver is the officer or agent of the court from which he derives his appointment . . . .").

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[1] *See* Motion at 3:7-9 (quoted above), 3:19-23 ("the Receiver's attempt to collect the Judgments . . . obtained against the Association, from the Plaintiffs' or their properties are direct violations of the permanent injunction"); 7:5-6 (referencing letter sent to Receiver demanding that "he cease and desist from any further effort to collect any judgments or take any action against the Plaintiffs"); 8:13-14 ("the very purpose of the Order Appointing Receiver is to attempt to collect the Rosemere judgments from the Plaintiffs"); 8:17-20 ("The Lytle Trust's attempts to appoint a Receiver to collect on the Judgments . . . are in clear violation of this Court's May 2018 Order."); 9:1-2 ("the Receiver's letter to the Plaintiffs seeking to collect the Lytle Trust's judgments violated this Court's permanent injunction"); 13:20-21 ("The Lytle Trust was unquestionably prohibited . . . from taking any action to collect the Rosemere judgments from the Plaintiffs or their properties."); 14:1-4 ("The Lytle Trust was not legally permitted to seek collection from the Plaintiffs . . . . Passing the illegal collection effort to the Receiver cannot be used to circumvent the [referenced Orders].") (emphases added).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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Although someone has to petition the Court for the appointment of a receiver—the Lytle Trust in this instance—"[a] court-appointed receiver . . . is an officer of the court, . . . and not an agent of the party who procured the appointment." *Miller v. Noonan*, 930 N.Y.S.2d 394, 396 (N.Y. Sup. Ct. App. Term 2011) (emphasis added). To the contrary, "[a] receiver stands in the shoes of the corporation." *Lank v. NYSE*, 548 F.2d 61, 67 (2d Cir. 1977); *accord*, *Kelley v. College of St. Benedict*, 901 F. Supp.2d 1123, 1128 (D. Minn. 2012) ("a receiver 'stands in the shoes' of the receivership entity"); *Gravel Resources of Arizona v. Hills*, 170 P.3d 282, 287 (Ariz. Ct. App. 2007) ("When appointed, the receiver stands in the shoes of the entity it represents."); *Banco de DeSarrollo Agropecuario, S.A. v. Gibbs*, 709 F. Supp. 1302, 1305 (S.D.N.Y. 1989) ("a receiver stands in the shoes of a corporation").

In short, "[a] receiver, in addition to being an officer of the court, is a representative of the corporation. He takes its place in respect to . . . the administration of its affairs . . . . The receiver takes the place of the former managers of the corporation, . . . and he . . . conducts everything in his own name, as such receiver, under the orders of the court." *Martin v. Forrey*, 193 N.E. 679, 681 (Ind. Ct. App. 1935). Again, a receiver is "not an agent of the party who procured the appointment." *Noonan*, *supra*. Nor does a receiver stand in the shoes of the corporation's creditors. *Weiss v. Weinberger*, 2005 WL 1432190, at *3 (N.D. Ind. 2005) ("court-appointed receiver stands in the shoes of corporation it was appointed to represent and not the corporation's creditors") (citing *B.E.L.T., Inc. v. Lacrad Int'l Corp.*, 2002 WL 1905389, at *2 (N.D. Ill. 2002).

The Motion incorrectly attributes the Receiver's actions to the Lytle Trust. The Lytle Trust merely exercised its right as a judgment creditor to seek appointment of a receiver over the judgment debtor Association. Because the Receiver stands in the shoes of and acts on behalf of the Association, his actions regarding the judgments can only be viewed as actions to *pay* the judgments—i.e., to *satisfy the Association's judgment liability*—and not to *collect* the judgments on behalf of the Lytle Trust.[2] This distinction is fatal to the homeowners' Motion.[3]

[2] Indeed, the Receiver's initial January 22, 2020 letter to the homeowners implicitly recognizes the difference between "collecting" a judgment on behalf of the judgment creditor and "satisfying" or "paying" a judgment on behalf of the judgment debtor: "The appointment of the receivership is predicated on judgments against the HOA . . . . These judgments need to be *paid* and the Court agreed with the [Lytle Trust] by *appointing a Receiver to facilitate the satisfying of the judgments*." (Mtn. at Ex. 2) (emphases added).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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B. THE HOMEOWNERS MISCONSTRUE THE MAY 2018 PERMANENT INJUNCTION

1. This Court's May 2018 Order Does Not Preclude Any Action By The Association, Nor Could It Because The Association Is Not A Party

Ironically, the very point that the homeowners successfully argued to this Court years ago (and which was affirmed on appeal), they now disregard. More specifically, the homeowners obtained the permanent injunction because they were not parties to the actions between the Lytle Trust and the Association that resulted in judgments against the Association. Yet, the homeowners now apparently believe this Court's May 2018 permanent injunction affects and binds the Association even though the Association is not (and never has been) a party here.

In short, the Court's May 2018 Order does not purport to bind the Association nor could it since the Association was NOT (and still is NOT) a party here.

2. The Homeowners Disregard Critical Context and Language In This Court's May 2018 Order

The homeowners focus on just nine *lines* from this Court's nine *page* May 2018 Order, disregarding the context in which the Order arose. Also, the homeowners disregard critical language within the nine lines they focus upon.

After the Lytle Trust obtained its judgments *against the Association*, the Lytle Trust recorded abstracts of judgment ("liens") *against the homeowners' lots*. Importantly, the Lytle Trust recorded just *one* of its three judgments. Because the homeowners were not parties to the actions giving rise to the judgments, Plaintiff homeowners filed this action against the Lytle Trust to expunge the liens. The homeowners were also concerned that the Lytle Trust might record its second and third judgments against their properties. (*See* Complaint (filed 11/30/17) at paras. 53

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[3] Plaintiffs' confused approach (i.e., its failure to acknowledge that the Receiver acts on behalf of the Association, and not the Lytle Trust) is poignantly demonstrated on pages 7-8 of the Motion. There, the Motion provides: "...the Lytle Trust asserts that the main purpose in requesting a Receiver is to require the owners in the Subdivision to pay the . . . Judgments." (Mtn. at 7:23-25). However, in support of this false statement, the Motion cites several portions of the Lytle Trust's Renewed Application for Appointment of Receiver ("Renewed Receiver Application") that, in fact, demonstrate the main reason for seeking the appointment of a receiver was to facilitate the *Association's (and not the homeowners')* payment of the judgments. That is, the Motion cites (and even quotes) the Renewed Receiver Application "at 3:2-4, 5:17-18 ('Additional grounds exist because *the Association* is refusing to pay and refusing to assess Association members related to various monetary judgments awarded to the Lytles against the Association'), . . . 15:20-25 ('*the Association* has a duty...to pay its debts, including the Judgments obtained by the Lytle Trust') . . . ." (Emphases added). In short, the main purpose for the Lytle Trust's Renewed Receiver Application was *the Association's* failure to pay the judgments, NOT "to require the owners in the Subdivision to pay the . . . Judgments." (Mtn. at 7:23-25).

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3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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("if the Lytles were to record the Rosemere Judgment II or the Rosemere Judgment III like they have the Rosemere Judgment I, the Plaintiffs will not have an adequate remedy at law because they could not sell their Properties.), 54 ("The Lytles have threatened to record the Rosemere Judgment II against other homeowners in the Rosemere Subdivision"), and 57 ("*Plaintiffs are entitled to an Order* . . . expunging the liens . . . and *declaring that the Rosemere Judgment II and the Rosemere Judgment III may not be recorded against the Plaintiffs' Properties*.") (emphases added)).

In short, it is clear that the homeowners sought to expunge the one judgment lien that had been recorded and to preclude the Lytle Trust from recording its other two judgments. The homeowners prevailed as set forth in the Court's May 2018 Order.

The Court devoted six pages in its May 2018 Order finding and concluding that the Lytle Trust's Rosemere Judgment I lien improperly clouded the Plaintiff homeowners' properties. (*See* May 2018 Order at 3-8). The Court next ordered the Rosemere Judgment I liens stricken from the County Recorder's records. (*Id.* at 9-10). Then (i.e., in that context after finding the Rosemere Judgment I liens were improperly recorded and striking the liens), the Court issued a two paragraph permanent injunction, which forms the entire basis of the present contempt Motion. (*Id.* at 10:10-19).

It is clear that the intent and purpose of the permanent injunction was to preclude the Lytle Trust from repeating the kind of direct action against the homeowners' properties that the Court just found improper. More particularly, the May 2018 permanent injunction addressed and remedied the homeowners' concern, as expressed in their Complaint, that the Lytle Trust might try to record its Rosemere Judgment II and Rosemere Judgment III against the homeowners' properties.

Equally clear, the Court did not eviscerate the Lytle Trust's judgment creditor rights against its judgment debtor, the Association, who was not a party.

The first paragraph of the permanent injunction provides:

> IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust is permanently enjoined from recording and enforcing the Judgments [i.e., Rosemere Judgment I, Rosemere Judgment II, and Rosemere

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3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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> Judgment III] . . . obtained against the Association, against the September Property, Zobrist Property, Sandoval Property or Gegen Property.

First, there is no allegation that the Lytle Trust violated the permanent injunction by recording anything after this Court's May 2018 Order. Second, the permanent injunction enjoins the Lytle Trust only from enforcing its judgments "against the September *Property*, Zobrist *Property*, Sandoval *Property* or Gegen *Property*." (Emphasis added). The "Property" of each plaintiff is defined as each plaintiff's residential lot. The Order's focus on the homeowners' properties is consistent with their pleaded concern that the Lytle Trust might record its other two judgments against the homeowners' properties.

However, in exercising its judgment creditor right to seek the appointment of a receiver over the judgment debtor Association, the Lytle Trust was not enforcing its judgments "against the September Property, Zobrist Property, Sandoval Property or Gegen Property," and the Motion does not claim otherwise. The homeowners undoubtedly recognize the weakness of their reliance on this first paragraph because they focus mostly on the second paragraph.

The second paragraph of the permanent injunction provides:

> IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust is permanently enjoined from taking any action in the future <u>*directly*</u> against the Plaintiffs or their properties based upon the Rosemere Litigation I, Rosemere Litigation II or Rosemere Litigation III. (Emphasis added).

Again, it is important to consider the Order's context. While this Court's permanent injunction speaks to the relationship between the Lytle Trust and the homeowners (parties here but not parties to the actions giving rise to the judgments), it says nothing about the relationship between the Lytle Trust and its judgment debtor, the Association (not a party here). Indeed, the permanent injunction precluded the Lytle Trust from taking action "directly" against the homeowners because they were not judgment debtors. In seeking the appointment of a receiver to take control of the Association, the Lytle Trust did not act "*directly* against the homeowners or their properties." Seeking a receiver over the Association was not even indirect action against the Plaintiffs or their properties because, as the homeowners themselves repeatedly asserted in a brief that resulted in the May 2018 Order, "[t]he difference between the Association and the Plaintiffs [homeowners] is paramount to this lawsuit" (Plaintiffs' Reply in support of MSJ (filed 2/21/18) at

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3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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24:13-14); "[t]he Plaintiffs are not the Association" (*Id.* at 10:8-9), "[f]irst and foremost, the Plaintiffs are not the Association" (*Id.* at 15:6-7), and "[t]he Plaintiffs are not the Association, it is that simple" (*Id.* at 15:13-14). Thus, given this acknowledged "paramount" distinction between the Association and the homeowners, any action by the Lytle Trust against the Association is not action, direct or indirect, against the Plaintiff homeowners.

In sum, this Court's May 2018 Order did not preclude the Lytle Trust from taking action against the Association to collect its judgments. Instead, since the wrong the homeowners' claimed was the Lytle Trust's attempt to collect its three judgments directly from them (instead of from the Association), the Order remedied such by precluding the Lytle Trust from taking any enforcement action "directly" against the homeowners. The Lytle Trust's effort to obtain the appointment of a receiver over the Association was (1) a valid exercise of its judgment creditor rights, and (2) not "direct" action against the homeowners.

C. THE HOMEOWNERS MISCONSTRUE THE NEVADA SUPREME COURT'S ORDER OF AFFIRMANCE IN THE LAMOTHE/BOULDEN CONSOLIDATED CASE

The Motion also relies upon the Nevada Supreme Court's December 4, 2018, Order of Affirmance from the summary judgment this Court granted to homeowners Lamothe and Boulden in the consolidated case. (*See* Mtn. at 5:18-6:10). However, as with the May 2018 Order, the homeowners misconstrue the Order of Affirmance to support their Motion.[4]

The Association has never been a party to either the Lamothe/Boulden action or the subsequent appeal that resulted in the Order of Affirmance. Thus, while the Order of Affirmance addresses what the *Lytle Trust*, as a judgment creditor, cannot do to *collect* its judgments (i.e., it cannot collect its judgments directly from the homeowners or their properties), it says nothing

[4] As a preliminary matter, the homeowners cannot rely on the Nevada Supreme Court's Order of Affirmance to support their contempt claim here. "It is well settled . . . that the power to judge a contempt rests solely with the court contemned, and that no court is authorized to punish a contempt against another court." *In re Contempt of Lance*, 55 N.E.3d 1129, 1132 (Ohio Ct. App. 2016); *accord*, *Smith v. City of Blanco*, 2013 WL 491022, at *6 (Tex. Ct. App. 2013) ("a trial court does not have jurisdiction to enforce another court's order through contempt"); *Cole v. Morgan*, 2000 WL 34229820, at *5 (W.D. Wis. 2000) ("Petitioner is mistaken in his belief that this court has the authority to hold respondents in contempt of court for ignoring another court's order."). These authorities (and many similar not cited) end the inquiry into the Nevada Supreme Court's Order of Affirmance as a basis for holding the Lytle Trust in contempt. Nevertheless, the Lytle Trust did not violate the Order of Affirmance, as will now be shown in the text.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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about what the *Association*, as a judgment debtor, can or cannot do to *satisfy* the valid judgments entered against it.

The Motion states that "[t]he Order of Affirmance . . . holds that a judgment obtained by the Lytle Trust against the [Association] cannot be enforced against individual owners or their properties . . . ." (Mtn. at 5:18-20). However, this statement reveals a critical misunderstanding of the Nevada Supreme Court's holding. Indeed, the Nevada Supreme Court addressed only what the Lytle Trust could or could not do; not what the nonparty Association (acting on its own or through a Receiver) could or could not do. For example, the Court characterized the permanent injunction granted to Lamothe/Boulden as "enjoining *the Lytles* [but saying nothing about the nonparty Association] from enforcing the judgment . . . against the [homeowner] properties." (Mtn. at Ex. 1, at p. 3, emphases added). Furthermore, the Court declared that "[w]e are likewise not persuaded by the Lytle's further contention that *they* may place a valid judgment lien on the [homeowner] properties." (*Id.* at p. 4, emphases added).

In short, the Nevada Supreme Court saying what the *Lytle Trust* cannot do to *collect* its judgments says nothing about what the *Association* can or cannot do to *pay* or *satisfy* those judgments. The Motion implies the Association, through its court-appointed Receiver, cannot do anything to satisfy the judgments entered against it, and thereby remove its judgment debtor liability. Common sense dictates otherwise. Most certainly, however, nothing in the Order of Affirmance applies to the Association or its court-appointed Receiver.

What the Motion seems to disregard or misunderstand is that the Lytle Trust DOES NOT CARE *HOW* the Association pays the judgments; only that it pays. So, for hypothetical example, if the Receiver, in the discharge of his duties, discovered sufficient Association assets to satisfy the judgments without any additional financial assessment upon the homeowners, the Lytle Trust would of course be perfectly happy with that result. Alternatively, the Receiver might obtain a loan (something he has expressed interest in doing) to satisfy the Association's judgment liability, thereby allocating repayment of the loan to the current and *future* homeowners *over several years*.

Although the Lytle Trust exercised its judgment creditor right to seek appointment of a receiver over the judgment debtor Association, such cannot be deemed action by the Lytle Trust

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3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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against the homeowners—the homeowners were not even parties to the Receivership action. Ultimately, whatever the Receiver does to satisfy the judgments will be Receiver-action on behalf of the judgment debtor Association, not on behalf of the judgment creditor Lytle Trust.

D. SEEKING THE APPOINTMENT OF A RECEIVER WAS A VALID EXERCISE OF THE LYTLE TRUST'S JUDGMENT CREDITOR RIGHTS

Nothing—ABSOLUTELY NOTHING—in either this Court's permanent injunction (i.e., the May 2018 Order) or the Nevada Supreme Court's Order of Affirmance even remotely purports to diminish the Lytle Trust's *valid* exercise of its judgment creditor rights. Indeed, an order precluding a judgment creditor's exercise of existing rights would arguably constitute an unconstitutional taking. That's not what occurred here. To the contrary, the only thing this Court's permanent injunction references and precludes is an *invalid* attempt to create and then exercise judgment creditor rights that do not actually exist.

Every judgment creditor (not, every judgment creditor *except the Lytle Trust*) has the right to seek the appointment of a receiver over a judgment debtor who refuses to pay. For example, NRS 32.010 authorizes appointment of a receiver "by a creditor to subject any property or fund to the creditor's claim" (NRS 32.010(1)), "to carry the judgment into effect" (NRS 32.010(3)) or "in proceedings in aid of execution, . . . or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment (NRS 32.020(4)). The homeowners incorrectly suggest this Court's permanent injunction stripped the Lytle Trust of this important right, and did so by implication and not expressly. Furthermore, NRS 32.010(6) authorizes the appointment of a receiver "[i]n all other cases where receivers have heretofore been appointed by the usages of the courts of equity." "Since very early days, courts of equity have appointed receivers at the request of judgment creditors when execution has been returned unsatisfied." *Pittsburgh Equitable Meter Co. v. Paul C. Loeber & Co.*, 160 F.2d 721, 728 (7th Cir. 1947); *accord*, *Peterson v. Lindskoog*, 93 Ill. App. 276, 282 (Ill. App. Ct. 1901) ("courts of equity are inclined to a liberal exercise of their jurisdiction by granting receivers over the estate of a debtor in behalf of his judgment creditors"). Nothing in any order took this judgment creditor right away from the Lytle Trust.

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3993 Howard Hughes Pkwy, Suite 600
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Furthermore, the Association is an NRS 82 nonprofit corporation and NRS 82.471(1) vests creditors, like the Lytle Trust, with the right to seek the appointment of a receiver when the nonprofit corporation "becomes insolvent or suspends its ordinary business for want of funds to carry on the business, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors . . . ." There can be no dispute that the Association, with a multimillion dollar judgment entered against it and no collection of dues or other money, is insolvent and has otherwise suspended its ordinary business. Thus, the Lytle Trust possessed and validly exercised its statutory right to seek the appointment of a Receiver over the judgment debtor Association.

In short, it is hornbook law that a "receivership may be an appropriate remedy for a judgment creditor." Wright & Miller, *Appointment of Receivers*, 12 Fed. Prac. & Proc. Civ. § 2983 (3d ed.). Neither this Court's May 2018 Order nor the Supreme Court's Order of Affirmance (nor any other order) deprived the Lytle Trust of any valid judgment creditor rights against its judgment debtor Association, nor could they since the Association was not (and still is not) a party here.

E. THE ORDER APPOINTING RECEIVER DOES NOT VIOLATE THE MAY 2018 ORDER

1. The Application for Appointment of a Receiver Did Not Conceal Relevant Information from Judge Kishner

The Motion implies some nefarious motive to the Lytle Trust because it "did not seek a receiver in this case or any of the three prior cases in which it obtained judgments against the Association." (Mtn. at 10:18-20). First, important reasons existed for seeking the appointment of a receiver that had nothing to do with the Lytle Trust's judgments, e.g., reinstating the Association in good standing with the Nevada Secretary of State and the Nevada Real Estate Division, overseeing the election of a new Association Board, etc. None of these things came under the jurisdiction of any of the courts who issued the judgments. Second, with three judgments obtained from three different judges at three different times, the Lytle Trust (i.e., its counsel) simply felt it more efficient and effective to seek the appointment of a Receiver in a single, new action.

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Next, the Motion accuses the Lytle Trust of "purposefully and selectively present[ing] facts to a new judge, conveniently leaving out key findings of fact and conclusions of law . . . ." (Mtn. at 10:25-26). The Lytle Trust admits that it purposefully and selectively presented to Judge Kishner what it presented to her—*mercifully so*. The numerous legal proceedings between the Lytle Trust, on the one hand, and the Association and/or the homeowners, on the other hand, span more than 12 years. Indeed, there have been two cases before the Nevada Real Estate Division, five cases in the District Court, and twelve appeals to the Nevada Supreme Court, including some still pending there. Furthermore, several of the appeals resulted in additional proceedings in the District Court on remand. The dockets to these cases are extensive. (*See* Dockets to District Court Cases, attached hereto as **Exs. A-E**, and Dockets to Supreme Court Cases, attached hereto as **Exs. F-Q**).

Yes, of course, the Lytle Trust was purposeful and selective in what it presented to Judge Kishner in conjunction with its request for the appointment of a Receiver. Indeed, the Lytle Trust presented to Judge Kishner only that which was relevant to the Court's determination of the Receiver application—and, this Court's May 2018 Order, along with many other orders *that also were not violated*, were not relevant to that determination. That is, because the Lytle Trust was not taking any action against the homeowners or their properties and, indeed, the homeowners were not even parties to the Receivership Action, an order (injunction) that enjoined the Lytle Trust from trying to enforce its judgments directly against the homeowners was not relevant.

2. The Association's Powers, and therefore the Receiver's Powers, are Not Limited to the Original CC&Rs and NRS 116.1201(2)

In another spectacular display of their misunderstanding, the homeowners next accuse the Lytle Trust of making misrepresentations to Judge Kishner that contradict the conclusions of law in this Court's May 2018 Order. (Mtn. at 11-12). More particularly, the homeowners falsely assume that a Court's determination that a certain authority (e.g., contract, statute, or rule) does not vest the Association with a specific power, is tantamount to a determination that no authority vests the Association with that specific power. Indeed, any statute that is merely silent on a certain right or power leaves room for that right or power to be supplied elsewhere.

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Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
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Here, the Motion correctly notes that this Court's May 2018 Order determined that "the Association is a 'limited purpose association' as referenced in NRS 116.1201(2)." (Mtn. at 11:18-19, quoting May 2018 Order at 7:20-21). And, this Court determined that the Amended CC&Rs, as opposed to the original CC&Rs, had no force or effect. (*Id.*). However, such does not mean, as the Motion wrongly suggests, that "[t]he only powers the Association or Receiver would be entitled to exercise are those enumerated in the original CC&Rs or NRS 116.1201(2) . . . ." (Mtn. at 11:23-12:1).

a. NRS 82 authorizes the appointment of a Receiver and to levy assessments

While the Association acts as a limited purpose association, it conducts that business through the vehicle of an NRS Chapter 82 nonprofit corporation. Thus, NRS 82 vests the Association with additional powers and duties, beyond those vested by the original CC&Rs and NRS 116.1201(2). *See* RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES at Introductory Note (2000) (common-interest communities, which include limited purpose associations, are governed by laws that include "the law governing the vehicle used in the community for management of commonly held property or provision of services."). Indeed, nowhere in the original CC&Rs or NRS 116.1201(2) is the power to make assessments expressly *excluded*. Thus, that power can be, and indeed is, expressly provided elsewhere.

First, NRS 82.471(1) authorizes the appointment of a Receiver when, as here, the corporation becomes insolvent or suspends its ordinary business or is conducted with great prejudice to its creditors. Second, with or without a Receiver, NRS 82.121 vests the Association with broad general powers. And, with a Receiver, the Association has the additional powers vested in NRS 82.476(2)(a)-(i), most, if not all, of which are not expressed in either the original CC&Rs or NRS 116.1201(2). Beyond the foregoing general powers, NRS 82.131 vests the Association with additional specific powers, *including the power to "[l]evy dues, assessments and fees*." (NRS 82.131(5), emphases added).

In short, there are additional bases beyond those contemplated in NRS 116.1201(2) and the original CC&Rs for (a) the Association to act, and (b) the appointment and empowerment of a Receiver. Therefore, even if, *arguendo*, the Association or Receiver is powerless under one area

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3993 Howard Hughes Pkwy, Suite 600
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of the law, they may be (and are) empowered by another area of the law. Judge Kishner was well within her right, power, and discretion to appoint the Receiver over the Association and to vest him with the powers and duties she did. Nothing Judge Kishner did violates or contradicts this Court's May 2018 Order.

b. NRS 32 authorizes the appointment of a Receiver to give effect to a judgment

NRS 32.010 also authorizes appointment of a receiver "by a creditor to subject any property or fund to the creditor's claim" (NRS 32.010(1)), "[a]fter judgment, to carry the judgment into effect" (NRS 32.010(3)), and "[a]fter judgment, . . . in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment" (NRS 32.0101(4)). Such constitute alternative bases for appointing a Receiver outside the original CC&Rs and NRS 116.1201(2).

c. The Association has relevant implied powers

As a preliminary matter, NRS Chapter 116 regards "common-interest communities." There are many different kinds of "common-interest communities," including homeowner associations, condominium associations, planned unit communities, and cooperatives. Most relevantly, common-interest communities also include limited purpose associations. *See Bank of New York Mellon v. Imagination North Landscaping Maintenance Ass'n*, 2019 WL 1383261, at *4 (D. Nev. 2019) ("a limited-purpose association [is] a type of common-interest community").

1) The RESTATEMENT and implied powers in common-interest communities

Chapter 6 of the RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES (2000) ("Restatement Servitudes") is entitled "Common-Interest Communities" and many of its sections identify various *implied* powers. The Introductory Note explains that implied powers are necessary "to provide common-interest communities with the powers needed to function effectively over the long term *even where the governing documents have not been carefully prepared.*" (Emphasis added). Indeed, Section 6.1 emphasizes the need for implied powers in *residential* common-interest communities:

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3993 Howard Hughes Pkwy, Suite 600
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> [T]he likelihood that purchasers of residential property will appreciate the significance of the details or be able to negotiate changes in the documents governing association powers . . . is generally assumed to be lower than in the case of commercial purchasers. This assumption leads to a generally greater willingness than might be appropriate for purely commercial developments . . . *to imply association powers* . . . to permit reasonable functioning of residential common-interest communities. (Restatement Servitudes § 6.1 cmt. a, emphasis added).

Section 6.4 relevantly provides: "*In addition to the powers granted by statute [NRS 116] and the governing documents [CC&Rs], a common-interest community has the powers reasonably necessary to manage the common property, administer the servitude regime, and carry out other functions set forth in the declaration.*" (Emphases added). The comment to this Section explains that implied powers are needed to supplement those powers expressly granted by statute and the CC&Rs because "[f]ailure of the governing documents to provide the powers that are implied under this section typically reflects inadequate attention by the developer rather than deliberate choice by the purchasers." Here, even a fleeting look at the Association's scant 3.5-page original CC&Rs reveals they were not prepared with adequate attention (e.g., (1) the CC&Rs include undefined terms ("PROPERTY," "Owner," "Purchaser," etc.), (2) the CC&Rs contain numerous specific rules but fail to identify any enforcement mechanism to ensure compliance, etc., etc.). In sum, the short, incomplete, and ambiguous CC&Rs are a good example of why the rules regarding implied powers are needed.

2) Common-interest communities possess the implied power to impose assessments

The Restatement Servitude's Section 6.5 provides direct authority regarding the Association's *implied* power to impose assessments. That section provides:

> (1) Except as limited by statute or the declaration:
>
> (a) a common-interest community has the power to raise the funds reasonably necessary to carry out its functions by levying assessments against the individually owned property in the community . . . .;
>
> (b) assessments may be allocated among the individually owned properties on any reasonable basis, and are secured by a lien against the individually owned properties.

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3993 Howard Hughes Pkwy, Suite 600
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As with the other Restatement provisions regarding implied powers, "[t]he rules stated in this section *supplement* the powers granted to the association by statute and the governing documents." (*Id.* at § 6.5, cmt a, emphases added). Indeed, "[u]nder the rule stated in this section, the power to raise funds reasonably necessary to carry out the functions of a common-interest community *will be implied if not expressly granted by the declaration or by statute*." (*Id.* at cmt b) (emphases added).

3) Common-interest communities possess the implied power to lien

An important corollary to the implied power to assess is the power to lien if an assessment is not paid. The Restatement implies this right as well. (*Id.* at § 6.5(1)(b) ("assessments . . . are secured by a lien against the individually owned properties.")). Indeed, as the comment provides: "Unless such a lien provision has been expressly excluded, a lien for unpaid assessments may be implied using the court's traditional power to impose an equitable lien when appropriate to secure payment of an obligation." (*Id.* at cmt d). The Association's CC&Rs do not expressly exclude assessment liens. To the contrary, as shown next, the CC&Rs mention and necessarily assume such liens.

4) The Association's CC&Rs expressly mention the possibility of liens; thus implying the power to lien and to assess

The Association's power to impose assessments and to lien the property of those who do not pay is not just implied as a matter of law through the foregoing Restatement provisions, it is also inferred in the original CC&Rs. More specifically, the last unnumbered preamble paragraph expressly references "*liens established hereunder*." Yet, nowhere else in the CC&Rs is the power to lien specified. Clearly, the unexpressed power to lien must be implied in order to give effect to the CC&Rs' express mention of "liens established hereunder." *See Solid v. Eighth Judicial Dist. Ct.*, 133 Nev. 118, 124, 393 P.3d 666, 672 (2017) ("A basic rule of contract interpretation is that every word must be given effect if at all possible. A court should not interpret a contract so as to make meaningless its provisions.") (internal quotes and citations omitted). In other words, "[s]ince all things necessary to carry a contract into effect may be implied therefrom," the CC&Rs' express mention of liens necessarily requires an implied power to impose those liens.

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3993 Howard Hughes Pkwy, Suite 600
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See Fidelity & Cas. Co. of N.Y. v. Gray, 72 P.2d 341, 346 (Okla. 1937). And, if the power to lien is implied, the precedent power to assess must be implied as well.

In short, while a limited purpose association's twin powers to assess and to lien are not expressly authorized by NRS 116.1201(2) or the original CC&Rs, neither are those powers expressly prohibited. Thus, the Restatement Servitudes § 6.5 and the CC&Rs' reference to "liens established hereunder" provide substantial support that those powers exist by implication.

5) The Nevada Supreme Court frequently relies on the Restatement Servitudes, including Section 6 regarding Common-Interest Communities

Lest there be any doubt about the force of the Restatement Servitudes in this state, the Nevada Supreme Court has relied upon and adopted various provisions from the RESTATEMENT (THIRD) OF PROPERTIES: SERVITUDES (2000). *See e.g., Glenbrook Club v. Match Point Properties, LLC*, 127 Nev. 1137, 373 P.3d 917 (2011) (citing Restatement Servitudes §§ 1.1(2) and 7.5 with approval); *Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc.*, 131 Nev. 99, 345 P.3d 1040 (2015) (quoting Restatement Servitudes § 3.3 cmt. b with approval); *Peake Development, Inc. v. R.B. Properties, Inc.*, 2014 WL 859215 (Nev. 2014) (unpublished) (citing Restatement Servitudes §§ 4.5(1)(a) and 4.5(2) with approval); *St. James Village, Inc. v. Cunningham*, 125 Nev. 211, 210 P.3d 190 (2009) (quoting Restatement Servitudes § 4.8 cmt. f with approval).

Indeed, the Nevada Supreme Court has repeatedly relied on Section 6 ("Common-Interest Communities") of the Restatement Servitudes, including to find implied powers not expressly authorized by NRS 116 or the CC&Rs. *See e.g., Artemis Exploration Co. v. Ruby Lake Estate Homeowner's Ass'n*, 135 Nev. Adv. Op. 48, 2019 WL 4896442 (2019) (unpublished) (applying Restatement Servitudes § 6.2); *Double Diamond v. Second Judicial Dist. Ct.*, 131 Nev. 557, 354 P.3d 641 (2015) (relying upon Restatement Servitudes § 6.19); *Beazer Homes Holding Corp. v. Eighth Judicial Dist. Ct.*, 128 Nev. 723, 291 P.3d 128 (2012) (quoting Restatement Servitudes § 6.11 cmt. a, with approval), *D.R. Horton, Inc. v. Eighth Judicial Dist. Ct.*, 125 Nev. 449, 215 P.3d 697 (2009) (quoting Restatement Servitudes § 6.11, with approval).

The recent *Artemis Exploration* case, *supra*, albeit unpublished, is very instructive. There, one issue was whether the subject common-interest community could impose monetary

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3993 Howard Hughes Pkwy, Suite 600
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assessments upon its members when the governing document "did not expressly state that [the association's] residents would be responsible for payment assessments . . . ." 2019 WL 4896442, at *1. The Court resolved the issue by relying on the Restatement Servitudes Section 6.2: "An implied obligation may also be found where the declaration . . . fails to include a mechanism for providing the funds necessary to carry out [the association's] functions." *Id.* at *5. Based on the Restatement, the Nevada Supreme Court found "an implied payment obligation." *Id.*

Similarly, here, because NRS 116 is largely inapplicable to limited purpose associations and the CC&Rs do not express an assessment right, that right exists by implication. Thus, the proper question is not whether Judge Kishner could *expand* the role of the Association beyond that contemplated by NRS 116.1201(2) or the original CC&Rs, because that question assumes that the statute and CC&Rs are the sole and exclusive source of the Association's powers. Rather, the powers Judge Kishner vested in the Association, through its Receiver, were not *new* powers *created* by the Court. Instead, they were *already-existing* powers the Court merely *identified.*

6) Common sense dictates implied powers

Implied powers exist here by necessity and as a matter of common sense. For example, consider a hypothetical where a Rosemere Estate guest incurs vehicle and/or bodily injury when the entrance gate malfunctions due to the Association's negligence. Unless the power to assess homeowners to pay the resulting judgment is implied (and to lien those who do not pay), a deserving plaintiff will have the mechanism to obtain a judgment but, absurdly, no mechanism to collect it. Similarly, here, the Lytle Trust obtained substantial judgments against the Association; yet, unless the Association possesses the implied power to impose assessments to pay the judgments, those judgments will exist with no mechanism to enforce payment. Certainly, the law does not create a right and a remedy without any mechanism to enforce the remedy. *See Utah & N. Railway Co. v. Crawford*, 1880 WL 4240, at *3 (Idaho 1880) (stating that conferring a right, "while withholding all remedy for its enforcement, would be . . . keeping the word of promise to the ear, and breaking it to the hope; in fine, . . . a gross absurdity.")

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Clearly, that which the Association had implied power to do itself could be vested by the Court in the Receiver. And, in any event, as set forth above, the Association's power to impose assessments is not just implied, it is expressly contemplated in NRS 82.131(5).

7) This Court (Judge Wiese) previously implied powers in the Association

In one of the actions the Lytle Trust brought against the Association, the District Court (Judge Weise) implied the Association's power to host elections based on the need for a Board even though NRS 116.1201(2) and the CC&Rs do not provide for elections. (*See* Order Granting MSJ at Conclusion 9, **Ex. R**). More particularly, Judge Wiese held that "a Board must exist and, as a consequence, so must elections." (*Id.* at Conclusion 8). The Court then ascertained the election method by looking at the election method in NRS 82.286, even though NRS 116.1201(2) and the CC&Rs do not provide a method for elections.

In short, NRS 116.1201(2) and the CC&Rs are a source of the Association's powers, but they are not the only source. NRS 82 is an additional source because the Association is an NRS 82 nonprofit corporation. And, the law (as set forth in the Restatement Servitudes and applied by the Nevada Supreme Court) implies all powers needed to function in an orderly manner, including the power to raise funds to satisfy the Association's obligations.

d. The homeowner's current position is inconsistent with their prior actions

Although the homeowners question Judge Kishner's ability to vest the Receiver with the powers she vested in him, the Court need look no further than the past actions by some of the very people who now question that power. Indeed, the Association, through the homeowners, acted in the past in ways not expressly authorized by either the CC&Rs or NRS 116.1201(2). Thus, power for their actions derived from another statutory or implied source. Consider the following examples:

The Association repeatedly borrows without any express authority to borrow. As the Association's ledger shows (attached as **Ex. S**), it received a $1,300 loan from one homeowner (Sherman Kearl aka Plaintiff September Trust) on June 4, 2007 (with another $200 lent by Mr. Kearl on June 6, 2007) and a loan of $25,000 from five homeowners on November 20, 2009. Those five homeowners were Kearl (aka Plaintiff September Trust), Sandoval (aka Plaintiff

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Sandoval Trust), Haehn (the predecessor of Plaintiff Gegen), Zobrist (aka Plaintiff Zobrist Trust), and McCumber. Nothing in NRS 116.1201(2) nor in the original CC&Rs authorize the Association to obtain loans. Nevertheless, NRS 82.131(1) vests nonprofit corporations, like the Association, with the power to "[b]orrow money . . . when necessary for the transaction of its business . . . ." Thus, any dispute about whether the Association has powers beyond those expressly granted by NRS 116.1201(2) or the original CC&Rs is disingenuous.

The Association hired lawyers, without any express authority to do so, and paid those lawyers through multiple assessments, without any express authority to impose assessments. The attached ledger (Ex. R) also shows the Association paid more than $125,000 to the Santoro Driggs law firm, which represented the Association in various lawsuits adverse to the Lytles. The ledger shows the Association raised these funds through assessments. More specifically, on September 15, 2008, the Association conducted a special meeting to "consider commencing a civil action by the Association against the Lytle Trust . . . and in response to the Lytle Trust's claims against the Association." (Notice of Special Meeting, **Ex. T**). Agenda item III(F) provided for a litigation assessment of $10,000 upon each lot owner: "Assessments: 1/9th of ninety-thousand dollars ($90,000) per unit in conjunction with litigation in the Lytle Trust actions." (Agenda for 9/15/08 Special Meeting, **Ex. U**). The Association's ledger reflects the receipt of $50,000 (i.e., $10,000 from five lot owners) just four days later (Ex. S). More particularly, the ledger (for September 19, 2008) reflects "$10,000/unit Assessment: Sandoval, Haehn, Kearl, Zobrist, McCumber." (*Id.*) Not coincidentally, the ledger shows a $50,000 payment made to Santoro Driggs less than a month later. Additionally, associated with 11/13/08, the ledger reflects "$10,000 Assessment: Boulden," presumably in satisfaction of the $10,000 assessed each lot owner in order to create a litigation fund. (*Id.*).

Another legal fund assessment was made in August 2009 as reflected on the attached ledger's entry for 8/29/09: "$7,000 assessments: Sandoval, Heahn, Kearl, Zobrist, McCumber"—totaling $35,000 in received assessments—and a corresponding payment two days later to the Santoro Driggs law firm in the amount of $35,000. Just a few days later, homeowner Boulden

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3993 Howard Hughes Pkwy, Suite 600
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paid her $7,000 legal fund assessment and, a week later, a payment of $7,000 was made to Santoro Driggs.

The Association hired other lawyers beside the Santoro Driggs law firm to fight the Lytles. Plaintiff Zobrist apparently convinced the Association to hire his son, who was paid at least $7,310 as evidenced by the Association's check attached hereto as **Ex. V**. Additionally, the Association hired and paid the Leach Johnson Song & Gruchow firm ("LJS&G") at least $10,000 as evidenced by the Association's check attached hereto as **Ex. W**. Indeed, the attached billings from LJS&G (**Ex. X**) demonstrate, on the last page, that the Association was billed $97,636.64 and, as of the date of the report, had paid $87,784.78.

In short, the Association retained at least three different law firms and paid those firms approx. $225,000 to fight the Lytles in multiple actions.

The foregoing gives rise to two important points. First, nothing in NRS 116.1201(2) nor in the Association's original CC&Rs authorize the Association to hire or pay lawyers. Indeed, nothing in NRS 82 expressly authorizes a nonprofit corporation to hire or pay lawyers. NRS 82.121(2)(b), however, does vest nonprofit corporations with the power to "[s]ue and be sued in any court of law or equity." Thus, the power to hire and pay lawyers must necessarily be implied from the expressed right to participate in litigation (especially since the Association cannot represent itself and, therefore, can participate in litigation only through retained counsel). In short, any dispute from the homeowners about whether the Association has powers beyond those expressly granted by NRS 116.1201(2) or the CC&Rs is disingenuous and refuted by their own past conduct.

Second, the Association raised the funds to pay Santoro Driggs through "assessments" and imposed such on multiple occasions. (See attached ledger, Ex. S). Thus, even though nothing in NRS 116.1201(2) or the CC&Rs expressly authorize assessments, any contention by the homeowners that the Association lacks that power is contradicted by their own prior actions.

The Association assesses owners for other reasons, without any express authority to impose assessments. Beyond assessments to pay lawyers to fight the Lytles, the attached ledger shows the Association imposed and collected assessments and late fees for other reasons. For

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3993 Howard Hughes Pkwy, Suite 600
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example, on 12/13/07, the Association received $1,500 from "Lot #6 (dues/*assessment/fees*/int.)." (Emphases added). Then, again, on 4/7/09, the Association received an additional $11,500 from "Lot #6 Assessment and late fee." Further, returning to the Association's special meeting on September 15, 2008, Agenda item III(G) memorializes Association assessments and possible related foreclosures: "Outstanding Assessments: Consideration of lien foreclosures on outstanding assessments." (Agenda for 9/15/08 Special Meeting, Ex. U) Indeed, at least one homeowner (the Lamothes) incurred "assessments, interest and other expenses and charges they owe to the Association" in the amount of $20,310. (*See* "To whom it may concern" letter (12/4/09), **Ex. Y**).

In short, powers that the homeowners *actually* exercised on behalf of the Association are not expressly conferred anywhere in NRS 116.1201(2) or the original CC&Rs. However, in the words of the Restatement Servitudes, powers are implied when necessary "to manage the property, administer the servitude regime, and carry out other functions set forth in the [CC&Rs]." *See* Restatement Servitudes § 6.4.

The Association hires a collection agency to collect unpaid assessments and to lien Association member properties. An even more troubling example of duplicity exists. The Association not only imposed assessments on all Association members and collected those assessments from some members, it also hired a collection agency to pursue collection, lien, and foreclose against those who did not pay. Attached hereto (**Ex. Z**) is a one-page contract whereby the Association, through Kearl (aka Plaintiff September Trust), retained Nevada Association Services, Inc. ("NAS") "as the Association's agent for the purpose of *collecting delinquent assessments, and/or fines, from Association homeowners*." Pursuant to that agreement, the Association represented to NAS "that in referring any matter to NAS for collection of delinquent assessments, fines or other charges, *the Association, has complied with all* applicable Federal and State rules and regulations, including, but not limited to *applicable provisions of the [NRS], [CC&Rs], other Association governing documents* . . . ." Thus, the Association not only imposed fines and assessments on its own accord, but it also affirmatively represented to its collection agency that those powers existed as a matter "of the [NRS], [CC&Rs], [and] other Association governing documents." These representations by the Association, through some of the very

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3993 Howard Hughes Pkwy, Suite 600
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homeowners adverse here to the Lytle Trust, directly contradict their own actions and current position.

To make matters worse, NAS sent letters to two owners (the Lytles and Ms. Lamothe) indicating (1) it was retained by the Association "to collect from you the overdue homeowner's assessments," (2) that "a Notice of Delinquent Assessment Liens was recorded on your property" (indeed, a lien was recorded against the Lytle property), and (3) that failure to pay the assessments would result in "the next step in the lien foreclosure process," i.e., "recordation of a Notice of Default and Election to Sell." The letters and lien are attached hereto as **Ex AA**. Threats of foreclosure by the Association, through NAS, continued. See Letter (12/1/09) attached hereto as **Ex. BB** ("The Association will soon proceed with a non-judicial foreclosure action, which could result in you losing your property."). Thus, any claim now by the homeowners that the Association lacks the power to assess, lien, and/or foreclose constitutes evidence of bad faith.

In sum, some of the very people who previously managed the Association—i.e., an Association that exercised power to (1) impose assessments to pay attorneys to fight the Lytles, and (2) impose assessments, late fees, liens, and threats of foreclosure—are the same people who now inconsistently contend the Association has no power to do any of those same things.

e. The homeowners are disingenuously selective regarding the Receiver's assessment powers

The homeowners have not disputed the Receiver's power to impose assessments against them. They have only disputed the Receiver's power to impose assessments against them *to satisfy the Lytle Trust's judgments.*

The Order Appointing Receiver expressly empowers the Receiver to impose assessments for the purposes of (1) reimbursing the Lytle Trust for advancing the initial fees and cost required by the Receiver (Mtn. at Ex. 3, at 2:7-10), (2) satisfying the amount needed to bring the Association current with the Nevada Real Estate Division (*Id.* at 2:21-23), (3) satisfying the amount needed to bring the Association current with the Nevada Secretary of State (*Id.* at 2:25-28), (4) paying for any needed repairs to the common areas (e.g., entrance gate, landscaping, etc.) (*Id.* at 3:2-4) , (5) paying the Receiver's fees and cost (*Id.* at 3:5-6), and (6) paying operation costs or other judgments against the Association (*Id.* at 6:4-5). The Motion does not dispute any of the

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3993 Howard Hughes Pkwy, Suite 600
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foregoing six assessment powers vested by Judge Kishner in the Receiver. The homeowners' Motion only disputes the Receiver's vested power to impose an assessment "to satisfy the Lytle Trust's judgments against the Association." (*Id.* at 2:19-20).

Such selectiveness reveals the homeowners' true understanding that the Association (and, therefore, the Receiver on behalf of the Association) possesses the power to impose assessments. After all, as set forth above, many of these same homeowners, previously acting in their capacity as Association Board members, imposed and collected (from themselves) Association assessments to create a large litigation fund to fight the Lytle Trust; even if the homeowners now despise that same assessment power in the hands of the Receiver to satisfy the Association's judgment liability to the Lytle Trust.

f. The Lytle Trust agrees with Plaintiffs that NRS 116.3117 has no application here

The Motion makes much of the ruling by this Court and the Nevada Supreme Court's ruling in its Order of Affirmance that NRS 116.3117 does not apply to limited purpose associations and, therefore, the Lytle Trust cannot record its judgments (or otherwise enforce its judgments) directly against the homeowner properties. The Lytle Trust agrees; but, the Lytle Trust did not rely upon NRS 116.3117 in seeking the appointment of a Receiver (indeed, neither the Renewed Application for Appointment of a Receiver nor the Order Appointing Receiver cites NRS 116.3117) nor does the appointment of a Receiver over the *Association* constitute any kind of direct action against the *homeowners or their properties*. Further, because NRS 116.3117 does not apply to limited purpose associations, it neither expands *nor limits* a limited purpose association's powers—the statute is simply not relevant to limited purpose associations.

In short, while the *Lytle Trust* cannot seek to *collect* its judgments directly from the homeowners pursuant to NRS 116.3117, such says nothing about whether the *Association* (on its own or through its court-appointed Receiver) can attempt to *satisfy* the judgments through a member assessment. Neither this Court's May 2018 Order nor the Nevada Supreme Court's Order of Affirmance even addressed the Association's assessment power or the Lytle Trust's judgment creditor right to seek appointment of a Receiver over the judgment debtor Association, who was

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3993 Howard Hughes Pkwy, Suite 600
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not a party to either proceeding. Accordingly, the Lytle Trust's exercise of its right to seek the appointment of a Receiver and Judge Kishner's empowerment of the Receiver could not constitute a violation of either the May 2018 Order or the Order of Affirmance.

F. THE RECEIVER'S LETTER DID NOT VIOLATE THE MAY 2018 ORDER

The homeowners brazenly contend that the Receiver's letter of introduction to the homeowners "violates the May 2018 Order." (Mtn. at 14:15, et seq.). This argument is fatally flawed because the homeowners fail to recognize (again) that the Receiver is an agent of the Court appointed to act on behalf of the Association, not on behalf of the Lytle Trust.

The Receiver, standing in the shoes of the Association, is the person charged with satisfying the judgments owed to the Lytle Trust. Since the Association does not manufacture widgets or provide services to generate revenues, the Association (i.e., the Receiver on behalf of the Association) must look to its only source of revenue—its members—to satisfy the judgments. That is, the judgment liability is no different than any other Association obligation that must be paid. Whether it's the electrician who repairs the entry gate or the Lytle Trust's judgments, the Association's only source to pay its debts is to look to its homeowner members. No matter how much the Plaintiff homeowners dislike the Lytles, the Lytle Trust obtained valid, final judgments, and the Receiver was properly empowered to satisfy that liability.

The homeowners cite absolutely no authority that a court-appointed Receiver acting within the bounds of the appointment Order is even capable, as a matter of law, of violating a different court order issued by a different judge in a different case where the receivership entity (the Association) was not even a party. As the homeowners themselves correctly acknowledge: "A party is required to adhere to court orders, even erroneous orders, until terminated or overturned." (Mtn. at 9:11-13, citing *Rish v. Simao*, 368 P.3d 1203, 1210 (Nev. 2016)). Thus, even if, *arguendo*, the Order Appointing Receiver is erroneous or invalid in some respect (it's not), the Receiver was and continues to be duty-bound to fully comply with it until it is terminated or overturned. Since there is no allegation that the Receiver acted in any manner contrary to the Order Appointing Receiver, the Receiver cannot be liable in any manner for an alleged violation of this Court's May 2018 Order (and the homeowners' attempt to interfere with the Receiver's

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3993 Howard Hughes Pkwy, Suite 600
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rights and responsibilities and to besmirch his professional reputation as an officer and agent of the Court should not be taken lightly).

G. THE HOMEOWNERS' LETTER NEITHER ASKED THE LYTLE TRUST TO TAKE ANY CORRECTIVE ACTION NOR WAS CORRECTIVE ACTION NECESSARY BECAUSE NO COURT ORDER WAS VIOLATED

The Motion next argues that the Lytle Trust's alleged violation of the May 2018 Order must be deemed intentional (contemptuous) because the Lytle Trust did not take corrective action in response to the aggressive "cease and desist" letter sent by the homeowners' counsel. (Mtn. at 15:5-16). However, a simple review of that "cease and desist" letter (Mtn. at Ex. 4) reveals that it was not even addressed to the Lytle Trust. Nor did the letter ask/demand the Lytle Trust to do anything. Thus, it is curious how the Lytle Trust's nonresponse to a letter that was not addressed to it and requested no action from it could even remotely constitute evidence of its intent. Indeed, the Lytle Trust does not control the court-appointed Receiver and the Receiver is not its agent.

In any event, neither the Receiver nor the Lytle Trust were required to take the action the homeowners' counsel demanded because neither the Receiver nor the Lytle Trust violated this Court's May 2018 Order, or any other order.

H. IF ANY PARTY IS ENTITLED TO ITS FEES AND COSTS, IT'S THE LYTLE TRUST FOR HAVING TO RESPOND TO THIS MOTION

The Lytle Trust did not violate any order, not intentionally and not accidentally. Therefore, no basis exists to award the Plaintiffs $500 in total (as contemplated by NRS 22.100(2)), to say nothing of $500 each as requested by the homeowners. Nor is there any basis to award Plaintiffs their attorney fees and costs. Least of all, there is no basis to award Plaintiffs' fees and costs for filing a motion to intervene in a different case (which the parties there stipulated to without request and would have stipulated to if requested without the need of a motion).

To the contrary, the Lytle Trust has been wrongfully required to expend significant resources responding to this contempt Motion. Therefore, the Lytle Trust should be awarded its fees and costs against each of the moving/joining homeowners. If the Court grants such, the Lytle Trust requests leave to file an affidavit setting forth the amount of its fees and cost.

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Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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IV.

CONCLUSION

Legal proceedings between the Lytle Trust and the Association (and/or the homeowners) commenced more than a dozen years ago. Unfortunately, it has been a Hatfield v. McCoy situation ever since. For years, the homeowners (some of these very Plaintiffs) pulled the strings of the Association and waged their personal battle against the Lytle Trust under the guise of the Association. Eventually, the Lytle Trust obtained judgments against the Association amounting to more than $1.8 million, including more than $800,000 in punitive damages. When those judgments started coming in, the homeowners abandoned the Association (resigning their Board positions), leaving the Association to become defunct. Now, the homeowners approach this Court with righteous indignation asking the Court to burn the Lytle-Trust-witch for allegedly violating this Court's permanent injunction.

The permanent injunction enjoins the *Lytle Trust*, and only the Lytle Trust, from seeking to collect its judgments directly from the homeowners. NOTHING, however, IN ANY ORDER, affects the Lytle Trust's judgment creditor rights against the judgment debtor Association. One of those rights unaffected by any Order is the judgment creditor's right to seek the appointment of a Receiver over the judgment debtor. Thus, the Lytle Trust violated no order when it sought the appointment of a Receiver over the Association.

Further, NO ORDER negates or even restricts the *Association's* right to impose assessments against its members to satisfy Association obligations, including its obligation to satisfy the Lytle Trust judgments. Indeed, the Association, through some of these very same Plaintiff homeowners, previously imposed and collected substantial assessments. And, the Receiver, as an agent of the Court acting on behalf of the Association, was expressly authorized to exercise that same power to satisfy the Association's financial obligations, including the Lytle Trust Judgments. This assessment power, which existed and was exercised by the Association long before the Receiver was appointed, does not violate any order or law.

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LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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In short, the homeowners have utterly failed to show, by any evidence, let alone clear and convincing evidence, that the Lytle Trust or the court-appointed Receiver violated any order. The Motion must be DENIED, with fees and costs awarded to the Lytle Trust.

Dated this 19th day of March, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: _____

DAN R. WAITE (SBN 4078)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200
Attorneys for Defendants

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Lewis Roca
ROTHGERBER CHRISTIE

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this day, I caused a true and correct copy of the following "***Opposition to Plaintiffs' Motion for an Order to Show Cause Why the Lytle Trust Should Not be Held in Contempt for Violation of Court Orders***" to be e-filed and served via the Court's E-Filing System.

Richard Haskin
GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP
1140 N. Town Center Drive
Las Vegas, Nevada 89144
Attorneys for Defendants

Kevin B. Christensen
Wesley J. Smith
Laura J. Wolff
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Ave.
Las Vegas, NV 89117
Attorneys for September Trust, Zobrist Trust, Sandoval Trust and Dennis & Julie Gegen

Christina H. Wang
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, NV 89113
christina.wang@fnf.com
Attorneys for Robert Z. Disman and Yvonne A. Disman

Daniel T. Foley
FOLEY & OAKES, PC
1210 S. Valley View Blvd., #208
Las Vegas, NV 89102
dan@foleyoakes.com
Attorneys for Marjorie Boulden Trust and Linda and Jacques Lamothe Trust

Dated this 19th day of March, 2020

/s/ Luz Horvath
An Employee of Lewis Roca Rothgerber Christie LLP

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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EXHIBIT X

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Steven D. Grierson
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JOEL D. HENRIOD
Nevada Bar No. 8492
DANIEL F. POLSENBERG
Nevada Bar No. 2376
DAN R. WAITE
Nevada Bar No. 4078
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200
JHenriod@LRRC.com
DPolsenberg@LRRC.com
DWaite@LRRC.com

Attorneys for Defendants 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, Plaintiffs, v. TRUDI LEE LYTLE; and JOHN ALLEN LYTLE, as trustees of the Lytle Trust, DOES I through X, inclusive, and ROE CORPORATIONS I through X, Defendants.	Case No. A-16-747800-C Dep't No. 16 **NOTICE OF APPEAL**
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; and DENNIS A. GEGEN and JULIE S. GEGEN, husband and wife, as joint tenants, Plaintiffs,	Consolidated with: Case No. A-17-765372-C Dep't No. 16

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Case Number: A-16-747800-C

v.

TRUDI LEE LYTLE; and JOHN ALLEN LYTLE, as trustees of the Lytle Trust, JOHN DOES I through V, inclusive, and ROE ENTITIES I through V, inclusive,

Defendants.

Please take notice that defendants Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust hereby appeal to the Supreme Court of Nevada from:

1. "Order Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not be Held in Contempt for Violation of Court Orders," filed May 22, 2020, notice of entry of which was served electronically on May 22, 2020 (Exhibit A); and

2. All judgments, rulings and interlocutory orders made appealable by the foregoing.

Dated this 22nd day of June, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/Joel D. Henriod*

JOEL D. HENRIOD (SBN 8492)
DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Defendants Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2020, I served the foregoing "Notice of Appeal" on counsel by the Court's electronic filing system to the persons and addresses listed below:

Daniel T. Foley
FOLEY & OAKES, PC
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

Christina H. Wang
FIDELITY NATIONAL LAW GROUP
1701 Village Center Circle, Suite 110
Las Vegas, Nevada 89134

/s/ Lisa M. Noltie
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

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Lewis Roca
ROTHGERBER CHRISTIE

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EXHIBIT Y

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Steven D. Grierson
CLERK OF THE COURT

MATF
CHRISTINA H. WANG, ESQ.
Nevada Bar No. 9713
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
Tel: (702) 667-3000
Fax: (702) 938-8721
Email: christina.wang@fnf.com
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 **HEARING REQUESTED** **ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR ATTORNEY'S FEES**

Counter-Defendants/Cross-Claimants ROBERT Z. DISMAN and YVONNE A. DISMAN (collectively referred to herein as, the "Dismans"), by and through their attorneys of record, the Fidelity National Law Group, hereby move this Honorable Court for an award of 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 "Lytles").

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Case Number: A-16-747800-C

This Motion is made and based upon the following Memorandum of Points and Authorities, all pleadings, exhibits and documents on file with the Court in this action, such further documentary evidence as the Court deems appropriate, and any arguments of counsel at the hearing of this matter.

DATED this 11th day of June, 2020.

FIDELITY NATIONAL LAW GROUP

/s/ Christina H. Wang

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case arises from the Lytles' wrongful attempt to enforce a judgment that they obtained against their property owners association against properties within their residential subdivision belonging to 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"). ***More than three years ago***, this Court enjoined the Lytles from doing so and from "taking any action in the future against" those property owners or their properties based upon the judgement. The Lytles appealed the Court's order to the Nevada Supreme Court, which is within their right.

However, rather than await the result of the appeal before taking further action, the Lytles expanded the scope of this case by seeking to enforce a ***second*** judgment that they obtained against their property owners association against the Boulden and Lamothe properties and adding the Dismans as parties to the case by virtue of their purchase of the Boulden property. Incredibly, the Lytles did so in spite of their later acknowledgement that their claim regarding the second judgment was "fully adjudicated" by this Court when it made its decision regarding the Lytles' first judgment. The Lytles' acknowledgement begs the question of why did they choose to proceed against the Dismans in the first place.

It gets worse. Unbeknownst to the Dismans and in direct violation of the Court's order, the Lytles took another route to enforce their judgments against the association against the property owners within the subdivision. The Lytles commenced an action on or about June 8, 2018, in another department of the district court through which they obtained the appointment of a receiver to issue and collect a special assessment from the property owners to satisfy the judgments. The Lytles maintained that action even though shortly after its commencement, the Nevada Supreme Court affirmed this Court's order. The Dismans first learned of the receiver action earlier this year when the receiver sent them correspondence asking for ideas on how they propose to pay the Lytles' judgments.

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Fidelity National Law Group
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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The Lytles' continued efforts to obtain payment of their judgments against the association from the individual property owners by any means necessary has resulted in substantial distress as well as additional attorney's fees to the Dismans. While the Court cannot compensate the Dismans for the cumulative emotional toll of being embroiled in three years of unnecessary litigation, it should award them every penny of attorney's fees expended in connection with the Lytles' violation of the Court's order in the amount of $7,920.00.

Attached hereto as **Exhibit A** are time sheets which detail the tasks performed by the Dismans' attorney and the fees incurred. The time sheets are supported by the concurrently filed affidavit of the Dismans' attorney, attached hereto as **Exhibit B**, which affirms that the fees were actually and necessarily incurred and are reasonable. The Dismans note that they will continue to incur fees in this matter and specifically request that they also be awarded their fees for any additional briefing, hearing and proceedings. Such an award is necessary to deter, hopefully, any further violation by the Lytles.

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II. FACTUAL AND PROCEDURAL BACKGROUND[1]

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A. The Rosemere Subdivision

Rosemere Court ("Rosemere" or "subdivision") is a residential subdivision located in Clark County, Nevada, comprised of nine (9) lots. *See* Decl. of Covenants, Conditions and Restrictions, attached hereto as **Exhibit C**. On January 4, 1994, Baughman & Turner Pension Trust, then owner and subdivider of Rosemere, recorded a Declaration of Covenants, Conditions and Restrictions governing the subdivision ("Original CC&Rs"). *See id.* The Original CC&Rs did not provide for the organization of a unit-owners' association as defined by NRS Chapter 116; rather, they called for the establishment of a "property owners committee" for the limited purpose of maintaining specific elements of the subdivision. *See id*.

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

[1] The following factual and procedural background omits, for the most part, related exhibits in order to reduce the volume of this submission. It includes only those exhibits that directly bear on the issues at hand.

Fidelity National Law Group
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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Amended CC&Rs set forth new requirements for the subdivision and provided that the changes were made in order to bring the same into compliance with the provisions of NRS Chapter 116.

B. The Rosemere Litigation I

On June 26, 2009, the Lytles, owners of the Rosemere property identified as APN: 163-03-313-009, filed a lawsuit in district court against the Rosemere Association seeking, among other things, a declaratory judgment that the Amended CC&Rs were not properly adopted and, therefore, void (Case No. A-09-593497-C) (at times referred to herein as, the "Rosemere Litigation I"). The Dismans were not parties to the Rosemere Litigation I.[2]

On or about July 30, 2013, the court granted summary judgment in the Lytles' favor, and in an order prepared by the Lytles' counsel, the court made the following legal determinations.

> **C. <u>Rosemere Is A *Limited Purpose Association* Under NRS 116.1201 And Not A *Unit-Owners' Association* Within The Meaning Of NRS, Chapter 116</u>**.
>
> . . . .
>
> 11. ***Here, no Chapter 116 unit-owners' association was formed*** because no association was organized prior to the date the first unit was conveyed. The Association was not formed until February 25, 1997, more than three years after Rosemere Estates was formed and the Original CC&Rs were recorded.
>
> . . . .
>
> 13. The Original CC&Rs provide for the creation of a "property owners committee," ***which is a "limited purpose association,"*** as defined by the 1994 version of NRS 116.1201, then in effect. That provision provided that Chapter 116 did not apply to "Associations created for the limited purpose of maintaining . . . "[t]he landscape of the common elements of a common interest community. . . ."

See Order Granting the Lytles' Mot. for Summ. J., attached hereto as **Exhibit D**, at pp. 6-8 (emphasis added).

The court invalidated the Amended CC&Rs, specifically holding that no NRS Chapter 116 unit-owners' association was formed with respect to the subdivision. *See id.* The court also awarded the Lytles a monetary judgment against the Association, consisting of attorney's fees and costs and other damages in the total amount of $361,238.59 plus post-judgment interest (the "Rosemere Judgment I"). *See* Abstract of J., attached hereto as **Exhibit E**.

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[2] As set forth below, the Dismans did not acquire their Rosemere property until August 2017.

Fidelity National Law Group
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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On August 18, 2016, and purportedly relying upon NRS 116.3117,[3] the Lytles caused to be recorded an abstract of the Rosemere Judgment I against all of the properties within the subdivision, aside from their property. On September 2, 2016, they caused to be recorded an abstract of the judgment against the property identified as APN: 163-03-313-002. On the same day, they also caused to be recorded an abstract of the judgment against the property identified as APN: 163-03-313-008.

C. The Rosemere Litigation II

On December 13, 2010, the Lytles filed a second lawsuit in district court against the Rosemere Association alleging claims for declaratory relief, slander of title, and injunctive relief (Case No. A-10-631355-C) (at times referred to herein as, the "Rosemere Litigation II"). The Dismans were not parties to the Rosemere Litigation II.

The court ultimately granted summary judgment in the Lytles' favor and awarded them a monetary judgment against the Association, consisting of attorney's fees and costs and other damages, in the total amount of $1,103,158.12 plus post-judgment interest (the "Rosemere Judgment II"). *See* Abstract of J., attached hereto as **Exhibit F**.

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D. The Rosemere III Litigation

On or about April 2, 2015, the Lytles filed a third lawsuit in district court against the Rosemere Association, Sherman L. Kearl, and Gerry G. Zobrist, alleging a claim for declaratory relief (Case No. A-15-716420-C) (at times referred to herein as, the "Rosemere Litigation III"). The Dismans were not parties to the Rosemere Litigation III.

The court ultimately granted summary judgment in favor of the Lytles and awarded them attorney's fees and costs in the total amount of $15,462.60 (the "Rosemere Judgment III"). *See* Order Granting the Lytles' Mot. for Attorneys' Fees, attached hereto as **Exhibit G**.

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[3] NRS 116.3117 is entitled "Liens against association," and provides in relevant 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.

Fidelity National Law Group
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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E. The Instant Action

On December 8, 2016, Boulden and Lamothe commenced the instant action against the Lytles alleging claims for slander of title, injunctive relief, quiet title, and declaratory relief with respect to the Lytles' recording of abstracts of the Rosemere Judgment I against their properties. 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, Nevada 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, Nevada 89117 ("1830 Rosemere Court").

On February 24, 2017, Boulden and Lamothe moved for partial summary judgment on all of their claims for relief, with the issue of damages and attorney's fees to be determined at a separate evidentiary hearing. This Court granted summary judgment in their favor and entered the following legal conclusions:

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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 [ ] Litigation [I], 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 [ ] Litigation [I].
>
> . . . .
>
> 7. The Final Judgment against the Association is not an obligation or debt owed by the Plaintiffs.

See Order Granting Mot. to Alter or Amend Findings of Fact and Conclusions of Law (at times referred to herein as, "July 2017 Order"), attached hereto as **Exhibit H**, at 4:12-23. The Court thus held that the Lytles improperly clouded title to Boulden and Lamothe's properties by recording abstracts of the Rosemere Judgment I against them; that those abstracts of judgment should be released; and that the Lytles are permanently enjoined from "recording and enforcing

Fidelity National Law Group
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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the [ ] Judgment from the Rosemere [ ] Litigation [I] or any abstracts related thereto against the Boulden Property or the Lamothe Property" and from "taking any action in the future against [Boulden and Lamothe] or their properties based upon the Rosemere [ ] Litigation [I]." *See id.* at pp. 5-7.

The Lytles appealed this Court's order to the Nevada Supreme Court. And although they released their abstracts of the Rosemere Judgment I against Boulden and Lamothe's properties, they advised them of the Rosemere Judgment II that they recently obtained. This prompted Boulden and Lamothe to file an amended complaint against the Lytles that sought, *inter alia*, to enjoin the Lytles from recording or enforcing the Rosemere Judgment II against Boulden and Lamothe's properties.

On or about August 4, 2017, Boulden sold 1960 Rosemere Court to the Dismans. On August 11, 2017, the Lytles filed a Counterclaim against Lamothe and the Dismans seeking a declaration that an abstract of the Rosemere Judgment II can be recorded against Lamothe and the Dismans' properties. *See* the Lytles' Answer to Pls.' Second Am. Compl. and Countercl., attached hereto as **Exhibit I**.

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On or about June 28, 2018, the Dismans moved for summary judgment or judgment on the pleadings against the Lytles on the basis that this Court's July 2017 Order regarding the Rosemere Judgment I rendered the Lytles' Counterclaim regarding the Rosemere Judgment II unsustainable. The Lytles opposed the motion, arguing as follows with respect to why the Court should deny the judgment sought:

> The Dismans lack any standing to bring the instant Motion for Summary Judgment. There is but a single claim by and between the Lytles 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 Lytles and Dismans is a single cause of action by the Lytles for declaratory relief. Specifically, the Lytles sought a declaration from the Court that the Lytles could lawfully record an Abstract of Judgment recorded against the Dismans' property. (Citation omitted). ***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

Fidelity National Law Group
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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> injunction preventing the Lytles from further clouding title to the Dismans' property.
>
> The Lytles 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.***

See, the Lytles' Opp'n to Mot. for Summ. J. or, in the Alternative, Mot. for J. on the Pleadings, attached hereto as **Exhibit J**, at 2:9-24 (emphasis added).[4] The Lytles' argument was utterly disingenuous as they brought their Counterclaim against the Dismans AFTER and in spite of the Court's July 2017 Order. *See* Exhibit I.

On or about December 27, 2018, the Court (Judge Mark B. Bailus) denied the Dismans' motion as moot, holding that this Court's July 2017 Order encompasses the Lytles' Counterclaim and prevents the Lytles from recording an abstract of the Rosemere Judgment II against the Dismans' property. *See* Notice of Entry of Order Den. the Dismans Mot. for Summ. J. or, in the Alternative, Mot. for J. on the Pleadings, attached hereto as **Exhibit K**. ***The Court's holding, as well as the Lytles' argument in opposition to the Dismans' motion, begged the question of why did the Lytles bring the Counterclaim against the Dismans at all***.

In the meantime, on or about December 4, 2018, the Nevada Supreme Court affirmed this Court's July 2017 Order in its entirety. *See* Order of Affirmance, attached hereto as **Exhibit L**. As a result, the Lytles agreed to dismiss the Counterclaim against the Dismans without prejudice.

On January 23, 2019, the Dismans filed a motion against the Lytles for attorney's fees incurred through January 22, 2019. On or about September 4, 2019, this Court granted the Dismans' motion and awarded them fees pursuant to the terms of the Original CC&Rs. *See* Findings of Fact, Conclusions of Law and Order Granting the Dismans' Mot. for Attorney's Fees, attached hereto as **Exhibit M**. On September 30, 2019, the Lytles appealed the fee award to the Nevada Supreme Court ("Attorney's Fee Appeal").

Recently, the Dismans and the Lytles settled the Attorney's Fee Appeal, and although

[4] The opposition is attached hereto without its accompanying exhibits to reduce the volume of this submission.

Fidelity National Law Group
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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the Dismans have incurred substantially more attorney's fees than what they are currently requesting, including, but not limited to, fees associated with the Attorney's Fee Appeal, none of those fees are included in their instant request given the settlement of the appeal.

F. The Consolidated Action

On November 30, 2017, a complaint was filed against the Lytles in district court (Case No. A-17-765372-C) by other Rosemere property owners 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; and Dennis A. Gegen and Julie S. Gegen (at times collectively referred to herein as, the "September Trust Plaintiffs").

The complaint stated claims for quiet title and declaratory relief, and sought, *inter alia*, a declaration that the Lytles cannot record or enforce the judgments that they obtained in the Rosemere Litigation I, II or III against the September Trust Plaintiffs or their properties within the subdivision. *See id.* Case No. A-17-765372-C was consolidated with this case, and the September Trust Plaintiffs moved for summary judgment on their claims for relief.

Based upon this Court's July 2017 Order, the Court granted summary judgment in their favor, holding that the Lytles improperly clouded title to the September Trust Plaintiffs' properties by recording abstracts of the Rosemere Judgment I against them; that those abstracts of judgment should be released; and that the Lytles are permanently enjoined from recording and enforcing any of the judgments that they obtained in the Rosemere Litigation I, II or III against these plaintiffs' properties and from taking any action in the future directly against these plaintiffs or their properties based upon the Rosemere Litigation I, II or III. *See* Order Granting Mot. for Summ. J or, in the Alternative, Mot. for J. on the Pleadings and Denying Countermotion for Summ. J., attached hereto as **Exhibit N**, at pp. 9-10.

G. The Receiver Action

On June 8, 2018, and in direct violation of this Court's orders, the Lytles commenced an action in another department of the district court in an effort to enforce their judgments against

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the Association against the property owners within the subdivision (Case No. A-18-775843-C) (at times referred to herein as, the "receiver action"). *See* Compl. for Declaratory Relief and Preliminary Injunction, attached hereto as **Exhibit O**. Through the receiver action, the Lytles obtained the appointment of a receiver over the Association to, among other things, "[i]ssue and collect a special assessment upon all owners within the Association to satisfy the Lytle[s] … judgments against the Association." *See* January 22, 2020, Correspondence from Kevin Singer to the Dismans, attached hereto as **Exhibit P**, at its Exhibit 1, p. 2, ¶ 2. The Lytles maintained the receiver action even though shortly after its commencement, the Nevada Supreme Court affirmed this Court's injunction. *See* Exhibit L.

The Dismans first learned of the receiver action on or about January 22, 2020 when the receiver sent them correspondence inviting them to meet with him to share ideas on how to pay the Lytles' judgments. *See* Exhibit P. In response to similar correspondences that the receiver sent them, the September Trust Plaintiffs filed a motion with this Court for an order to show cause why the Lytles should not be held in contempt for violating this Court's orders and the injunctions contained therein ("Contempt Motion"). *See* Contempt Motion, attached hereto as **Exhibit Q**.[5] The Dismans joined in the Contempt Motion. *See* Joinder to Contempt Motion, attached hereto as **Exhibit R**.

On May 22, 2020, this Court entered an order granting the Contempt Motion and the Dismans' joinder thereto. *See* Order Granting Contempt Motion, attached hereto as **Exhibit S**. Based upon their violation, the Court ordered the Lytles to, among other things, pay a $500 fine to the Dismans. *Id.* at 12:9-12. Additionally, the Court provided that the Dismans "may file applications for their reasonable expenses, including, without limitation, attorney's fees, incurred … as a result of the contempt." *Id.* at 13:1-3.

III. LEGAL ARGUMENT

Rule 54(d)(2)(B) of the Nevada Rules of Civil Procedure provides that a motion for attorney's fees must:

[5] The motion is attached hereto without its accompanying exhibits to reduce the volume of this submission.

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(i) be filed no later than 21 days after written notice of entry of judgment is served;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it;

(iv) disclose, if the court so orders, the nonprivileged financial terms of any agreement about fees for the services for which the claim is made; and

(v) be supported by:

(a) counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable;

(b) documentation concerning the amount of fees claimed; and

(c) points and authorities addressing the appropriate factors to be considered by the court in deciding the motion.

The Dismans have complied with each of these requirements by bringing this Motion within 21 days after service of notice of entry of the Contempt Order, *see* Exhibit S, and attaching their attorney's time sheets and affidavit, *see* Exhibits A and B.

"The decision whether to award attorney's fees is within the sound discretion of the district court." *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006). The long-standing rule in Nevada is that attorney's fees should be awarded when authorized by statute, rule, or agreement. *Elwardt v. Elwardt*, No. 69638, 2017 WL 2591349 *2 (Nev. Ct. App. June 9, 2017) (unpublished disposition) (citing *First Interstate Bank of Nev. v. Green*, 101 Nev. 113, 116, 694 P.2d 496, 498 (1985)). This Court should exercise its discretion and award attorney's fees to the Dismans because it is authorized to do so pursuant to the terms of NRS 22.100, the Original CC&Rs and NRS 18.010(2)(b).

A. The Court Should Award the Dismans Their Attorney's Fees Pursuant to NRS 22.100.

NRS 22.010(3) defines an act constituting contempt as including "[d]isobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers." NRS 22.100 provides the following penalties for contempt:

1. Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged.

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> 2. Except as otherwise provided in NRS 22.110, if 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.
>
> 3. In addition to the penalties provided in subsection 2, ***if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt***.

(Emphasis added). As the Nevada Supreme Court instructs, a district court has "inherent power to protect the dignity and decency of its proceedings and to enforce its decrees, and thus it may issue contempt orders and sanction or dismiss an action for litigation abuses." *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428, 440 (2007).

Here, the Court determined that the Lytles violated its orders 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 … 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." *See* Exhibit S at 11:3-8.

Based upon the violation, the Court ordered the Lytles to, among other things, pay a $500 fine to the Dismans. *See id.* at 12:9-12. Additionally, the Court provided that the Dismans "may file applications for their reasonable expenses, including, without limitation, attorney's fees, incurred … as a result of the contempt." *See id.* at 13:1-3.

Given the Lytles' willful violation of the Courts' orders in a case that never should have been brought against the Dismans in the first place, this Court should award the Dismans all of their attorney's fees incurred as a result of the violation.

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B. The Terms of the Original CC&Rs Provide an Additional Basis for the Award of Attorney's Fees to the Dismans.

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

Section 25 of the Original CC&Rs governing Rosemere provides:

> 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 Exhibit C.

This Court previously awarded the Dismans their attorney's fees under Section 25 of the Original CC&Rs. *See* Exhibit M. Specifically, the Court found that the Lytles brought the Counterclaim against the Dismans seeking to enforce, among other things, their alleged rights under the Original CC&Rs against the Dismans. *See id.* at p. 7, ¶ 3. It noted that the Counterclaim alleges in pertinent part:

> 28. There exists a controversy between the Lytles and the Counter-defendants and Third-Party Defendants regarding the interpretation, application and ***enforcement*** of NRS, Chapter 116 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.
>
> 29. Specifically, the Lytles contend as follows:
>
> a. 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.
>
> b. Pursuant to the Amended CC&Rs, which were in force at all times from 2007 through July 29, 2013, a lien or judgment against the Association established under the Amended CC&Rs attaches to each lot with the Association.
>
> c. Pursuant to NRS, Chapter 116, the Uniform Common Interest Development Act, a lien or judgment against the Association attached to each lot within the Association, even if the Association is a limited purpose association, because under NRS 116.021, each common interest community consists of 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

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

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

30. The Lytles desire a judicial determination of the parties' rights and duties and a declaration (that) the lien against the Association, specifically, the Abstract of judgment issued in the NRED II Litigation,[6] can be recorded against 1830 Rosemere Court and 1960 Rosemere Court.

See id. (Emphasis in the original).

Given the nature of the Counterclaim, as well as the overall case in which the parties sought to enforce their alleged rights under the Original CC&Rs, the Court concluded that Section 25 of the Original CC&Rs applied to control the award of attorney's fees. *See id.* at ¶ 4. Further, the Court concluded that in applying the language of Section 25, the Dismans were the winning parties and the Lytles were the losing parties, such that the assessment of attorney's fees against the Lytles was mandatory under Section 25. *See id.* at ¶ 5.

Section 25 the Original CC&Rs likewise applies to the Dismans' instant request for attorney's fees. The Dismans were forced to address the Lytles' contempt in order to uphold this Courts orders and the injunctions contained therein. All of those orders resulted from the Court's enforcement of the Original CC&Rs which established the Rosemere Association as a

[6] The NRED II Litigation is referred to herein as the Rosemere Litigation II.

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limited-purpose association to which NRS 116.3117 does not apply. The Dismans' efforts were successful in that the Court held the Lytles in contempt for violation of its orders. Accordingly, the Dismans, as the winning parties, are entitled to recover their attorney's fees pursuant to the terms of the Original CC&Rs.

C. NRS 18.010(2)(b) Provides Yet Another Basis for the Award of Attorney's Fees to the Dismans .

NRS 18.010(2) provides in relevant part as follows:

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. . . .

A groundless claim is a claim that is "not supported by any credible evidence at trial." *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995-96, 860 P.2d 720, 724 (1993). A frivolous claim is a claim that is "baseless", which is defined as a pleading that is "not well grounded in fact or not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law." *Simonian v. Univ. & Cmty. Coll. Sys.*, 122 Nev. 187, 196, 128 P.3d 1057, 1063 (2006). Furthermore, in assessing the award of attorney's fees under NRS 18.010(2)(b), the Court must consider if a party had reasonable grounds for making or defending its claims, based on actual circumstances of the case. *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993).

As the Court found here, what the Lytles sought to accomplish through the receiver action was in direct violation of this Court's orders and the injunctions contained therein. *See* Exhibit S. The Court determined that the Lytles violated its orders 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 … property owners for the purpose of paying the Rosemere Judgments…." *See id.* at 11:3-8. As such, the Lytles' receiver action, to the extent that it

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sought the appointment of a receiver to collect on the Lytles' judgments from the property owners, was brought and maintained without reasonable ground or to harass, and the Dismans are entitled to an award of their attorney's fees under NRS 18.010(2)(b).

D. The Attorney's Fees Sought Are Reasonable and Justified in Amount.

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 imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorneys was successful and what benefits were derived." *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (internal citations omitted). "Furthermore, good judgment would dictate that each of these factors be given consideration by the trier of fact and that no one element should predominate or be given undue weight." *Id.*, at 349-50, 33.

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The qualities of the advocate's ability, training, education, experience, professional standing, and skill from the Dismans' attorney establish the reasonableness of the fees sought. *See* **Exhibit B**. The difficulty, intricacy, importance, time and skill required, and responsibility imposed likewise establish the reasonableness of the Dismans' attorney's fees. *See id.* What the Lytles sought to accomplish through the receiver action required extensive investigation, analysis, research and preparation by the Dismans' attorney. Moreover, it required the Dismans' attorney not only to participate in the contempt proceedings in this case but also to monitor the receiver action.

The skill, time, and attention given to the work are also indicative of the reasonableness of the Dismans' attorney's fees. *See id.* As shown in the Court records and attached time sheets, the contempt matter was contentious and zealously litigated. Tremendous attention and time was paid to the matter. The preparation of the Disman's attorney was detailed and complete and the fees charged were reasonable and necessary.

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The final factor depends on the success and benefits derived from the efforts of the Dismans' attorney. Through those efforts, the Dismans succeeded in establishing the Lytles' contempt. Accordingly, the Lytles cannot reasonably argue that the result obtained was not a successful result for the Dismans.

In sum, this Court should find that all of the *Brunzell* factors have been satisfied and sufficient basis exists to award reasonable attorney's fees in the amount of $7,920.00 incurred by the Dismans in connection with the Lytles' violation of the Court's orders.

IV. CONCLUSION

For the above and foregoing reasons, the Dismans respectfully request that the Court grant their Motion in its entirety.

DATED this 11th day of June, 2020.

FIDELITY NATIONAL LAW GROUP

/s/ Christina H. Wang

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

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CERTIFICATE OF SERVICE

The undersigned employee of Fidelity National Law Group, hereby certifies that she served a copy of the foregoing **ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR ATTORNEY'S FEES** upon the following parties on the date below entered (unless otherwise noted), at the fax numbers and/or addresses indicated below by: [ ] (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.

Dan R. Waite, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169
Attorneys for the Lytles

Richard E. Haskin, Esq.
GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for the Lytles

Kevin B. Christensen, Esq.
Wesley J. Smith, Esq.
Laura J. Wolff, Esq.
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for the September Trust Plaintiffs

Daniel T. Foley, Esq.
Foley & Oakes, PC
626 S. 8th Street
Las Vegas, Nevada 89101
Attorneys for Boulden and Lamothe

DATED: 06/11/2020

/s/ Lace Engelman
An employee of Fidelity National Law Group

Fidelity National Law Group
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
(702) 667-3000

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EXHIBIT Z

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SUPPLEMENTAL 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 Supplemental 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 ("Motion") against Defendants/Counter-Claimants Trudi Lee Lytle and John Allen Lytle, Trustees of The Lytle Trust (collectively referred to herein as, the "Lytles").

2. The Dismans filed the instant Motion on May 12, 2023, and the Lytles filed an Opposition to the Motion on June 13, 2023.

3. In the Opposition, the Lytles argue that their settlement of the Dismans' 2020 Fee Motion prohibits the instant Motion because the settlement was a complete resolution of these parties' dispute regarding the Lytles' contempt. *See* Opp'n, at pp. 4-5, 6. I negotiated the settlement with the Lytles' counsel Dan Waite and nothing could be farther from the truth.

4. Mr. Waite approached me regarding a settlement after the filing of the 2020 Fee Motion. At that time, the Lytles had already appealed the Court's Contempt Order to the Nevada Supreme Court.

5. The settlement that we subsequently reached resolved ***only*** the fees sought in the 2020 Fee Motion and the fine that the Court imposed against the Lytles in the Contempt Order. *See* Settlement Agreement Re. Fees, Costs, and Penalty, attached to App. to Mot. as Exhibit O.

6. It did not resolve any other matter related to the Lytles' contempt, including the Dismans' defense of the Contempt Order on appeal. *See id.*

7. Specifically, because I anticipated that substantial fees and costs would be incurred by the Dismans in the defense of the Contempt Order on appeal, I expressly reserved

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onto the Dismans the ability to seek recovery of those fees and costs. *See id.*

8. If the settlement had been a complete resolution of the Lytles' contempt, as they now argue, the Dismans would not have participated in the appeal of the Contempt Order.

9. Indeed, I, on behalf of the Dismans, actively participated in every facet of the appeal, which included the first appeal that was dismissed by the Nevada Supreme Court, as well as the second appeal that resulted from the Lytles' Writ Petition.

10. My participation, included, but was not limited to, fully briefing both appeals and appearing for oral arguments with respect to the Lytles' Writ Petition.

11. Consequently, the Lytles' argument regarding the settlement of the Dismans' 2020 Fee Motion as being prohibitive of the instant Motion is an absurd mischaracterization of the settlement that was reached between the parties.

12. In the Opposition, the Lytles also object to my time entry for September 24, 2021, and argue for a $666.00 reduction in the fees sought on the basis that the fees were incurred for an unrelated matter, specifically, the Lytles' complaints about the Dismans' dog.

13. The issue was finite and I spent no more than 20 minutes addressing it with Mr. Waite and my client Robert Disman.

14. Mr. Waite reached out to me regarding the issue, and other than relaying the issue to Mr. Disman, the remainder of the time was spent on addressing this case.

15. My standard hourly rate since July 28, 2020, has been $180.00; consequently, the fees incurred in addressing the Lytles' complaints regarding Mr. Disman's dog were no more than $72.00 (0.4 x $180.00).

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Christina H Wang

CHRISTINA H. WANG, ESQ.

State of Florida, County of Franklin

Subscribed and sworn to before me this 6th day of July, 2023, by Christina H. Wang.

NOTARY PUBLIC Amy Harvey

Session via online notarization. Produced ID:DRIVER LICENSE

AMY HARVEY
Notary Public - State of Florida
Commission # HH 361421
Expires on October 8, 2023

Notarized online using audio-video communication

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN; ET AL., Plaintiffs, vs. TRUDI LEE LYTLE; ET AL., Defendants.	CASE#: A-16-747800-C CONSOLIDATED WITH: CASE#: A-17-765372-C DEPT. XVI

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS,

DISTRICT COURT JUDGE

THURSDAY, JULY 13, 2023

RECORDER'S TRANSCRIPT OF HEARING:
PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS;
COUNTER-DEFENDANTS/CROSS-CLAIMANTS' ROBERT Z. DISMAN AND YVONNE A DISMAN'S MOTION FOR ATTORNEY'S FEES

SEE PAGE TWO FOR APPEARANCES

RECORDED BY: MARIA GARIBAY, COURT RECORDER
TRANSCRIBED BY: PETRA ZIROS TRANSCRIPTION

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A P P E A R A N C E S:

FOR SANDOVAL TRUST, ZOBRIS TRUST, SEPTEMBER TRUST, DENNIS A. GEGEN AND JULIE S. GEGEN:	WESLEY L. SMITH, ESQ.
FOR YVONNE A. DISMAN AND ROBERT Z. DISMAN:	CHRISTINA H. WANG, ESQ.
FOR THE LYTLE TRUST:	DAN R. WAITE, ESQ.

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Las Vegas, Nevada, Thursday, July 13, 2023

[Case called at 10:36 a.m.]

THE COURT: Marjorie B. Boulden Trust versus Trudi Lytle. Seems like this case just won't go away. How long have I had this case?

MR. SMITH: The gift that keeps on giving. Too long, Your Honor. Wesley Smith on behalf of the plaintiffs. That's the Sandoval Trust, the Zobrist Trust, the September Trust and the Gegens.

THE COURT: Right.

MS. WANG: Good morning, Your Honor. Christina Wang on behalf of the Dismans.

MR. WAITE: And Good morning, Your Honor. Dan Waite, bar number 4078, for the defendant Lytle Trust.

THE COURT: All right. And once again, good morning to everyone. And it's my understanding this is -- let me make sure I get it here. This is plaintiffs motion for attorneys' fees and costs, counter defendants cross claimant Dismans' motion for fees and costs; right?

MR. SMITH: Yes, Your Honor.

THE COURT: Okay.

MR. SMITH: Thank you. Your Honor, I just want to -- again, Wesley Smith on behalf of the plaintiffs in the consolidated matter. This is really a straightforward motion for fees and costs on

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behalf of the plaintiffs. I believe the Dismans' motion is in light kind. Really, there has been a lot of history in this case, a lot of orders that have already been entered. Orders which have been scrutinized on appeal before the Nevada Supreme Court and affirmed.

And so there's a lot of law of the case here, including law of the case for prior fee orders, on the same basis on which we are moving for fees here today.

And so really, I think that this is an easy decision and I don't say that to be flippant or arrogant, but that really the Court has already made decisions on this matter that make it easy to simply review these new fees and costs, determine if they are reasonable and to enter a fee order.

So in the past and considering the amount of time that we've already spent here today, we've appreciated the Court's preparation on these matters in our previous hearings.

And so I would -- I'm prepared to go through each point if you'd like me to, but I will defer to the Court if you have questions that you'd like us to address or an inkling of where you want to go?

THE COURT: Not -- not at this point because I do remember this case. I mean, we've spent a lot of time together and I'm still sometimes surprised it's still around.

MR. SMITH: So are we.

THE COURT: I mean, I don't remember when was the original filing? It had to be what, five, six years ago, something like that?

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MR. WESLEY: It's a 2018 case.

THE COURT: Yes.

MR. SMITH: The first case was filed in 2016 and then my clients came in in 2017 --

THE COURT: Right.

MR. SMITH: -- in consolidation.

THE COURT: Yeah. I got it.

MR. SMITH: So it's been here for quite a while.

THE COURT: Yes, it has. Okay. Anything else, sir?

MR. SMITH: I will defer to my co-counsel and I reserve the rest of my argument in rebuttal with defendant's argument. Thank you, Your Honor.

THE COURT: I understand.

MR. WAITE: How do you want to handle these, Your Honor? Do you want to handle the plaintiffs' motion in total and then go to the Dismans' or have the Dismans' motion heard now?

THE COURT: Let's deal with the plaintiffs first and then we'll go to the Dismans. How is that?

MR. WAITE: Okay.

THE COURT: That way I can keep them separate.

MR. WAITE: Thank you, Your Honor. Again, Dan Waite for the Lytle Trust. Your Honor, this is -- just to kind of set the stage and I appreciate that you are -- experience has -- is demonstrated, you're prepared on these -- on these matters.

But just to set the stage. This is a request for fees

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resulting from a contempt order.

THE COURT: I understand.

MR. WAITE: And there is a -- there is a contempt statute that has a fee provision within it and that is NRS 22.100. And, Your Honor, I'm not here -- the Lytle Trust did not dispute in the briefs and I'm not here to dispute now that the plaintiffs are not entitled to an award of fees under NRS 22.100.

We greatly dispute the amount and I'm going to address that for a moment. We greatly dispute some of the other bases. Mr. Smith did not address those in his argument, but I feel compelled to go through a couple of them.

But quite honestly, given that we are not disputing an award under NRS 22.100, any award under any other basis is -- is totally unnecessary. It just creates an opportunity or encouragement for an additional appeal, and it should be avoided.

And so maybe what I should do, Your Honor, in the interest of time, is just ask you if you had any questions or concerns regarding the plaintiffs only, not Disman, because you'll hear me say I don't agree that the Dismans are entitled to any award of fees.

But did you have any questions on any other basis?

THE COURT: I understand the issue regarding NRS 22. --

MR. WAITE: 100.

THE COURT: -- 100.

MR. WAITE: Okay.

THE COURT: And you -- and I guess as far as the

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opposition is concerned, I guess the real primary issue as far as you're concerned would be the amount?

MR. WAITE: Well, Your Honor, they sought -- they sought an award of fees, the base -- setting the amount aside --

THE COURT: Right.

MR. WAITE: -- for a moment. They sought an award of fees under NRS 22.100.

THE COURT: Right. 18.

MR. WAITE: Under the CC&R section 25, under NRS 18.010(2), which is the bad faith section and under the local rule EDCR 7.60(b). And we greatly dispute that an award of fees is awardable under any of those bases other than 22.100.

So I'm happy to go through those, but if you don't have any concerns with them. And I've essentially conceded that they're entitled to an award, and you're happy awarding them under 22.100 and not under the other bases, then I'll move on to the -- to the amount.

THE COURT: Yeah, let's move to the amount.

MR. WAITE: Okay.

THE COURT: I mean, I understand your position. I do.

MR. WAITE: All right. So as it relates to the amount, there's a few issues here, Your Honor. The first of all has to do with the rate. Mr. Smith's and his colleagues rate. And there's a lot of addressing in the briefs regarding the prevailing market rate. Mr. Smith charged; his clients paid the rate of $265 an hour.

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Now, in their motion they're seeking almost double that. And they say that is the prevailing market rate and you should pay no attention to the rate that was actually in their contract, or the amount that they actually charged, and their clients actually paid because apparently they feel that's not reflective of the prevailing market rate.

But Your Honor, you know, you go back to the old definition of fair market value for a real property. What a property is worth is what a ready, willing and able buyer is willing to pay for it under, you know, not under duress in those type of circumstances.

Well, I would suggest that the absolute best evidence of Counsel's prevailing market rate is the rate that he charged to his clients and his clients paid in this case. After all, both Counsel and his client are members of the community, are members of that market that you have to consider.

There's been no evidence presented to you that plaintiffs' Counsel have ever charged any client in any case the rates that they're asking for now.

And this is not a case, Your Honor, like some of the cases that are cited in their briefs. A lot of these civil rights cases, Your Honor, that are working under federal statutes, like section 1988 and so forth, are very favorable for the prevailing private citizen.

But those cases are always against the government, against governmental entities. Here, you have a fee shifting attempt not against a governmental entity, but against private individuals.

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This is a private case between private parties.

THE COURT: Well, many times those types of cases are also taken on a contingency.

MR. WAITE: And they're taken on a contingency or, Your Honor, what you see -- what you see in those cases where they're not on a contingency and you are spot on, what is -- what is the purpose of -- of those provisions?

The provisions -- those provisions that are in those federal cases so often are based on a matter of public policy. We want -- we want parties with good valuable meritful cases to be able to retain competent counsel.

And that's the underlying policy behind contingency cases. People that otherwise can't afford counsel, can get competent counsel and the counsel is willing to kind of ride the gamble with them and take it on a contingency.

Or you see this as well, Your Honor. There are some, you know, good souls out there who recognize that their client has a meritorious case but can't afford their rate and so they significantly reduce their customary rate so that they can -- this -- this wonderful client can be represented and their cause advanced.

And then when they go to seek fees, they submit their affidavit and say yeah, I charged, I charged this amount for in this case, but my normal and customary rate is really X times 2.

But that's not what we have here. We have here where Counsel, their normal and customary rate is $265 an hour and that's

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the rate that they charged. They didn't lower their rate in this case. They're not on a contingency. And they're not going against a governmental agency.

Furthermore, Your Honor, there is some precedent here. This is not -- as Counsel mentioned, this is not the first fee motion that has been before Your Honor. And so the Court has already been through a lodestar analysis. Has already been through some *Brunzell* analysis.

And in those prior motions they never requested that their rate was too low. The Court determined at that time their rate was $260 an hour, and the Court -- they proclaimed that was the fair and reasonable rate and you ordered it.

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So there is precedent in this as well. I think it's interesting Your Honor and worth noting that plaintiffs, the co-counsel in this case and that's really a misnomer, but Ms. Wang, her rate in her motion that she seeks is at one point is $180 an hour, and at another point it was $200 an hour. I'm just going to call it a $190 an hour, just in the midpoint there.

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But the irony here is that Ms. Wang has been licensed to practice law four years more than Mr. Smith. Now, make no mistake. I think Mr. Smith is a very fine attorney and my comments are not a commentary on Mr. Smith.

But it would be an odd and perhaps even, Your Honor, an arbitrary result to conclude that the prevailing rate for one attorney is $190 an hour, and that the prevailing rate for another attorney in

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the same case with four years less experience, was more than double that rate.

And furthermore, Your Honor, awarding the augmented rate that Mr. Smith and his firm are seeking, creates a windfall. It creates a windfall at -- at the expense or punitive measure against the Lytle Trust, who they're trying to seek -- shift their fees to.

Why is it a windfall? Well, if you award the rates, the 400 and whatever amounts that they're looking for an hour, who is going to get that money?

Either their client is going to get that money and they're going to be reimbursed more than they paid and that they contracted to pay, or the attorney is going to get that money. And he's going to receive more than he contracted to be paid.

And the cases are very, very clear. That the purpose of fee shifting statutes is not to create a windfall for anyone and it's certainly not to punish anyone.

And yet, that's exactly what would happen here if you awarded those fees against the Lytle Trust. They would be penalized. It would be no different than if the Court just entered punitive damages against the Lytle Trust.

And that's just inappropriate. So Your Honor, I would suggest right off the bat that the amount that is requested has to be reduced. When you do the math, they have -- the amount has to be reduced $42,215.60, for giving them the credit for the amount that they actually charged and billed, not the augmented rates that

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they're requesting, $42,215.60.

But the amount requested has to be reduced for some other reasons as well, such as excessive and duplicative work. A fair amount of the beginning work that is asked for here, Your Honor, had to do with a prior motion for fees. That was denied as premature.

THE COURT: Right.

MR. WAITE: Now, what the billing records show, Your Honor, is that when the Supreme Court issued its order dismissing the appeal, the billing records indicate that plaintiffs counsel immediately started working on their motion for fees, even though the Lytle Trust made clear in their submissions to the Supreme Court, that if the appeal was dismissed on procedural grounds, that we would pursue review through writ proceedings.

In other words, Your Honor, and this has to do with my brilliant colleague, Dan Polsenberg and Joel Henriod, and so forth. They knew that an appeal had a very short and jurisdictional deadline, whereas a writ petition has no deadline.

And so to avoid filing something too late, they filed the appeal and acknowledged in it that we may be in the right place but through the wrong door.

But if we're in the wrong door, we're going to file a writ petition. Well, ultimately the Supreme Court said yeah, you're in the wrong door. Appeal dismissed. And so we prepared writ petition.

But they didn't wait for that and they knew that that's

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what was coming and they filed -- prepared and filed a motion for fees, which Your Honor denied as premature. And that counts for $11.713,99 for a failed premature motion.

Also, Your Honor, there is lots of interoffice conferences, lots of interoffice emails, which some of the cases interestingly say that an interoffice email is in this day and age is no different than an interoffice conference.

And make no mistake, I'm not being critical of interoffice communications. I'm not being critical of interoffice collaboration. What I'm being critical of, is billing for it, is that both attorneys are billing for it.

When I have such conferences, for example, Your Honor, with my colleagues and it's a good -- it's good to be collaborative and I have those conferences, I tell my colleague, you bill for 50 percent of our time, I'm going to bill for 50 percent of our time and that way the client doesn't get double -- double-dipped.

Now, it's interesting, Your Honor, and let me make again a math point that I think is worth understanding. Coming back to the rates. They're asking for these high rates, these augmented rates.

Over on this point they're saying, they're trying to defend that the -- the duplicative efforts, the interoffice communications are reasonable because that's a -- that's just something that they offer to their clients.

That's a very collaborative office. Their clients are better served through that collaboration and the end result is better. And --

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and their rates are low. Well, your rates are low unless you double them over here and you get the benefits of the collaborative effort.

You're really double-dipping. We're marketing ourselves as a firm with low rates and collaboration, until it comes time to ship the piece to somewhere else.

When you look at the billing entries for those interoffice conferences, interoffice emails, that's $1,934.63.

There are 15 entries, Your Honor, I'm moving on to the vague category. Fifteen entries that -- that are labeled "research" or "research case law" for a total of 12.4 hours and $3,541.

Neither you nor I can evaluate. I can't -- I can't evaluate as is my right, nor can you evaluate as is your obligation when resolving a motion for fees, whether that type of work was reasonable and necessary. And so that -- that has to go out the door; $3,541.

There's numerous entries, Your Honor, much more than 15 regarding emails and telephone calls without any description whatsoever regarding what the emails or the telephone calls were about.

That amounts to an additional $4,226.25. Again, it is very difficult, if not impossible to evaluate as must be done whether the charges were reasonably and necessarily incurred.

And, Your Honor, I know that this is this case and the Judge Kishner case is the Judge Kishner case. But this being a contempt proceeding, the underlying matter for the actions the

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Lytles took in the receivership action in front of Judge Kishner, I'll note that in the fee motions that were recently resolved there with her, she found in a couple of instances regarding my fee request in her court, that there was a problem created by me in some of the way that my entries were created, and therefore I must bear the burden. I must bear the cost of the -- as the party that created that error.

And the same should hold here too. Plaintiffs counsel had the opportunity to identify more precisely what the research regarded, what the subject of the conferences and so forth were.

For whatever reason, they chose not to do so and that's fine. But -- and the fact that they were able to convince their client to pay those -- those bills with that level of lack of specificity is fine too. But when it comes time to shifting those fees to your opponent, it's not fine.

Next category, Your Honor, looking up and familiarizing yourself with the rules. The plaintiffs counsel submitted declarations that they had a lot of appellate experience, yet they billed time for looking up and familiarizing themselves with appellate and other rules.

And once again here, I'm not being critical that the tasks were performed. That's an appropriate thing to do, to look up the rules and make sure that you're on good grounds.

What I am being critical of is that they're billing for it, and more particularly, not that they're billing their own clients. Again, if

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they can convince their clients to pay themselves to educate themselves regarding the rules, okay great, that's fine. But it should not be appropriate tasks when you're looking to shift those fees to your opponent. And that amounts to $1,627.50.

Paralegal tasks, not just paralegal tasks, but paralegal tasks performed by a partner. Things like preparing table of authorities, preparing table of contents, revising them, those types of things.

That amounts to $980. It's probably compensable at paralegal rates, but they weren't performed by a paralegal. They're performed by partners at partner rates, and in fact there's no evidence of what their paralegals charge.

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Again, this is a problem that is created by the plaintiffs and must be borne by them.

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Similarly, clerical tasks, Your Honor. The Court in its prior rulings, in the prior motion for fees and costs that you awarded the plaintiffs, you reduced their request by $23,374 for clerical tasks.

Now, they seek an award again for clerical tasks but at a much smaller level. In this instance it's in the amount of $1,719 and that's all briefed what those tasks are.

Finally, Your Honor, there's a charge, which in the reply plaintiffs acknowledge was a mistake. It was billed to the wrong matter. It should have been billed to the receivership action for $53.

Based on all of that, Your Honor, I would suggest that an award of fees. We don't dispute an additional award of fees under

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