

1 **OPP**

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19 **EIGHTH JUDICIAL DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 MICHAEL KOSOR, JR., an individual,

22 Plaintiff,

23 -vs-

24 SOUTHERN HIGHLANDS COMMUNITY
25 ASSOCIATION, a Nevada Non-Profit Corporation;
26 SOUTHERN HIGHLANDS DEVELOPMENT
27 CORPORATION, a Nevada Corporation; CHRIS
28 ARMSTRONG, an individual; RICK REXIUS, an
individual; MARC LIEBERMAN, an individual.

Defendants.

) Case No.: A-23-881474-W

)

) Dept. No.: 31

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) **SOUTHERN HIGHLANDS
COMMUNITY ASSOCIATION’S
OPPOSITION TO PLAINTIFF’S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION
ON AN ORDER SHORTENING
TIME**

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1 NOW COMES Defendant SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION, a
2 Nevada non-profit corporation and common-interest community association (“Association” or
3 “Defendant”), by and through its counsels of record Adam H. Clarkson, Esq., and Shawn D. Johnson,
4 Esq., of CLARKSON MCALONIS & O’CONNOR, P.C., and submit its opposition to Plaintiff
5 MICHAEL KOSOR, JR.’s (“Plaintiff”) motion for a temporary restraining order and preliminary
6 injunction on an order shorting time to enjoin the Association from holding the Executive Board
7 (“Board”) elections except as ordered by this Court, taking any kind of Board action except as
8 permitted by this Court, and from entering into any contracts or obligations except as permitted by
9 this Court, and states as follows:

10 **I. INTRODUCTION**

11
12 Plaintiff filed his initial Complaint on November 13, 2023. On November 17, 2023, Plaintiff
13 filed a First Amended Complaint wherein he alleged that Southern Highlands Development
14 Corporation (the “Declarant”), the developer and Declarant of the association, no longer has any
15 declarant control rights over the Association’s Board of Directors (“Board”) pursuant the §2.19 of
16 Association’s Covenant, Conditions and Restrictions¹, because more than 75% of the maximum units
17 of the Association have been conveyed as of January 26, 2022.

18 On November 21, 2023, two days before the Thanksgiving holiday, Plaintiff filed his present
19 Motion for Temporary Restraining Order and Preliminary Injunction on an Order Shortening Time.
20 Plaintiff’s motion asserts that he has a reasonable probability of success on the merits, he will suffer
21 irreparably injury if the Declarant continues to exercise control and the unelected Board is allowed
22 to continue operating the Association, and that the balance of hardships and the public interest tips in
23 his favor in this matter.

24 However, Plaintiff does not have a reasonable probability of success on the merits of his
25 allegations, because Plaintiff has erroneously applied NRS 116.31032, which controls when a
26 declarant’s period of control should terminate. NRS 116.31032(1)(b) provides in relevant part that

27 _____
28 ¹ Southern Highland Community Association’s declaration.

1 regardless of any provisions in an association’s declaration once 90% of the units that may be created
2 are conveyed to unit owners, a 60-day deadline is triggered at the end of which the declarant must
3 transition control of the association to the association’s membership. It is Plaintiff’s argument that
4 §2.19 of the Association’s Covenants, Conditions and Restrictions (“CC&Rs” or “Declaration”)
5 supersedes NRS 116.31032(1)(b) in this matter, because the CC&Rs requires the Declarant to transfer
6 control when 75% of the units have been conveyed to unit owners. Plaintiff attempts to support his
7 argument by claiming that the 90% threshold hold imposed by NRS 116.31032 is simply a ceiling
8 and transition can happen before the 90% threshold and that the Contract Clause of the Nevada
9 Constitution prohibits the Association from relying on NRS 116.31032(1)(b). Plaintiff’s argument
10 fails, because it does not properly apply NRS 116.31032 and does not account for the provisions
11 contained in NRS 116.1104 and NRS 116.1206. Plaintiff’s argument also fails to take into account
12 relevant Nevada case law. Under Nevada law §2.19 of the Association’s CC&Rs do not supersede
13 NRS 116.31032 and NRS 116.31032(1)(b) is governing in this dispute.

14 Moreover, Plaintiff’s argument that he would suffer irreparable harm is also meritless. The
15 Plaintiff claims that if the Board is not made up of members elected by the Association’s membership,
16 then his constitutional right to self-determination would be violated. However, Plaintiff fails to
17 provide any evidence or arguments that show that as of the filing of his motion that he is in possession
18 of a right to self-determination that the defendants are violating. Plaintiff claims that he has a right to
19 vote on the Executive Board Members (the “Board”) but does not have any evidence to show that
20 that right has been conferred onto him. The only right to self-determination that Plaintiff could have
21 in this dispute stems from the argument that §2.19 of the Association’s CC&Rs supersede the
22 provisions of NRS 116.31032, NRS 116.11.04, and NRS 116.1206. As further discussed below, the
23 Association’s CC&Rs do not supersede the provisions of NRS 116, and the Contract Clause of the
24 Nevada Constitution is not applicable in these circumstances.

25 Furthermore, Plaintiff’s argument that the balance of hardships and the public interest tips in
26 Plaintiff’s favor because his right to self-determination is more important than the very little hardship
27 the Defendants would endure if his motion were granted is a gross simplification of the hardship the
28 Defendants would actually suffer. If the Defendants were enjoined from holding Board elections

1 except as ordered by this Court, taking any kind of Board action except as permitted by this Court,
2 and from entering into any contracts or obligations except as permitted by this Court, then the
3 Association would be enjoined from fulfilling its contractual and fiduciary obligations. Plaintiff is
4 essentially asking the Court to enjoin the Association from conducting any business without a court
5 order. This includes paying the Association's vendors, conducting meetings, responding to violations
6 of the Association's governing documents, and collecting assessments, among other things. If the
7 Court agrees with Plaintiff's position in this matter, then a substantial amount of judicial resources
8 and Association funds will be expended just so the Board can comply with the fiduciary duties
9 imposed by NRS 116.3103. Such action is simply unwarranted, given Plaintiff is unlikely to succeed
10 on the merits of his claim and has failed to adequately explain what law or contract confers onto him
11 a right of self-determination which the Association is allegedly violating.

12 In summary fashion, Plaintiff's complaint and motion relies upon an erroneous interpretation
13 of NRS 116.31032. Moreover, Plaintiff has not been conferred a right of self-determination which can
14 be violated by the defendants. Finally, the balance of hardships and the public interest does not tip in
15 Plaintiff's favor, but instead tips in favor of the Defendants as enjoining the Association would create
16 undue hardship, create a waste of judicial resources, and force the Defendants to incur substantial
17 attorneys' fees and litigation costs in order to fulfill the Association's contractual obligations and
18 fiduciary duties. For these reasons, Plaintiff's motion should be denied in its entirety.

19 **II. BACKGROUND**

20
21 The Association believes it is important that the Court be made aware of Plaintiff's litigious
22 history with the Association, the Declarant, and the Association's management Company, Olympia
23 Management Services ("OMS"). Plaintiff has filed more than eleven intervention affidavits against
24 the Association and OMS with the Nevada Real Estate Division ("NRED"). When NRED determined
25 that the Plaintiff's complaints against the Association were meritless and did not require further action,
26 Plaintiff sued NRED in Case No. A-17-765257-C. In response to Plaintiff's lawsuit, NRED filed a
27 Motion to Dismiss which was granted. Plaintiff thereafter appealed the District Court's decision to
28

1 dismiss his lawsuit to the Nevada Supreme Court. The Nevada Supreme Court subsequently affirmed
2 the District Court's decision and denied Plaintiff's petition on October 12, 2021.

3 On November 24, 2020, right before the Thanksgiving Holiday and before he had even
4 finished litigation of his case against the NRED, Plaintiff, along with Howard McCarley also filed a
5 lawsuit against the Association and the Declarant in Case No. A-20-825485-C. *See Exhibit 1*. In their
6 Complaint, Plaintiff and Mr. McCarley sought injunctive and declaration relief and claimed that the
7 Association had violated NRS 116.31034(1). Plaintiff and Mr. McCarley asserted the following
8 regarding the Association's alleged violation of NRS 116.31034(1):

9
10 22. That the unit creation threshold precedent to the termination of the
11 Declarant's control over the SHCA has been satisfied. And, at present,
12 termination of the Declarant's control is overdue under the SHCA Bylaws,
the CC&Rs, and Nevada law.

13 ...

14 24. That pursuant to NRS 116.31034(1), before the termination of the
15 declarant's control period, the SHCA must provide an election for an
executive board of at least three members, all of whom must be owners.

16 25. That the SHCA has failed to timely provide an election for an executive
17 board of at least three members all of whom must be owners are required
by NRS 116.31034(1)

18 26. That pursuant to NRS 116.31034(4), at least 30 days before the
19 preparation of a ballot for the election of members of the executive board,
20 the SHCA secretary (or similarly assigned officer) must cause notice to be
21 given to each owner of the owner's eligibility to serve as a member of the
22 SHCA executive board.

23 27. That the SHCA secretary (or similarly assigned officer) has failed to
24 timely provide notice to each owner concerning the number of director
25 positions that need to be elected by the owners (at least three) and instead
wrongly notified owners that only one director need be elected.

26 28. That contrary to NRS 116.31034(1), the SHCA executive board has
27 informed in its communications to owners that it will provide a timely
28 election for only one director position to the SHCA executive board and
continue to allow the three Declarant-appointed directors currently serving

1 on the SHCA executive board to exercise control over the SHCA executive
2 board.

3 29. that, absent court intervention, on or around December 3, 2020, the
4 SHCA executive board will conduct an election for only one director
5 position, divesting owners of their right to elect all directors who will serve
6 on the SHCA executive board upon termination of the declarant control
7 period.

8 30. That, absent emergent court intervention and as a consequence of the
9 SHCA executive board conducting a limited election, owners will suffer
10 irreparable harm for which no adequate remedy at law exists and be
11 deprived of their right to choose executive board candidates who will best
12 represent their interest on the executive board.

13 31. That, absent emergent court intervention and as a consequence of the
14 SHCA executive board conducting a limited election, a limited election will
15 perpetuate an improper extension of the declarant's control period, during
16 which decisions contrary to the rightful interest of the owners will be made.

17 ...

18 33. If allowed to proceed according to plan, SHCA will hold an election or
19 or about December 3, 2020 that will divest owners of their right to choose
20 each director on the SHCA executive board. Nevada statutory law, the
21 CC&Rs, and the SHCA Bylaws each require SHCA hold a fair election
22 among owners for each SHCA executive board position replacing those
23 currently appointed by the Declarant – prior to the end of the declarant
24 control period.

25 *See Exhibit 2.* After filing their Complaint on November 23, 2020, Plaintiff and Mr. McCarley then
26 filed a Motion for Temporary Restraining Order and Preliminary Injunction on an Order Shortening
27 Time. *See Exhibit 1.*

28 On December 2, 2020, the Association filed a Motion to Dismiss Plaintiff's and Mr.
29 McCarley's Complaint for failure to include the Declarant in the litigation. *See Exhibit 3.* On
30 December 8, 2020, the Association also filed an Opposition to Plaintiff's Motion for Preliminary
31 Injunction. *See Exhibit 1.* On December 15, 2020, Plaintiff's Motion for Temporary Restraining Order
32 and Preliminary Injunction and the Association's Motion to Dismiss were heard. *Id.* On January 15,
33 2023, the Court issued an Order on both the Motion for Temporary Restraining Order and Preliminary

1 Injunction and the Motion to Dismiss. *See Exhibit 4.* The Court denied Plaintiff's Motion for a
2 Temporary Restraining Order as moot and denied in part and granted in part the Association's Motion
3 to Dismiss. *Id.* Thereafter on January 25, 2021, Plaintiff and Mr. McCarley filed an Amended
4 Complaint which named the Declarant as a defendant in the lawsuit. *See Exhibit 5.*

5 On April 31, 2023, the Declarant filed a Motion to Dismiss in response to the Amended
6 Complaint in which it was argued that whether the Association and Declarant had committed a
7 violation of NRS 116.31034 was a matter within the sole discretion of the Nevada Real Estate
8 Division, that Plaintiff's claims were time-barred, and that Plaintiff's claims were barred by issue
9 preclusion as a result of Plaintiff's lawsuit against the Nevada Real Estate Division, Case No. A-17-
10 765257-C. *See Exhibit 6.* On May 27, 2021, Declarant's Motion to Dismiss was heard. *See Exhibit*
11 **1.** On May 28, 2021, an Order was filed by the Court in which Declarant's Motion to Dismiss was
12 granted in part and denied in part. *See Exhibit 7.* The order dismissed Plaintiff's complaint to the
13 extent that it sought relief relating to a determination as to the validity or non-validity of the Third
14 Amendment to the CC&Rs', which increased the maximum number of units in the Association from
15 9,000 to 10,400, as the issue was previously addressed by District Court Department 29, and that the
16 challenge was untimely, and consequently dismissal was appropriate. *Id.* Plaintiff's other claims were
17 then further litigated until, after litigating the lawsuit for more than a year and a half, Plaintiff and Mr.
18 McCarley decided to abandon their claims and filed a Motion for Voluntary Dismissal of Without
19 Prejudice. *See Exhibit 1.*

20 In response, the Association and the Declarant filed a limited opposition, in which they moved
21 the Court to dismiss Plaintiff's claims with prejudice and to award the Association and Declarant
22 attorney's fees and costs. *Id.* On September 29, 2022, a Decision and Order was issued by the Court,
23 in which the Court dismissed Plaintiff's claims with prejudice, after finding that Plaintiff demonstrated
24 an excessive amount of delay and lack of diligence in prosecuting his claims and failed to provide
25 sufficient explanation of the need to take a dismissal in the case. *See Exhibit 8.* The dismissal with
26 prejudice of Plaintiff's claims also included his claims that the Association and Declarant were in
27 violation of NRS 116 by not transitioning control of the Association from Declarant to the
28 Association's membership.

1 The Decision and Order from the Court also awarded the Association \$67,521.25 in attorneys'
2 fees and \$261.19 in costs and awarded the Declarant \$79,637.50 in attorneys fees and \$695.94 in costs.
3 *Id.* A Judgment was thereafter entered against Plaintiff ordering him to pay the Association and the
4 Declarant. *See Exhibit 8.* On October 18 and 21, 2022, the judgments were entered against Plaintiff
5 and Mr. McCarley which ordered them to pay the Association and Declarant the attorneys fees and
6 costs the Court awarded in relation to Plaintiff's Motion for Voluntary Dismissal. *See Exhibit 9.*

7 Rather than pay the judgment as ordered, Plaintiff instead filed a Motion to Amend Findings
8 of Fact and to Amend the Decision and Order and Judgment ordering him to reimburse the Association
9 and Declarant. *See Exhibit 1.* Plaintiff also appealed the Court's Decision and Order to the Nevada
10 Supreme Court. *Id.* Thereafter, on January 23, 2023, the Court granted Plaintiff's motion in part and
11 reduced the amount Plaintiff owed the Association from \$67,782.44 to \$45,129.94. *See Exhibit 10*
12 **Notice of Entry of Order A-20.** On August 1, 2023, Plaintiff filed a Notice of Withdrawal of Appeal
13 in which he withdrew his appeal of the District Court's Decision and Order that required him to pay
14 the Association's and Declarant's attorney fees and costs. *See Exhibit 11.* As a result of Plaintiff's
15 withdrawal of his appeal the Association and the Declarant filed a Motion for Supplemental Fees and
16 Costs associated with their defense in Plaintiff's Nevada Supreme Court Appeal. *See Exhibit 1.*
17 Plaintiff in response filed an opposition to the Motion for Supplemental Fees and Costs. Thereafter,
18 Plaintiff filed a Motion for Relief from Judgments on November 8, 2023, in which he argues that he
19 should be relieved from the Decision and Orders and Judgments entered against him, because he failed
20 to properly mediate his claim pursuant to NRS 38 prior to filing his lawsuit against the Association
21 and the Declarant in November of 2020. *Id.* Plaintiff makes this argument despite the fact that the
22 Association and Declarant filed a Motion to Dismiss at the beginning of the case that made the very
23 same argument, but which was rejected by the Court.

24 The Court should also be aware that Plaintiff was elected to the Association's Board while his
25 lawsuit against the Association and Declarant were still being litigated. While on the Board, Plaintiff
26 breached his fiduciary duty on multiple occasions by attempting to use his position on the Board to
27 obtain records and documents relevant to his litigation against the Association. Following an
28 investigation by NRED, it was determined that Plaintiff's litigation against the Association

1 represented a conflict of interest that precluded him from serving as a member of the Board. As a
2 result, the Association was required to deem Plaintiff's position on the Board vacant by operation of
3 law and to prohibit Plaintiff from running for or serving on the Association's Board as required by
4 NRS 116.31034(10)&(13). Plaintiff was removed from the Board in 2023.

5 Now Plaintiff has brought another lawsuit against the Association and the Declarant to again
6 allege that the period of declarant control has terminated and is attempting to enjoin the Association
7 from conducting business and holding its Board election.

8 **III. LEGAL STANDARD**

9 NRS 33.010 sets forth the basis upon which an injunction may be issued. It reads as follows:
10

11 **NRS 33.010 Cases in which an injunction may be granted.** An injunction
12 may be granted in the following cases:

13 1. When it shall appear by the complaint that the plaintiff is entitled
14 to the relief demanded, and such relief or any part thereof consists in
15 restraining the commission or continuance of the act complained of, either
16 for a limited period or perpetually.

17 2. When it shall appear by the complaint or affidavit that the
18 commission or continuance of some act, during the litigation, would
19 produce great or irreparable injury to the plaintiff.

20 3. When it shall appear, during the litigation, that the defendant is
21 doing or threatens, or is about to do, or is procuring or suffering to be done,
22 some act in violation of the plaintiff's rights respecting the subject of the
23 action, and tending to render the judgment ineffectual.

24 Injunctive relief is an extraordinary remedy that courts should only impose upon a clear
25 showing that the moving party faces irreparable harm for which there is no adequate remedy at law.
26 *Dep't of Conservation & Nat. Res., Div. of Water Res. V. Foley*, 121 Nev. 77, 80, (2005). For a court
27 of competent jurisdiction to issue a preliminary injunction, not only must the moving party articulate
28 the specific harm that will occur absent relief, but also demonstrate a likelihood of success on the
merits of the claim. *Id*; *See also Titaness Light Shop, LLC v. Sunlight Supply, Inc.*, 585 F.App'x 390,

1 391 (9th Cir. 2014) (holding that conclusory or speculative allegations are not enough to establish a
2 likelihood of irreparable harm).

3 **IV. LEGAL ARGUMENT**

4 **a. Plaintiff Failed to Properly Serve His Motion and Adhere to the Order Shortening**
5 **Time**

6 First and foremost, Plaintiff failed to properly serve the defendants with a copy of his Motion
7 by 5:00 p.m. on November 21, 2023. *See Plaintiff's Motion for Temporary Restraining Order and*
8 *Preliminary Injunction on an Order Shortening Time.* Pursuant to Rule 5(b) of the Nevada Rules of
9 Civil Procedure, a paper is served by:

10
11 **(b) Service: How Made.**

12 **(1) Serving an Attorney.** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court
13 orders service on the party.

14 **(2) Service in General.** A paper is served under this rule by:

15 (A) handing it to the person;

16 (B) leaving it:

17 (i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

18 (ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

19 (C) mailing it to the person's last-known address—in which event service is complete upon mailing;

20 (D) leaving it with the court clerk if the person has no known address;

21 (E) submitting it to the court's electronic filing system, if established under the NEFCR, for electronic service under [NEFCR 9](#) or sending it by other electronic means that the person consented to in writing—in which events service is complete upon submission or sending, but is not effective if the serving party learns that it did not reach the person to be served; or

22 (F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

23 **(3) Using Court Facilities.** If the court has established an electronic filing system under the NEFCR through which service may be effected, a party may use the court's transmission facilities to make service under Rule 5(b)(2)(E).
24
25
26
27
28

1 As evidenced by the Certificate of Service Plaintiff filed in this matter on November 21, 2023,
2 Plaintiff emailed the Motion to the defendants in this matter. *See Exhibit 12.* Email is not a proper
3 form of service allowed by NRCP 5(b). For this reason, Plaintiff failed to properly serve his Motion
4 to defendants as ordered by the Court, and, therefore, this matter should not be heard on an order
5 shortening time. Rather this motion should be heard in the normal course of litigation just as any other
6 motion would be.

7
8 **b. Plaintiff Failed to Comply with NRS 38.310**

9 NRS 38.310 states:

10 **NRS 38.310 Limitations on commencement of certain civil actions.**

11 1. No civil action based upon a claim relating to:

12 (a) The interpretation, application or enforcement of any covenants,
13 conditions, or restrictions applicable to residential property or any bylaws,
14 rules or regulations adopted by an association; or

15 (b) The procedures used for increasing, decreasing or imposing
16 additional assessments upon residential property,

17 May be commenced in any court in this State unless the action has been
18 submitted to mediation or, if the parties agree, has been referred to a
19 program pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and,
20 if the civil action concerns real estate within a planned community subject
21 to the provisions of chapter 116 of NRS or real estate within a condominium
22 hotel subject to the provisions of chapter 166B or NRS, all administrative
23 procedures specified in any covenants, conditions or restrictions applicable
24 to the property or in any bylaws, rules and regulations of an association have
25 been exhausted.

26 2. A court shall dismiss any civil action which is commenced in
27 violation of the provisions of subsection 1.

28 NRS 38.310 requires a plaintiff who seeks to file a civil action based on a claim relating to the
interpretation, application, or enforcement of an association's CC&Rs to first mediate their claim with
the association. NRS 38.320 further states that any civil action described in NRS 38.310, which

1 includes Plaintiff's present action because the Association is named as a defendant, must be submitted
2 to mediation or referred to a program by filing a written claim with the Nevada Real Estate Division.
3 NRS 38.325(1) further states that the Division may refer the parties to a dispute resolution program
4 upon receipt of a written claim and answer.

5 In this present matter, Plaintiff is attempting to enjoin the Association, Declarant, and the
6 Board from conducting any business based upon Plaintiff's interpretation and application of §2.19 of
7 the Association's CC&Rs. Plaintiff interprets and applies §2.19 of the Association's CC&Rs in such
8 a way that it is his belief and argument that control of the Association should have transitioned from
9 Declarant to the Association's membership 60 days after January 25, 2022, when the Association
10 provided the Nevada Real Estate Division with paperwork which evidence 79.88% of the
11 Association's units had been transferred to unit owners. As Plaintiff's lawsuit and motion are founded
12 upon an interpretation and application of §2.19, Plaintiff was required pursuant to NRS 38.310, NRS
13 38.320, and NRS 38.325 to mediate his claims by submitting his claim to the Nevada Real Estate
14 Division, providing the Association an opportunity to file an answer to his claim, and then mediating
15 his claim with the Association through the Nevada Real Estate Divisions alternative dispute resolution
16 program. Plaintiff has not completed any of these steps.

17 To defendants' knowledge, Plaintiff has not submitted a claim in relation to this matter to the
18 Nevada Real Estate Division. In addition, defendants have not had the opportunity to provide an
19 answer to the Nevada Real Estate Division regarding Plaintiff's claim. Further, Plaintiff's claim was
20 not mediated through the Nevada Real Estate Division's alternative dispute resolution program.

21 It is acknowledged that NRS 38.300(3) excludes "an action in equity for injunctive relief in
22 which there is an immediate threat of irreparable harm" from the NRS 38.310 mediation requirements.
23 However, for the reasons set forth herein, there is no "immediate threat of irreparable harm" and
24 therefore there is no exception under which Plaintiff may submit the current action to litigation prior
25 to complying with the mandatory mediation requirements of NRS 38.310. Rather, Plaintiff is
26 improperly attempting an end run around NRS 38.310 under a meritless assertion that there is an
27 "immediate threat of irreparable harm."

28

1 For these reasons, Plaintiff has failed to comply with the provisions of NRS 38.310. NRS
2 38.310(2) states that a court may dismiss any civil action which does not comply with the requirements
3 of NRS 38.310(1). Although this present opposition is not a Motion to Dismiss, given the fact that
4 Plaintiff failed to properly serve defendants with a copy of his Motion as required by the Order
5 Shortening Time and did not properly mediate his claim prior to filing his complaint and the present
6 Motion, dismissal of Plaintiff's civil action would be legally justifiable at this time.

7 **c. Plaintiff's Claims are Barred by Issue Preclusion**

8 "[I]ssue preclusion is applied to conserve judicial resources, maintain consistency, and avoid
9 harassment or oppression of the adverse party." *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*,
10 130 Nev. 525, 321 P.3d 912 (2014). In order for an issue to be precluded in a subsequent action, the
11 moving party must show:

- 12 1. The issue decided in the prior litigation must be identical to the issue presented in the
13 current litigation.
- 14 2. The initial ruling must have been on the merits and have become final.
- 15 3. The party against whom the judgment is asserted must have been a party or in privity with
16 a party to the prior litigation.
- 17 4. The issue was actually and necessarily litigated.

18 *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008).

19 **i. The prior litigation contained identical issues.**

20 An issue decided in a previous lawsuit is barred from re-litigation if the issue is identical to
21 the issue in the current lawsuit. *Alcantara*, 130 Nev. at 258, 321 P.3d at 916. "Issue preclusion cannot
22 be avoided by attempting to raise a new legal or factual argument that involves the same ultimate issue
23 previously decided in the prior case." *Id.* at 259.

24 Plaintiff sued the Association and Declarant in Case No. A-20-825485-C on November
25 January 25, 2021, requesting among other things:

- 26 (A) A declaration of rights of Plaintiffs, including a declaration that (1) the
27 threshold unit count for the termination of the Declarant's control over
28

1 the SHCA has been meet and (2) the “Third Amendment” was invalid
2 *ab initio* and that must be severed pursuant to section 25.5 of the
3 CC&Rs;

4 (B) A temporary restraining order and preliminary injunction enjoining
5 SHCA, and all persons and entities acting under their direction or in
6 concert with them, from conducting any further election that would
7 allow Declarant-appointees to continue to serve as directors on the
8 SHCA executive board, as currently intended by the SHCA executive
9 board;

10 (C) An order directing the SHCA executive board to provide notice to the
11 owners that the threshold for termination of the Declarant’s control has
12 been met and to provide for an election of all SHCA executive board
13 positions not previously elected by the owners (rather than appointed by
14 the Declarant) as soon as reasonably possible and no later than March
15 25, 2021.

16 *See Exhibit 5, p.9.*

17 Similarly, Plaintiff is requesting the following relief in this current matter:

- 18 1. For a determination that the Control Period has ended and that the
19 SHCA must (a) remove all appointed Directors from the Board and (b)
20 hold a valid election to fill the vacancies created by the removal of the
21 Declarant-appointed Directors;
- 22 2. For injunctive relief preventing Defendants from making any decisions
23 affecting the SHCA, except those specifically and explicitly authorized
24 by this Court;

25 *See Exhibit 13, p. 7.*

26 **ii. *The initial ruling was on the merits and final***

27 The Nevada Supreme Court has adopted Restatement (Second) of Judgment §13 (Am. Law
28 Inst. 1982) in determining when a judgment is final. *Kirsch v. Traber*, 134 Nev. 163, 166, 414 P.3d
818, 821 (2018). Pursuant to the Restatement, a judgment is final if it is “sufficiently firm.” *Id.* Factors
to determine finality include: “(1) that the parties were fully heard; (2) that the court supported its
decision with a reasoned opinion; and (3) that the decisions was subject to appeal.” *Id.* at 822 (quoting
Restatement (Second) of Judgment § 13 at cmt. G) (internal quotations omitted). “In issue preclusion
cases, a decision is final and maintains its preclusive effect even if the judgment is on appeal.” *City of
Las Vegas v. Bluewaters Family Ltd. Partnership*, 2013 WL 431045, at *1 (Nev. Jan. 31, 2013) (citing

1 *Edwards v. Ghandour*, 123 Nev. 105, 117, 159 P.3d 1086, 1094 (2007), rejected on other grounds by
2 *Five Star Capital*, 134 Nev. at 1053-54, 194 P.3d at 712-13)).

3 The facts in this case evidence that the District Court’s granting of Plaintiff’s Motion for
4 Voluntary Dismissal was on the merits and final. First, Plaintiff, the Association, and Declarant were
5 fully heard on the merits as evidenced by the details contained in the Decision and Order. *See Exhibit*
6 **8**. Second the District Court’s Decision and Order contained a detailed Factual and Procedural
7 Background, and conclusions of law explaining why it was dismissing Plaintiff’s claims with prejudice
8 and awarded the Association and Declarant attorney’s fees and costs. *Id.* Lastly, the dismissal was
9 subject to appeal, as Plaintiff appealed the Decisions and Order to the Nevada Supreme Court before
10 voluntarily withdrawing the appeal. *See Exhibit 11*. Accordingly, all the evidence suggests that the
11 District Court’s ruling on whether the control of the Association should transition from the Declarant
12 to the Association membership was on the merits and final.

13 **iii. Plaintiff was a party in the prior litigation**

14 “Issue preclusion can only be used against a party whose due process rights have been met by
15 virtue of that party having been or in privity with a party in the prior litigation.” *Alcantara*, 130 Nev.
16 at 259, 321 P.3d at 917 (quoting *Bower v. Harrah’s Laughlin, Inc.*, 125 Nev. 470, 481, 215 P.3d 709,
17 718 (2009)). Here, it is unquestionable that Plaintiff’s due process rights have been met. As evidenced
18 in the Decision and Order, Plaintiff was a party in the prior litigation and was fully heard on the issues
19 in the prior litigation.

20 **iv. The issues were actually and necessarily litigated.**

21 An issue is actually litigated when the issue “is properly raised ... and is submitted for
22 determination...” *Alcantara*, 130 Nv. At 262, 321 P.3d at 918 (quoting *Frei v. Goodsell*, 305 P.3d 70,
23 72 (Nev. 2013) (quoting Restatement (Second) of Judgments § 27 cmt. D (1992))) (internal quotations
24 omitted.) In the previous case, *Kosor v. Southern Highlands Community Association*, Plaintiff sought
25 declaratory relief for the following:

- 26 (A) A declaration of rights of Plaintiffs, including a declaration that (1)
27 the threshold unit count for the termination of the Declarant’s
28 control over the SHCA has been met and (2) the “Third
Amendment” was invalid *ab initio* and that must be severed
pursuant to section 25.5 of the CC&Rs;

1 (B) A temporary restraining order and preliminary injunction enjoining
2 SHCA, and all person and entities acting under their direction or in
3 concert with them, from conducting any further election that would
4 allow Declarant-appointees to continue to serve as directors on the
5 SHCA executive board, as currently intended by the SHCA
6 executive board;

7 *See Exhibit 5, p.6-7*

8 The issues, specifically that the threshold unit court for the termination of Declarant’s control
9 over the Association has been met, were dismissed with prejudice by Judge Bell on September 29,
10 2022. *See Exhibit 8, p.7.*

11 An issue is necessarily litigated when “the common issue was ... *necessary to the judgment in*
12 *the earlier suit.” Id.* (quoting *Frei v. Goodsell*, 205 P.3d 70, 72 (Nev. 2013) (quoting *Univ. of Nev.*
13 *Tarkanian*, 110 Nev. 581, 599, 879 P.2d 1180, 1191))) (internal quotations omitted). The issues,
14 specifically that the threshold unit count/conveyance for the termination of Declarant’s control over
15 the Association has been met, were necessary to the judgment in the earlier suit and the Court found
16 Plaintiff demonstrated an excessive amount of delay and lack of diligence in prosecuting the claim
17 and failed to provide a sufficient explanation of the need to take a dismissal in the case. Plaintiff’s
18 claim that the threshold had been reached and transition of control was required were dismissed with
19 prejudice by Judge Bell in Case No. A-20-825485-C, and Plaintiff should not be allowed another
20 opportunity to bring such a claim.

21 Based on the foregoing, the issue of whether the Association has reached the unit threshold
22 requiring transition of control is barred by issue preclusion.

23 **d. Plaintiff Does Not Enjoy Even a Reasonable Chance of Success on the Merits.**

24 Plaintiffs does not enjoy a reasonable chance of success on the merits, because he erroneously
25 interprets and applies NRS 116.1206 and NRS 116.31032. Plaintiff also fails to give any consideration
26 to NRS 116.1104 and existing Nevada case law relevant to this litigation.

27 ///

28 ///

///

1 i. **NRS 116.31032 does not require transition of control from Declarant to the**
2 **Association’s membership till 90% of the units have been conveyed**

3 NRS 116.31032(1)(b) is the statute which governs when control of a common-interest
4 community association transitions from declarant control to association membership control. NRS
5 116.31032 states in relevant part:

6 **NRS 116.31032 Period of declarant’s control of association;**
7 **representation of units’ owners on executive board.**

8 1. Except as otherwise provided in this section, **the declaration may**
9 **provide for a period of declarant’s control of the association**, during
10 which a declarant, or person designated by a declarant, may appoint and
11 remove the officers of the association and members of the executive board.
12 A declarant may voluntarily surrender the right to appoint and remove
13 officers and members of the executive board before termination of that
14 period and, in that event, the declarant may require, for the duration of the
15 period of declarant’s control, that specified actions of the association or
16 executive board, as described in a recorded instrument executed by the
17 declarant, be approved by the declarant before they become effective.
18 **Regardless of the period provided in the declaration, a period of**
19 **declarant’s control terminates no later than the earliest of:**

20 ...
21 (b) **For a common-interest community with 1,000 units or more, 60**
22 **days after the conveyance of 90 percent of the units that may be**
23 **created to units’ owners other than a declarant.** (Emphasis added)

24 NRS 116.31032 states that while a declarant may voluntarily surrender the power to appoint
25 and remove officers of the association and members of the executive board, a declarant’s control of a
26 community-association with more than 1,000 units is not required to terminate until 60 days after 90
27 percent of the units have been conveyed to unit owners other than the declarant, regardless of the
28 language contained in an association’s declaration². See NRS 116.31032(1)(b). NRS 116.31032(1)
specifically states that regardless of the provisions contained in an association’s declaration NRS

² NRS 116.037 “Declaration” defined. “Declaration means any instruments, however denominated, that creates a common-interest community, including any amendments to those instruments.

1 116.31032(1) governs when the transition of control is triggered. In application, NRS 116.31032(1)
2 specifically allows declarants to disregard provisions in an association's declaration which dictate
3 when transition of control should occur.

4 Plaintiff argues that control of the Association should have transitioned from Declarant to the
5 Association 60 days after January 25, 2022, when the Association provided documentation to the
6 Nevada Real Estate Division that showed 79.88% of the Association's units had been conveyed,
7 because §2.19 of the Association's CC&Rs dictate that transition should occur at 75%. However, NRS
8 116.31032(1) specifically states that the transition of control happens when 90% of the units have
9 been conveyed, "[r]egardless of the period provided in the declaration." *See* NRS 116.31032(1).
10 Therefore, as stated by the statute, regardless of the fact that §2.19 of the Association's CC&Rs states
11 that control of the Association shall transition from declarant to the membership 60 days after 75% of
12 the units have been conveyed, pursuant to NRS 116.31032(1)(b) transition of control is not required
13 until 90% of the Association's units have been conveyed. To agree with Plaintiff's argument would
14 be to disregard the language of NRS 116.31032(1), which allows the declarant to retain control of a
15 community association with 1,000 or more units until 90% of units have been conveyed. To require
16 Declarant to transition of control of the Association prior to 90% of the units being conveyed would
17 be a violation of NRS 116.31032(1)(b), which specifically states that the Declarant may maintain
18 control as, by Plaintiff's own admission, only 79.88% of the Association's units have been conveyed.

19 Plaintiff's argument that NRS 116.31032(1)(b) simply creates a ceiling for when control of a
20 community association must transition is erroneous. NRS 116.31032(1)(b) does not create a ceiling,
21 it creates an absolute threshold. By the language of NRS 116.31032(1)(b) even if a community
22 association's declaration states that control shall not transition till 100% of the units have been
23 conveyed, control of the community association will transition when 90% of the units have been
24 conveyed. By the same token even if a community association's declaration says that control of the
25 community association shall transition when 10% of the units have been conveyed, the transition of
26 control is not required to occur till 90% of the units have been conveyed.

27 NRS 116.1104 supports an interpretation of NRS 116.31032(1)(b) which requires triggers the
28 transition of control at the 90% threshold. NRS 116.1104 states:

1
2 **NRS 116.1104 Provisions of chapter may not be varied by agreement,**
3 **waived, or evaded; exceptions.** Except as expressly provided in this
4 chapter, its provisions may not be varied by agreement, and rights
5 conferred by it may not be waived. Except as otherwise provided in
6 paragraph (b) of subsection 2 of NRS 116.12075, a declarant may not act
under a power of attorney, or use any other device, to evade the limitations
or prohibits of this chapter or the declaration.

7 NRS 116.1104 states that the provisions of NRS 116 may not be varied by agreement. This means that
8 NRS 116.31032(1)(b) may not be varied by the Association's CC&Rs. Which is to say that the
9 Association's CC&Rs must be treated the same as every other association declaration. This ensures
10 that association declarations are interpreted and enforced in a consistent manner. As NRS
11 116.31032(1)(b) states that transition of control does not occur until 90%, the threshold for transition
12 is 90%, regardless of what is in the Association's CC&Rs. For this reason, Declarant is not required
13 to transition control of the Association to the membership before 90% of the units have been conveyed
14 simply because its CC&Rs contain a provision that states transition shall occur at 75%.

15 Plaintiff's arguments in this matter utterly fail to properly interpret and apply NRS
16 116.31032(1)(b). Plaintiff's argument that the 90% threshold is a ceiling utterly disregards the
17 language of NRS 116.31032(1)(b), which states the statute supersedes the provisions contained in an
18 association's declaration. Moreover, Plaintiff's argument absolutely lacks any analysis of NRS
19 116.1104 and whether NRS 116.1104 requires the Court to apply NRS 116.31032(1)(b) to the
20 Association's CC&Rs in the same manner it would any other declaration. For these reasons, Plaintiff's
21 argument is meritless.

22
23 **ii. NRS 116.1206 Does Apply Retroactively and the Contract Clause of the**
24 **United States and Nevada Constitutions Does Not Prohibit Application of**
25 **NRS 116.1206 to the Association's CC&Rs**

26 Plaintiff's argument that NRS 116.1206 does not apply to this matter and thus NRS
27 116.31032(1)(b) does not govern, stems from the argument that the Association's CC&Rs were
28 created in 1999, prior to when NRS 116.1206 was enacted in 2003. Plaintiff also argues that the

1 Contract Clause of the United States and Nevada Constitutions prohibit the Court from applying NRS
2 116.1206 to the Association’s CC&Rs.

3 First and foremost, Plaintiff argument that NRS 116.1206 does not apply because NRS
4 116.1206 was passed in 2003 is a blatant misrepresentation of NRS 116.1206’s legislative history.
5 NRS 116.1206 was first added to NRS in 1991 and then amended thereafter in 1999, 2003, 2009, and
6 2011. *See Exhibit [] – Printout of Statute language.* Therefore, Plaintiff’s arguments that the CC&Rs
7 supersede NRS 116.1206 because NRS 116.1206 was not in effect when the CC&Rs were created are
8 inaccurate and simply wrong.

9 Nonetheless, Plaintiff’s argument still fails because it has already been rejected by Nevada’s
10 Supreme Court. In *U.S. Bank National Association as Trustee for GSAA Home Equity Trust 2006-5 v.*
11 *Pawlik*, 136 Nev. 889, 461 P.3d 157 (Nev. 2020), the Nevada Supreme Court held in relevant part:

12
13 Appellants contend that the HOA elected to foreclose on only the
14 subpriority portion of its lien based on a mortgage protection clause
15 contained in the HOA’s CC&Rs. In particular, appellants contend that NRS
16 116.1104, which took effect in 1992 and which invalidates mortgage
17 protection clauses, does not apply retroactively and therefore cannot
18 invalidate the mortgage protection clause at issue in this case. *Cf. SFR Invs.*
19 *Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 757-58, 334 P.3d 408, 418-
20 19 (2014) (holding that NRS 116.1104 prohibits an HOA governed by the
21 Uniform Common Interest Ownership Act from using its CC&Rs to
22 perpetually waive its statutory superpriority lien right).

23 We disagree. **In 1999, the Legislature amended the Uniform Common**
24 **Interest Ownership Act to clarify that CC&R provisions in common-**
25 **interest communities created before 1992 that conflicted with the Act’s**
26 **provisions were deemed to conform to the Act.** *See* 1999 Nev. Stat., ch.
27 572, § 16.5, at 2999 (amending NRS 116.1206 to provide that “[a]ny
28 declaration, bylaw or other governing document of a common-interest
community shall be deemed to conform with those provisions”). Thus, after
1999, the HOA’s CC&Rs were deemed to conform with the Act, such that
the mortgage protection clause was no longer enforceable in light of NRS
116.1104. *SFR Invs.*, 130 Nev. At 757-58, 334 P.3d at 418-19. (Emphasis
added).

1 *Pawlik*, 136 Nev. 889, 461 P.3d 157 (Nev. 2020), evidences that the Nevada Supreme Court
2 has already decided that pursuant to NRS 116.1206 that an declaration/CC&R provisions that are in
3 conflict with the Uniform Common Interest Ownership Act (the “Act”), codified as NRS 116, must
4 be read to conform to the provisions of the Act and NRS 116. Plaintiff’s argument that NRS 116.1206
5 and NRS 116.31032(1)(b) do not apply in this situation, because NRS 116.1206 is not retroactive are
6 blatantly false and such arguments have already been rejected by the Nevada Supreme Court.

7 Further, it is reasonable to assume that if the Nevada Supreme Court believes that provisions
8 of association CC&Rs created prior to 1992 should conform to NRS 116, then the Nevada Supreme
9 Court also believes that §2.19 of the Association CC&Rs, created in 1999, should also conform to
10 NRS 116, including NRS 116.31032(1)(b). The holding in *Pawlik*, 136 Nev. 889, 461 P.3d 157 (Nev.
11 2020) also evidences that the Nevada Supreme Court does not find NRS 116.1206 to be in violation
12 of the Contract Clause of the Unites States and Nevada Constitutions, because the Court did not strike
13 NRS 116.1206 down in *Pawlik*.

14 A plain reading of NRS 116.1206 also supports the conclusion that NRS 116.1206 applies
15 regardless of the date the CC&Rs were created as NRS 116.1206 states in relevant part:

16 **NRS 116.1206 Provisions of governing document in violation of chapter**
17 **deemed to conform with chapter by operation of law; procedure for**
18 **certain amendments to governing documents.**

19 **1.** Any provisions contained in a declaration, bylaw or other governing
20 document of a common-interest community that violates the provisions of
21 this chapter:

22 (a) Shall be deemed to conform with those provisions by operation of
23 law, and any such declaration, bylaw or other governing document is
24 not required to be amended to conform to those provisions.

25 (b) Is superseded by the provisions of this chapter, regardless of
26 whether the provision contained in the declaration, bylaw or other
27 governing document became effective before the enactment of the
28 provision of this chapter that is being violated.

When the language of a statute is plain and subject to only one interpretation, courts are required to
give effect to that meaning and will not consider outside sources beyond that statute. *State Farm v.*
State Farm Mut. Auto Ins. Co., 116 Nev. 290, 995 P.2d 482, 285 (Nev. 2000) (overturned on other

1 grounds). The language of NRS 116.1206 is plain and is subject to only one interpretation, that CC&R
2 provisions are to conform to NRS 116. Therefore, Plaintiff's argument that NRS 116.1206 does not
3 apply retroactively is defeated by the plain language of the statute which says that any provisions
4 contained in a declaration are superseded by the provisions of NRS 116 regardless of whether the
5 provisions contained in the declaration became effective before the enactment of the provisions of
6 NRS 116.

7 For these reasons, NRS 116.1206 and NRS 116.31032(1)(b) apply to the Association's
8 CC&Rs, regardless of the fact that the CC&Rs may or may not have been created before NRS
9 116.1206 was enacted. Plaintiff's motion should be denied in its entirety.

10 **e. Plaintiff Will Not Suffer Irreparable Harm If His Motion for Temporary Restraining**
11 **Order and Preliminary Injunction Is Denied**

12 Plaintiff argues that his right of self-determination will be violated if control of the Association
13 is not transferred from Declarant to the Association's membership and if the membership is denied
14 the right to elect their own representative to the Board. However, Plaintiff's argument fails to
15 sufficiently evidence that Plaintiff is in possession of the right of self-determination in this matter.

16 NRS 116 anticipates that for a period of time homeowners living within community-interest
17 associations will not have the right to self-determination of their associations. This is evidenced by
18 the fact that declarants are granted the right to control the associations they are building until a specific
19 percentage of units have been conveyed to unit owners other than the declarant. Until the thresholds
20 in NRS 116.31032 are reached the membership of associations have not been granted or conveyed the
21 right to self-determination. In this matter the provisions of NRS 116.31032 dictate that Plaintiff and
22 his fellow unit owners do not have the right to elect their owner officers and executive board members
23 till 90% of the units have been conveyed to unit owners. As Plaintiff argues only 79.88% of the
24 Association has been transferred to the unit owners, Plaintiff is not yet in possession of the right to
25 self-determination he claims is being violated. This means that Plaintiff currently is not nor in danger
26 of having his right to self-determination violated in this matter. For this reason, Plaintiff has not and
27 is not in danger of suffering irreparable harm which would require the defendants to be enjoined from
28

1 operating the Association. Plaintiff's claims and allegations in this matter are meritless and his motion
2 should be denied.

3 Moreover, even if Plaintiff's meritless arguments were upheld, Plaintiff's attempt to enjoin the
4 upcoming unit owner election is not even the correct remedy to effectuate the outcome Plaintiff
5 purports to seek. The upcoming election, the date of which has not even been set, is for the annual
6 election of unit owners to the non-declarant appointed seats on the Association's board of directors
7 because a third of the board is comprised of unit owners elected by the Association's membership.
8 These seats have been filled through the vote of Association unit owners for many years and that is
9 what is being planned to occur again this year. The seats at issue are up for election by the membership
10 regardless of whether transition from declarant control occurs. When it is time for transition from
11 declarant control to occur (*i.e.*, once 90% of the units that may be created have been sold to unit owners
12 other than the declarant) the declarant appointed seats, seats that are not being filled by the upcoming
13 election, are then filled by an election of the units owners that occurs within 60 days of the date that
14 90% of the units in the Association are conveyed. However, the unit owner seats that will be filled by
15 the upcoming election are not impacted by the transition election. *See* NRS 116.31032. Thus, there
16 are no legitimate arguments that the upcoming unit owner election should not be permitted to move
17 forward on the basis that election of all seats should occur because allowing the unit owners to fill the
18 unit owner seats via election causes no harm.

19 **f. The Balance of Hardships and the Public Interest Tips in the Association's,**
20 **Declarant's and the Executive Board's Favor**

21 Plaintiff argues that the alleged violation of his right to self-determination is more important
22 than the hardships the Association, Declarant, and the Association's Executive Board would endure
23 if his motion were to be granted. Plaintiff's argument, however, is utterly self-serving and fails to take
24 into consideration the obligations and fiduciary duties imposed upon the Association, Declarant, and
25 Board.

26 Pursuant to NRS 116.3103, the Board has a fiduciary duty to act in the best interest of the
27 Association. This fiduciary duty encompasses the Board's responsibilities to enforce the Association's
28 governing documents, ensure that the Association's contractual obligations, including paying its

1 vendors (e.g. landscapers, security personnel, Association management, etc.), are fulfilled, and
2 collecting assessments from the Association which are used to finance the maintenance, repair, and
3 upkeep of the Association's common areas, which includes the various amenities the Association
4 provides to its membership. If this Court were to grant Plaintiff's Motion and enjoin the Defendants
5 from conducting any Association business, the Association would default on its contractual
6 obligations, cease to collect assessments, and be unable to enforce the Association's governing
7 documents without first obtaining an order from the Court. As the Association is a non-profit
8 corporation it would be ridiculous to require the Association to cease conducting business and
9 fulfilling its obligations, especially in light of the fact, as argued above, that Plaintiff has failed to
10 present any evidence to support his argument that as of this moment he has a right of self-
11 determination in relation to the Association's Board election.

12 Furthermore, it is in the public interest to allow declarants to maintain control of common-
13 interest community associations until the vast majority of the units have been conveyed to other
14 owners. While declarants exercise significant control over community associations, without such
15 control declarant efforts to build homes and establish community associations could be impeded by
16 homeowners whose interests do not center on building homes and establishing communities. In
17 addition, creating a community association represents a significant investment of money, effort, and
18 manpower. If the fruits of such investment are allowed to be impeded based upon the grounds Plaintiff
19 sets forth then declarants have less incentive to build homes during a time when homes are needed.
20 For this reason, the public interest tips in the Defendants' favor. For these reasons, Plaintiff's motion
21 should be denied in its entirety.

22 **V. CONCLUSION**

23 In summary, despite Plaintiff's arguments he is unlikely to enjoy success on the merits, he will
24 not suffer irreparable harm if the defendants are not enjoined as requested, and public policy does not
25 tip in Plaintiff's favor. NRS 116.31032(1)(b) states that the threshold that must be reached for the
26 transition of control from a declarant to an association's unit owners is when 90% of the Association's
27 units have been conveyed to unit owners. NRS 116.31032 expressly allows Declarant to disregard
28 §2.19 of the Association's CC&Rs because NRS 116.1206 and NRS 116.1104 require that the

1 Association's CC&Rs conform with NRS 116, which includes NRS 116.31032(1)(b). Moreover,
2 while Plaintiff states that he has a right to self-determination in relation to the Association's operation,
3 he fails to cite to any legal authority which confers onto him such a right at this time. Furthermore,
4 impeding Declarant from operating the Association, which aids in the development and improvements
5 of the Association as a whole is not in the public interest. For these reasons, Plaintiff's Motion must
6 be DENIED in its entirety.

7 Dated this November 27, 2023.

8
9 **CLARKSON MCALONIS & O'CONNOR P.C.**

10 */s/ Shawn D. Johnson*

11

ADAM H. CLARKSON, ESQ.

12 Nevada Bar No. 10003

13 MATTHEW J. MCALONIS, ESQ.

14 Nevada Bar No. 11203

15 SHAWN D. JOHNSON, ESQ.

16 Nevada Bar No. 14552

17 CLARKSON MCALONIS & O'CONNOR P.C.

18 *Attorneys for Defendant*

19 *Southern Highlands Community Association*
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 27 of November 2023, I served a true and correct copy of: **SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION'S OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ON AN ORDER SHORTENING TIME** by serving the following parties via

Odyssey File & Serve:

DAVID M. DOTO, ESQ.
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Attorneys for Plaintiff Michael Kosor, Jr.

/s/ Ashley Livingston
Ashley Livingston
An Employee of The Clarkson Law Group, P.C.

EXHIBIT 1

Case Information

A-20-825485-C | Michael Kosor, Jr., Plaintiff(s) vs. Southern Highlands Community Association, Defendant(s)

Case Number	Court	Judicial Officer
A-20-825485-C	Department 7	Chio, Danielle
File Date	Case Type	Case Status
11/24/2020	Other Real Property	Dismissed

Party

Plaintiff
 Kosor, Michael, Jr.
 Address
 c/o Barron & Pruitt
 North Las Vegas NV 89031

Active Attorneys ▼
 Lead Attorney
 Pruitt, William H.
 Retained

Attorney
 Meservy, Joseph R.
 Retained

Plaintiff
 McCarley, Howard C.
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 North Las Vegas NV 89031

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Attorney
 Meservy, Joseph R.
 Retained

Defendant
 Southern Highlands Community Association

Active Attorneys ▼
 Lead Attorney
 Jones, Jon Randall
 Retained

Attorney
Kerr, Gregory P.
Retained

Attorney
Levine, Madison S.
Retained

Attorney
Rulis, Nathanael R., ESQ
Retained

Disposition Events

09/29/2022 Judgment ▼

Judicial Officer
Bell, Linda Marie

Judgment Type
Voluntary Dismissal

Monetary Judgment

Debtors: Michael Kosor, Jr. (Plaintiff), Howard C. McCarley (Plaintiff)

Creditors: Southern Highlands Community Association (Defendant)

Judgment: 09/29/2022 Docketed: 10/03/2022

10/18/2022 Judgment ▼

Judicial Officer
Bell, Linda Marie

Judgment Type
Judgment

Monetary Judgment

Debtors: Michael Kosor, Jr. (Plaintiff), Howard C. McCarley (Plaintiff)

Creditors: Southern Highlands Community Association (Defendant)

Judgment: 10/18/2022 Docketed: 10/19/2022

Total Judgment: \$67,782.44

10/21/2022 Judgment ▼

Judicial Officer
Bell, Linda Marie

Judgment Type
Judgment

Monetary Judgment

Debtors: Michael Kosor, Jr. (Plaintiff), Howard C. McCarley (Plaintiff)

Creditors: Southern Highlands Community Association (Defendant)

Judgment: 10/21/2022 Docketed: 10/25/2022

Total Judgment: \$80,333.44

01/23/2023 Judgment ▼

Judicial Officer
Bell, Linda Marie

Judgment Type
Judgment

Monetary Judgment

Debtors: Michael Kosor, Jr. (Plaintiff), Howard C. McCarley (Plaintiff)

Creditors: Southern Highlands Community Association (Defendant)

Judgment: 01/23/2023 Docketed: 10/19/2022

Total Judgment: \$45,129.94

Events and Hearings

11/24/2020 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD (CIV)

Comment

[1] IAFD

11/24/2020 Complaint ▼

Complaint - COMP (CIV)

Comment

[2] Complaint

11/30/2020 Summons Electronically Issued - Service Pending ▼

Comment

[3] Summons

12/01/2020 Order Shortening Time ▼

Order Shortening Time

Comment

[4] Application for Temporary Restraining Order with Notice and Motion for Preliminary Injunction on OST

12/02/2020 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD (CIV)

Comment

[5] Initial Appearance Fee Disclosure

12/02/2020 Certificate of Service ▼

Certificate of Service - CSERV (CIV)

Comment

[6] Certificate of Service of Application for Temporary Restraining Order with Notice and Motion for Preliminary Injunction on Order Shortened Time

12/02/2020 Certificate of Service ▼

Certificate of Service - CSERV (CIV)

Comment

[7] Certificate of Service of Application for Temporary Restraining Order with Notice and Motion for Preliminary Injunction on Order Shortened Time

12/02/2020 Motion to Dismiss ▼

Motion to Dismiss

Comment

[8] MOTION TO DISMISS PURSUANT TO NRCP 19, FOR FAILURE TO JOIN AN INDISPENSABLE PARTY, ON ORDER SHORTENING TIME

12/04/2020 Proof of Service ▼

Proof of Service - PSER (CIV)

Comment

[9] Proof of Service of Summons and Complaint

12/08/2020 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

[10] Southern Highlands Community Association's Opposition to Motion for Preliminary Injunction

12/08/2020 Opposition ▼

Opposition - OPPS (CIV)

Comment

[11] Plaintiffs' Opposition to Defendant's Motion to Dismiss

12/10/2020 Reply to Opposition ▼

Reply to Opposition - ROPP (CIV)

Comment

[12] Southern Highlands Community Association's Reply to Opposition to Motion to Dismiss

12/10/2020 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[13] Plaintiffs' Reply in Support of Application for Temporary Restraining Order with Notice and Motion for Preliminary Injunction

12/11/2020 Request for Judicial Notice ▼

Request for Judicial Notice - RFJN (CIV)

Comment

[14] Southern Highlands Community Association's Request for Judicial Notice

12/14/2020 Errata ▼

Errata - ERR (CIV)

Comment

[15] Plaintiffs' Errata to Their Opposition to Defendant's Motion to Dismiss

12/14/2020 Errata ▼

Errata - ERR (CIV)

Comment

[16] Plaintiffs' Errata to Their Reply in Support of Application for Temporary Restraining Order with Notice and Motion for Preliminary Injunction

12/15/2020 Preliminary Injunction Hearing ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

10:30 AM

Result

Moot

Comment

TRO/Preliminary Injunction Hearing on OST

12/15/2020 Motion to Dismiss ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

10:30 AM

Result

Motion Denied

12/15/2020 All Pending Motions ▼

All Pending Motions

Judicial Officer

Wiese, Jerry A.

Hearing Time

10:30 AM

Result

Matter Heard

Parties Present ▲

Plaintiff

Attorney: Pruitt, William H.

Plaintiff

Attorney: Pruitt, William H.

01/15/2021 Order ▼

Order

Comment

[17] Order RE: Motion to Dismiss Or. in the Alternative, to Force Joinder of Necessary Party Pursuant to NRCP 19

01/19/2021 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[18] Notice of Entry of Order

01/20/2021 Status Check ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason

Vacated

Comment

Status Check: Submission/Filing of Order (Preliminary Injunction and Motion to Dismiss)

01/25/2021 Amended Complaint ▼

Amended Complaint - ACOM (CIV)

Comment

[19] Amended Complaint Requesting Injunctive and Declaratory Relief

01/26/2021 Errata ▼

Errata - ERR (CIV)

Comment

[20] Errata to Amended Complaint Requesting Injunctive and Declaratory Relief

03/17/2021 Certificate of Service ▼

Certificate of Service - CSERV (CIV)

Comment

[21] Certificate of Service of Amended Complaint Requesting Injunctive and Declaratory Relief

03/17/2021 Certificate of Service ▼

Certificate of Service - CSERV (CIV)

Comment

[22] Certificate of Service of Errata to Amended Complaint Requesting Injunctive and Declaratory Relief

03/17/2021 Summons Electronically Issued - Service Pending ▼

Comment

[23] Summons to Southern Highlands Development Corporation

03/25/2021 Affidavit of Service ▼

Affidavit of Service - AOS (CIV)

Comment

[24] Summons and Affidavit of Service of Southern Highlands Development Corporation

04/13/2021 Notice of Appearance ▼

Notice of Appearance - NOTA (CIV)

Comment

[25] Notice of Appearance

04/13/2021 Motion to Dismiss ▼

Motion to Dismiss - MDSM (CIV)

Comment

[26] Defendant Southern Highlands Development Corporation's Motion to Dismiss Plaintiffs' Amended Complaint Requesting Injunctive and Declaratory Relief

04/13/2021 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[27] Notice of Hearing

04/13/2021 Joinder To Motion ▼

Joinder To Motion - JMOT (CIV)

Comment

[28] Defendant Southern Highlands Community Association's Joinder to Defendant Southern Highlands Development Corporation s Motion to Dismiss Plaintiffs Amended Complaint

04/30/2021 Opposition ▼

Opposition - OPPS (CIV)

Comment

[29] Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' Amended Complaint Requesting Injunctive and Declaratory Relief

05/12/2021 Reply ▼

Reply - RPLY (CIV)

Comment

[30] Defendant Southern Highlands Community Association's Reply and Joinder to Defendant Southern Highlands Development Corporation's Reply to Opposition to Motion to Dismiss Plaintiffs' Amended Complaint

05/12/2021 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[31] Defendant Southern Highlands Development Corporation's Reply in Support of its Motion to Dismiss Plaintiffs' Amended Complaint Requesting Injunctive and Declaratory Relief

05/27/2021 Motion to Dismiss ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

10:30 AM

Result

Granted in Part

Comment

Defendant Southern Highlands Development Corporation's Motion to Dismiss Plaintiffs' Amended Complaint Requesting Injunctive and Declaratory Relief

05/27/2021 Joinder ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

10:30 AM

Result

Granted in Part

Comment

Defendant Southern Highlands Community Association's Joinder to Defendant Southern Highlands Development Corporation s Motion to Dismiss Plaintiffs Amended Complaint

05/27/2021 All Pending Motions ▼

All Pending Motions

Judicial Officer

Wiese, Jerry A.

Hearing Time

10:30 AM

Result

Matter Heard

Parties Present ▲

Plaintiff

Attorney: Meservy, Joseph R.

Defendant

Attorney: Rulis, Nathanael R., ESQ

Plaintiff

Attorney: Meservy, Joseph R.

05/28/2021 Order ▼

Order

Comment
[32] ORDER

06/02/2021 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment
[33] Notice of Entry of Order Granting in Part and Denying in Part, Defendant Southern Highlands Development Corporation's Motion to Dismiss Plaintiffs' Amended complaint Requesting Injunctive and Declaratory Relief

06/11/2021 Answer to Amended Complaint ▼

Answer to Amended Complaint - ANAC (CIV)

Comment
[34] Defendant Southern Highlands Development Corporation's Answer to Amended Complaint Requesting Injunctive and Declaratory Relief

06/16/2021 Answer to Amended Complaint ▼

Answer - ANS (CIV)

Comment
[35] Defendant Southern Highlands Community Association's Answer to Amended Complaint

07/01/2021 Notice ▼

Notice - NOTC (CIV)

Comment
[36] Plaintiffs' Notice of Telephonic 16.1 Early Case Conference

07/30/2021 Joint Case Conference Report ▼

Joint Case Conference Report - JCCR (CIV)

Comment
[37] Joint Case Conference Report

08/06/2021 Mandatory Rule 16 Conference Order ▼

Order - ORDR (CIV)

Comment
[38] Mandatory Rule 16 Conference Order

09/17/2021 Order ▼

Order - ORDR (CIV)

Comment

[39] AMENDED MANDATORY RULE 16 CONFERENCE ORDER

09/30/2021 Mandatory Rule 16 Conference ▼

Minutes - Mandatory Rule 16 Conference

Judicial Officer

Wiese, Jerry A.

Hearing Time

1:00 PM

Result

Trial Date Set

10/08/2021 Scheduling and Trial Order ▼

Scheduling and Trial Order - SCHTO (CIV)

Comment

[40] Scheduling Order and Order Setting Civil Non-Jury Trial

01/05/2022 Status Report ▼

Status Report - SR (CIV)

Comment

[41] Joint Status Report

01/10/2022 Motion for Summary Judgment ▼

Motion - MOT (CIV)

Comment

[42] Plaintiff's Motion for Summary Judgment

01/11/2022 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[43] Notice of Hearing

01/14/2022 Stipulation and Order to Extend Discovery Deadlines ▼

Stipulation and Order to Extend Discovery Deadlines

Comment

[44] Stipulation and Order for Extension of Discovery Deadlines

01/18/2022 Minute Order ▼

Minute Order

Judicial Officer
Wiese, Jerry A.

Hearing Time
3:00 AM

Result
Minute Order - No Hearing Held

01/19/2022 Status Check: Negotiations/Trial Setting ▼

Judicial Officer
Wiese, Jerry A.

Hearing Time
9:00 AM

Cancel Reason
Vacated

01/28/2022 Opposition to Motion For Summary Judgment ▼

Opposition to Motion For Summary Judgment - OMSJ (CIV)

Comment
[45] Defendant Southern Highlands Development Corporation's Opposition to Plaintiffs' Motion for Summary Judgment

01/28/2022 Joinder ▼

Joinder - JOIN (CIV)

Comment
[46] Defendant Southern Highlands Community Association s Joinder to Defendant Southern Highlands Development Corporation s Opposition to Plaintiff s Motion for Summary Judgment

01/28/2022 Appendix ▼

Appendix - APEN (CIV)

Comment
[47] Appendix Of Exhibits In Support Of Defendant Southern Highlands Development Corporation's Opposition To Plaintiffs' Motion For Summary Judgment-Vol. 4

01/28/2022 Appendix ▼

Appendix - APEN (CIV)

Comment
[48] Appendix Of Exhibits In Support Of Defendant Southern Highlands Development Corporation's Opposition To Plaintiffs' Motion For Summary Judgment

01/28/2022 Appendix ▼

Appendix - APEN (CIV)

Comment

[49] Appendix Of Exhibits In Support Of Defendant Southern Highlands Development Corporation's Opposition To Plaintiffs' Motion For Summary Judgment-Vol. 2

01/28/2022 Appendix ▼

Appendix - APEN (CIV)

Comment

[50] Appendix Of Exhibits In Support Of Defendant Southern Highlands Development Corporation's Opposition To Plaintiffs' Motion For Summary Judgment-Vol. 3

02/16/2022 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[51] Plaintiffs' Reply in Support of Their Motion for Summary Judgment

02/18/2022 Order ▼

Order

Comment

[52] Order Re: Plaintiffs' Motion for Summary Judgment

02/18/2022 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[53] Notice of Entry of Order Re: Plaintiffs' Motion for Summary Judgment

02/23/2022 Motion for Summary Judgment ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason

Vacated - Previously Decided

Comment

[42] Plaintiff's Motion for Summary Judgment

02/23/2022 Joinder ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

9:00 AM

Cancel Reason

Vacated - Previously Decided

Comment

Defendant Southern Highlands Community Association s Joinder to Defendant Southern Highlands Development Corporation s Opposition to Plaintiff s Motion for Summary Judgment

04/22/2022 Stipulation and Order ▼

Stipulation and Order

Comment

[54] STIPULATION AND ORDER FOR EXTENSION OF DISCOVERY DEADLINES AND CONTINUANC EOF TRIAL (SECOND REQUEST)

04/22/2022 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

[55] Notice of Entry of Stipulation and Order to Extend Deadlines

04/28/2022 Amended Order Setting Civil Non-Jury Trial ▼

Amended Order Setting Civil Non-Jury Trial - ACNJ (CIV)

Comment

[56] Amended Order Setting Civil Non-Jury Trial

05/06/2022 Order ▼

Order - ORDR (CIV)

Comment

[57] AMENDED ORDER SETTING CIVIL JURY TRIAL

06/02/2022 Motion ▼

Motion

Comment

[58] PLAINTIFFS' MOTION FOR VOLUNTARILY DISMISSAL WITHOUT PREJUDICE PURSUANT TO NRCP 41(a)(2)

06/06/2022 Order Shortening Time ▼

Order Shortening Time

Comment

[59] Defendant Southern Highlands Development Corporation's Motion to Continue Hearing on Plaintiffs' Motion for Voluntary Dismissal Without Prejudice Pursuant to NRCP 41(a)(2) on Order Shortening Time Motion to Continue Hearing on Plaintiffs' Motion for Voluntary Dismissal on OST

06/07/2022 Joinder To Motion ▼

Joinder - JOIN (CIV)

Comment

[60] Defendant Southern Highlands Community Associations Joinder to Defendant Southern Highlands Development Corporations Motion to Continue Hearing on Plaintiffs Motion for Voluntary Dismissal Without Prejudice Pursuant to NRCP 41(a)(2) On Order Shortening Time

06/07/2022 Opposition to Motion ▼

Opposition - OPPS (CIV)

Comment

[61] Plaintiffs' Opposition to Defendant Southern Highlands Development Corporation's Motion to Continue Hearing on Plaintiffs' Motion for Voluntary Dismissal Without Prejudice and Defendant Southern Highlands Community Association's Joinder Thereto

06/08/2022 Motion to Continue ▼

Minutes - Motion to Continue

Judicial Officer(s)

Wiese, Jerry A., Crockett, Jim

Hearing Time

9:00 AM

Result

Granted

Comment

Defendant Southern Highlands Development Corporation's Motion to Continue Hearing on Plaintiffs' Motion for Voluntary Dismissal Without Prejudice Pursuant to NRCP 41(a)(2) on Order Shortening Time

Parties Present ▲

Plaintiff

Attorney: Meservy, Joseph R.

Defendant

Attorney: Kerr, Gregory P.

Attorney: Levine, Madison S.

Plaintiff

Attorney: Meservy, Joseph R.

06/17/2022 Order ▼

Order

Comment

[62] Order Granting Defendant Southern Highlands Development Corporation's Motion to Continue Hearing on Plaintiffs' Motion for Voluntary Dismissal Without Prejudice Pursuant to NRCP 41(a)(2) On Order Shortening Time

06/20/2022 Opposition and Countertermotion ▼

Opposition - OPPS (CIV)

Comment

[63] Defendant Southern Highlands Community Associations 1) Limited Opposition To Plaintiffs Motion To Dismiss; 2) Partial Joinder To Co-Defendant SHDCs Limited Opposition To Motion To Dismiss And 3) Countertermotion For Fees And Costs

06/20/2022 Opposition and Countertermotion ▼

Opposition and Countertermotion - OPPC (CIV)

Comment

[64] Defendant Southern Highlands Development Corporation's Limited Opposition to Plaintiffs' Motion for Voluntarily Dismissal Without Prejudice Pursuant to NRCP 41(a)(2) and Counter-Motion for Fees and Costs

06/20/2022 Appendix ▼

Appendix - APEN (CIV)

Comment

[65] Appendix of Exhibits in Support of Defendant Southern Highlands Development Corporation's Limited Opposition to Plaintiffs' Motion for Voluntarily Dismissal Without Prejudice Pursuant to NRCP 41(a)(2) and Counter-Motion for Fees and Costs Vol. 2 of 2

06/20/2022 Appendix ▼

Appendix - APEN (CIV)

Comment

[66] Appendix of Exhibits in Support of Defendant Southern Highlands Development Corporation's Limited Opposition to Plaintiffs' Motion for Voluntarily Dismissal Without Prejudice Pursuant to NRCP 41(a)(2) and Counter-Motion for Fees and Costs (Volume 1 of 2)

06/21/2022 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[67] Notice of Entry of Order Granting Defendant Southern Highlands Development Corporation's Motion to Continue Hearing on Plaintiffs' Motion for Voluntarily Dismissal Without Prejudice Pursuant to NRCP 41(a)(2) on Order Shortening Time

07/05/2022 Case Reassigned to Department 7 ▼

Comment

Pursuant to Administrative Order 22-09 - Case Reassigned from Judge Jerry A. Wiese to Judge Linda Marie Bell

07/05/2022 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment
[68] RIS and OPP

07/05/2022 Appendix ▼

Appendix - APEN (CIV)

Comment
[69] Appendix of Exhibits to Plaintiffs' Reply in Support of Their Motion for Voluntarily Dismissal without Prejudice Pursuant to NRCP 41(a)(2) and Opposition to Defendants' Countermotions for Costs and Fees

07/08/2022 Stipulation and Order ▼

Stipulation and Order

Comment
[70] 2022.07.01 SAO for Extension to File Reply

07/08/2022 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment
[71] Notice of Entry of Stipulation and Order to Extend

07/13/2022 Reply to Opposition ▼

Reply to Opposition - ROPP (CIV)

Comment
[72] Southern Highlands Community Association's Reply to Plaintiff's Opposition to Association's Counter Motion for Fees and Costs

07/13/2022 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment
[73] Defendant Southern Highlands Development Corporation's Reply in Support of its Counter-Motion for Fees and Costs

07/20/2022 Motion ▼

Judicial Officer
Bell, Linda Marie

Hearing Time
9:00 AM

Result
Granted With Prejudice

Comment
PLAINTIFFS' MOTION FOR VOLUNTARILY DISMISSAL WITHOUT PREJUDICE PURSUANT TO NRCP 41(a)(2) ON ORDER SHORTING TIME

Parties Present ▲

Plaintiff

Attorney: Pruitt, William H.

Defendant

Attorney: Jones, Jon Randall

Plaintiff

Attorney: Pruitt, William H.

07/20/2022 Opposition and Countermotion ▼

Judicial Officer

Bell, Linda Marie

Hearing Time

9:00 AM

Result

Granted in Part

Comment

Defendant Southern Highlands Development Corporation's Limited Opposition to Plaintiffs' Motion for Voluntarily Dismissal Without Prejudice Pursuant to NRCP 41(a)(2) and Counter-Motion for Fees and Costs

Parties Present ▲

Plaintiff

Attorney: Pruitt, William H.

Defendant

Attorney: Jones, Jon Randall

Plaintiff

Attorney: Pruitt, William H.

07/20/2022 Opposition and Countermotion ▼

Judicial Officer

Bell, Linda Marie

Hearing Time

9:00 AM

Result

Granted

Comment

Defendant Southern Highlands Community Associations 1) Limited Opposition To Plaintiffs Motion To Dismiss; 2) Partial Joinder To Co-Defendant SHDCs Limited Opposition To Motion To Dismiss And 3) Countermotion For Fees And Costs

Parties Present ▲

Plaintiff

Attorney: Pruitt, William H.

Defendant

Attorney: Jones, Jon Randall

Plaintiff

Attorney: Pruitt, William H.

07/20/2022 All Pending Motions ▼

Minutes - All Pending Motions

Judicial Officer

Bell, Linda Marie

Hearing Time

9:00 AM

Result

Matter Heard

Parties Present ▲

Plaintiff

Attorney: Pruitt, William H.

Defendant

Attorney: Jones, Jon Randall

Plaintiff

Attorney: Pruitt, William H.

08/01/2022 Bench Trial ▼

Judicial Officer

Wiese, Jerry A.

Hearing Time

10:30 AM

Cancel Reason

Vacated

09/01/2022 Notice of Change of Hearing ▼

Notice of Change of Hearing - NOCH (CIV)

Comment

[74] Notice of Change of Hearing

09/19/2022 Minute Order ▼

Minute Order

Judicial Officer

Bell, Linda Marie

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

09/21/2022 Status Check ▼

Judicial Officer

Bell, Linda Marie

Hearing Time

9:00 AM

Cancel Reason

Vacated - per Judge

Comment

Status Check: Decision

09/29/2022 Decision and Order ▼

Decision and Order

Comment

[75] A-20-825485-C Decision and Order

09/30/2022 Notice of Hearing ▼

Notice of Hearing - NOH (CIV)

Comment

[76] Notice of Hearing

09/30/2022 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[77] Notice of Entry of Order

10/18/2022 Judgment ▼

Judgment

Comment

[78] Judgment

10/18/2022 Notice of Entry of Judgment ▼

Notice of Entry of Judgment - NJUD (CIV)

Comment

[79] Notice of Entry of Judgment

10/19/2022 Pre Trial Conference ▼

Judicial Officer

Bell, Linda Marie

Hearing Time

9:00 AM

Cancel Reason

Vacated

10/21/2022 Judgment ▼

Judgment

Comment

[80] Judgment

10/21/2022 Notice of Entry of Judgment ▼

Notice of Entry of Judgment - NJUD (CIV)

Comment

[81] Notice of Entry of Judgment

10/26/2022 Motion to Amend ▼

Motion - MOT (CIV)

Comment

[82] Plaintiffs' Motion to Amend Findings of Fact Under NRCP 52(b) and to Amend Decision and Order and Judgment Under NRCP 59

10/26/2022 Appendix ▼

Appendix - APEN (CIV)

Comment

[83] Appendix of Exhibits to Plaintiffs' Motion to Amend Findings of Fact under NRCP 52(b) and to Amend Decision and Order and Judgment under NRCP 59

10/27/2022 Motion to Stay ▼

Motion to Stay - MSTY (CIV)

Comment

[84] Plaintiffs' Motion to Stay Execution of Judgment Pending Disposition of Motions to Amend Findings of Fact Under NRCP 52(b) and to Amend Decision and Order and Judgment Under NRCP 59

10/31/2022 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[85] Notice of Hearing

10/31/2022 Notice of Appeal ▼

Notice of Appeal - NOAS (CIV)

Comment
[86] Notice of Appeal

10/31/2022 Case Appeal Statement ▼

Case Appeal Statement - ASTA (CIV)

Comment
[87] Case Appeal Statement

11/09/2022 Opposition ▼

Opposition - OPPS (CIV)

Comment
[88] Defendant Southern Highlands Development Corporation's Opposition to Plaintiffs' Motions to Amend Findings of Fact Under NRCP 52(b) and to Amend Decision and Order and Judgment Under NRCP 59

11/09/2022 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment
[89] Southern Highlands Community Association's Opposition to Plaintiffs' Motion to Amend Findings of Fact Under NRCP 52(B) and to Amend Judgment Under NRCP 59

11/10/2022 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment
[90] Defendant Southern Highlands Community Associations Opposition of Plaintiffs Motion to Stay Execution of Judgment Pending Disposition of Motions to Amend Findings of Fact Under NRCP 52(b) and to Amend Decision and Order and Judgment Under NRCP 59

11/10/2022 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment
[91] Defendant Southern Highlands Development Corporation's Opposition to Plaintiffs' Motion to Stay Execution of Judgment Pending Disposition of Motions to Amend Findings of Fact Under NRCP 52(b) and to Amend Decision and Order and Judgment Under NRCP 59

11/30/2022 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment
[92] RIS Motion to Stay

11/30/2022 Reply in Support ▼

Reply in Support - RIS (CIV)

Comment

[93] RIS Motion to Amend

12/07/2022 Motion to Amend ▼

Judicial Officer

Bell, Linda Marie

Hearing Time

9:00 AM

Result

Granted in Part

Comment

Plaintiffs' Motion to Amend Findings of Fact Under NRCP 52(b) and to Amend Decision and Order and Judgment Under NRCP 59

Parties Present ▲

Plaintiff

Attorney: Meservy, Joseph R.

Defendant

Attorney: Jones, Jon Randall

Attorney: Rulis, Nathanael R., ESQ

Plaintiff

Attorney: Meservy, Joseph R.

12/07/2022 Motion to Stay ▼

Judicial Officer

Bell, Linda Marie

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Plaintiffs' Motion to Stay Execution of Judgment Pending Disposition of Motions to Amend Findings of Fact Under NRCP 52(b) and to Amend Decision and Order and Judgment Under NRCP 59

12/07/2022 All Pending Motions ▼

Minutes - All Pending Motions

Judicial Officer

Bell, Linda Marie

Hearing Time

9:00 AM

Result

Matter Heard

Parties Present ▲

Plaintiff

Attorney: Meservy, Joseph R.

Defendant

Attorney: Jones, Jon Randall

Attorney: Rulis, Nathanael R., ESQ

Plaintiff

Attorney: Meservy, Joseph R.

12/28/2022 Calendar Call ▼

Judicial Officer

Bixler, James

Hearing Time

9:00 AM

Cancel Reason

Vacated

01/03/2023 Bench Trial ▼

Judicial Officer

Bell, Linda Marie

Hearing Time

9:00 AM

Cancel Reason

Vacated

01/03/2023 Administrative Reassignment - Judicial Officer Change ▼

Comment

Pursuant to Administrative Order 22-14 - Reassigned to Vacant DC 7

01/06/2023 Minute Order ▼

Minute Order

Judicial Officer

Bell, Linda Marie

Hearing Time

9:45 AM

Result

Minute Order - No Hearing Held

Comment

Minute Order Re: Decision

01/10/2023 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

[94] Recorders Transcript of All Pending Motion 12/7/22

01/23/2023 Order ▼

Order

Comment

[95] Order Denying Plaintiffs' Motion to Amend Findings of Fact under NRCP 52(b) and Granting in Part Plaintiffs' Motion to Amend the Final Order and Judgment under NRCP 59

01/23/2023 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

[96] Notice of Entry of Order Denying Plaintiffs' Motion to Amend Findings of Fact Under NRCP 52(b) and Granting in Part Plaintiffs' Motion to Amend the Final Order and Judgment Under NRCP 59

02/21/2023 Amended Notice of Appeal ▼

Amended Notice of Appeal - ANOA (CIV)

Comment

[97] Amended Notice of Appeal

03/02/2023 Order Shortening Time ▼

Order Shortening Time

Comment

[98] Notice Of Motion; Order Shortening Time

03/15/2023 Notice of Non Opposition ▼

Notice of Non Opposition - NNOP (CIV)

Comment

[99] Southern Highlands Community Associations Notice of Non-Opposition to Plaintiffs' Motion to Set Supersedes Bond and to Stay Execution of Judgments Pending Resolution of Plaintiffs' Appeal on OST

03/16/2023 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment

[100] Defendant Southern Highlands Development Corporation's Limited Opposition To Plaintiffs' Motion To Set Supersedeas Bond And Stay Execution Of Judgments Pending Resolution Of Plaintiffs' Appeal On Order Shortening Time

03/17/2023 Notice ▼

Notice - NOTC (CIV)

Comment

[101] Notice of Intent to Appear Via BlueJeans

03/20/2023 Administrative Reassignment - Judicial Officer Change ▼

Comment

Pursuant to Administrative Order 23-03 - Reassigned to Judge Danielle Chio

03/20/2023 Notice to Appear ▼

Notice to Appear - NTA (CIV)

Comment

[102] Defendant Southern Highlands Development Corporation's Notice of Intent to Appear by Simultaneous Audiovisual Transmission Equipment

03/20/2023 Notice ▼

Notice - NOTC (CIV)

Comment

[103] Plaintiffs' Notice of Intent to Appear by Simultaneous Audiovisual Transmission Equipment

03/21/2023 Motion ▼

Minutes - Motion

Judicial Officer
Chio, Danielle

Hearing Time
9:00 AM

Result
Off Calendar

Comment

Plaintiffs' Motion to Set Supersedeas Bond and Stay Execution of Judgments Pending Resolution of Plaintiffs' Appeal on Order Shortening Time

Parties Present ▲

Plaintiff

Attorney: Meservy, Joseph R.

Defendant

Attorney: Rulis, Nathanael R., ESQ

Plaintiff

Attorney: Meservy, Joseph R.

03/22/2023 Stipulation and Order ▼

Stipulation and Order

Comment

[104] Stipulation and Order to Set Supersedeas Bond and Stay Execution of any final order or Judgment pending appeal

03/23/2023 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

[105] Notice of Entry of Order

03/27/2023 Notice of Posting Bond ▼

Notice of Posting Bond - NPP (CIV)

Comment

[106] Notice of Posting Supersedeas Bond

04/04/2023 Notice ▼

Notice - NOTC (CIV)

Comment

[107] Notice of Release of judgment Lien

04/19/2023 Request ▼

Request - REQT (CIV)

Comment

[108] Request for Transcripts

05/12/2023 Court Recorders Invoice for Transcript ▼

Court Recorders Invoice for Transcript

Comment

[109]

05/26/2023 Recorders Transcript of Hearing ▼

Recorders Transcript of Hearing - RTRAN (CIV)

Comment

[110] Recorder's Transcript of Proceedings Re: All Pending Motions hear July 20, 2022

08/07/2023 Notice ▼

Notice - NOTC (CIV)

Comment

[111] Defendant Southern Highlands Community Association's Notice of Disassociation of Counsel Bradley S. Schrage, Esq.

08/18/2023 Motion for Attorney Fees and Costs ▼

Motion for Attorney Fees and Costs - MAFC (CIV)

Comment

[112] Defendant Southern Highlands Development Corporation's Motion for Supplemental Fees and Costs

08/18/2023 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[113] Clerk's Notice of Hearing

08/24/2023 Motion for Fees ▼

Motion for Fees - MFEE (CIV)

Comment

[114] Defendant Southern Highlands Community Association's Motion for Supplemental Fees and Costs

08/24/2023 Stipulation and Order ▼

Stipulation and Order

Comment

[115] Stipulation and Order to Release Supersedeas Bond

08/24/2023 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

[116] Notice of Entry of Stipulation and Order to Release Supersedeas Bond

08/30/2023 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment

[117] Clerk's Notice of Hearing

08/30/2023 Notice of Rescheduling of Hearing ▼

Notice

Comment

[118] Notice of Rescheduled Hearing

09/05/2023 Stipulation and Order ▼

Stipulation and Order

Comment

[119] Stipulation And Order For Extension Of Briefing Schedule Regarding Defendants' Motions For Supplemental Fees And Costs

09/05/2023 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

[120] Notice of Entry od Stipulation and Order for Extension of Briefing Schedule Regarding Defendants' Motons for Supplemental Fees and Costs

09/28/2023 Opposition ▼

Opposition - OPPS (CIV)

Comment

[121] Plaintiffs' Opposition to Defendant Southern Highlands Development Corporation's Motion for Supplemental Fees and Costs

10/05/2023 Opposition ▼

Opposition - OPPS (CIV)

Comment

[122] Plaintiffs' Opposition to Defendant Southern Highlands Community Association's Motion for Supplemental Fees and Costs

10/31/2023 Stipulation and Order ▼

Stipulation and Order

Comment

[124] Stipulation and Order for Continuance of Hearing Regarding Defendants' Motions for Supplemental Fees and Costs

11/01/2023 Notice of Entry ▼

Notice of Entry - NEO (CIV)

Comment

[125] Notice of Entry of Stipulation and Order

11/02/2023 Motion for Attorney Fees and Costs ▼

Judicial Officer

Chio, Danielle

Hearing Time

9:00 AM

Cancel Reason

Vacated - per Stipulation and Order

Comment

Defendant Southern Highlands Development Corporation's Motion for Supplemental Fees and Costs

11/02/2023 Motion for Fees ▼

Judicial Officer
Chio, Danielle

Hearing Time
9:00 AM

Cancel Reason
Vacated - per Stipulation and Order

Comment
Defendant Southern Highlands Community Association's Motion for Supplemental Fees and Costs

11/08/2023 Motion ▼

Motion - MOT (CIV)

Comment
[126] Motion for Relief from Judgments

11/08/2023 Clerk's Notice of Hearing ▼

Clerk's Notice of Hearing - CNOC (CIV)

Comment
[127] Clerk's Notice of Hearing

11/20/2023 Court Recorders Invoice for Transcript ▼

Court Recorders Invoice for Transcript

Comment
[128]

11/22/2023 Opposition to Motion ▼

Opposition to Motion - OPPM (CIV)

Comment
[129] Defendant Southern Highlands Development Corporation's Opposition to Plaintiffs' Motion for Relief from Judgments

11/22/2023 Joinder ▼

Joinder - JOIN (CIV)

Comment
[130] Defendant Southern Highlands Community Association's Joinder to Co-Defendant Southern Highlands Development Corporation's Opposition to Plaintiff's Motion for Relief from Judgments

12/12/2023 Motion ▼

Judicial Officer
Chio, Danielle

Hearing Time
9:00 AM

Comment

Plaintiffs' Motion for Relief from Judgments

12/12/2023 Joinder ▼

Judicial Officer

Chio, Danielle

Hearing Time

9:00 AM

Comment

Defendant Southern Highlands Community Association's Joinder to Co-Defendant Southern Highlands Development Corporation's Opposition to Plaintiff's Motion for Relief from Judgments

Financial

Kosor, Michael, Jr.

Total Financial Assessment

\$447.40

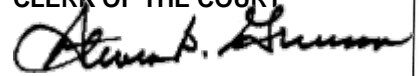
Total Payments and Credits

\$447.40

11/25/2020	Transaction Assessment			\$300.00
11/25/2020	Efile Payment	Receipt # 2020-67026-CCCLK	Kosor, Michael	(\$300.00)
10/31/2022	Transaction Assessment			\$24.00
10/31/2022	Efile Payment	Receipt # 2022-63471-CCCLK	Kosor, Michael	(\$24.00)
11/15/2022	Transaction Assessment			\$5.00
11/15/2022	Payment (Window)	Receipt # 2022-66560-CCCLK	WRSSR	(\$5.00)
2/1/2023	Transaction Assessment			\$10.00
2/1/2023	Payment (Window)	Receipt # 2023-06945-CCCLK	Dawson Nygard	(\$10.00)
5/12/2023	Transaction Assessment			\$108.40
5/19/2023	Payment (Mail)	Receipt # 2023-39961-CCCLK	Barron Vivone Holland & Pruitt	(\$108.40)

Southern Highlands Community Association

EXHIBIT 2



CASE NO: A-20-825485-C
Department 30

1 **COMP**
2 **WILLIAM H. PRUITT, ESQ.**
3 Nevada Bar No. 6783
4 **JOSEPH R. MESERVY, ESQ.**
5 Nevada Bar No. 14088
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11 E-Mail: jmeservy@lvnvlaw.com
12 *Attorneys for Plaintiffs*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 MICHAEL KOSOR, JR., a Nevada resident;
10 HOWARD CHARLES MCCARLEY, a Nevada
resident; DOES I through X, inclusive,
11 Plaintiffs,

12 vs.

13 SOUTHERN HIGHLANDS COMMUNITY
14 ASSOCIATION; DOES I through X, inclusive,
15 Defendants.

Case No:

Dept. No:

**COMPLAINT REQUESTING
INJUNCTIVE AND DECLARATORY
RELIEF**

*(Exempt from Arbitration, Declaratory Relief
Requested)*

16 Plaintiffs, Michael Kosor, Jr. and Howard Charles McCarley, by and through their attorneys,

17 Barron & Pruitt, LLP, hereby complains and alleges against the above named Defendant as follows:

18 **I. INTRODUCTION**

19 1. This is an action for declaratory and injunctive relief to enjoin Southern Highlands
20 Community Association (SHCA), its executive board, and its agents from further implementing and
21 carrying out an election on or about **December 3, 2020** for the SHCA executive board *without*
22 including the election of each executive board position currently appointed by Southern Highlands
23 Development Corporation ("Declarant").

24 **II. JURISDICTION**

25 2. This Court has original jurisdiction over this action pursuant to Nevada Const. art. VI,
26 § 6, as the matter is excluded by law from the original jurisdiction of justice courts.

27 ///

28 ///

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III. PARTIES

3. Plaintiff MICHAEL KOSOR, JR. is a resident of Clark County, Nevada and the owner of a home within the Southern Highlands master-planned community, to which he pays regular dues. Mr. Kosor is also a candidate for a director position on the SHCA executive board.

4. Plaintiff HOWARD CHARLES MCCARLEY, is a resident of Clark County, Nevada and the owner of a home within the Southern Highlands master-planned community, to which he pays regular dues.

5. Defendant Southern Highlands Community Association (SHCA) is a homeowners association formed to represent the interest of the Southern Highlands master-planned community in Clark County, Nevada.

IV. FACTUAL ALLEGATIONS

6. That more than twenty years ago, on or about January 6, 2000, the developer, the Declarant caused to be recorded a Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements (CC&Rs) for Southern Highlands. *See* CC&R's attached as **Exhibit A**.

7. That pursuant to section 2.32 of the original CC&Rs, the maximum number of units approved for development in Southern Highlands was 9,000.

8. That pursuant to section 2.19 of the original CC&Rs and article 4, section 4.2(c) of the SHCA Bylaws, the Declarant's control over the SHCA, including its appointment of three of the five SHCA board members, shall terminate 60 days after the Declarant has conveyed 75% of the maximum units. *See* SHCA Bylaws attached as **Exhibit B**. Likewise, pursuant to NRS 116.31032, once a statutorily prescribed percentage of the maximum units were created to owners other than the Declarant, declarant control of the SHCA shall terminate within 60 days.

9. In Nevada, amendment of a declaration is governed by NRS 116.2117, which states in pertinent part that the declaration "**may be amended only by vote or agreement of the units' owners of units** to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments ... If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval ... **Amendments to the declaration . . . must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence**

1 **of designation, by the president of the association.”** (emphasis added). *Cf.* NRS 116.3103(2)(a)
2 (“The executive board may not act to . . . amend the declaration.”)

3 10. Additionally, under NRS 116.2122, a declarant may amend its declaration if the right
4 to do so is preserved therein; however, **“the declarant may not in any event increase the number**
5 **of units in the planned community beyond the number stated in the original declaration[.]”**
6 (emphasis added).

7 11. Despite the foregoing restrictions on increasing the number of units in a planned
8 community, Declarant attempted to amend section 2.32 of the CC&Rs unilaterally, by executing a
9 “Third Amendment” to the CC&Rs on September 27, 2005 and recording the same on October 6,
10 2005. *See* “Third Amendment” attached as **Exhibit C**. That “Third Amendment” purported to
11 unilaterally increase the maximum number of units approved for development in Southern Highlands
12 from 9,000 to 10,400.

13 12. Declarant’s attempted “Third Amendment” was invalid *ab initio*, as it failed to satisfy
14 the conditions of NRS 116.2117. The attempted “Third Amendment” was not voted upon nor adopted
15 by the majority of the Southern Highlands unit owners. Because the proposed amendment was never
16 voted upon nor adopted, it was and remains invalid. NRS 116.2117(1); *see also* NRS 116.1206.
17 Furthermore, the attempted “Third Amendment” was not prepared, executed, recorded, or certified on
18 behalf of the SHCA by any officer of the SHCA. NRS 116.2117(5); *see also* NRS 116.1206; *but see*
19 NRS 116.3103(2)(a). Also, the attempted “Third Amendment” was, on its face, an attempt by the
20 declarant to perform the statutorily prohibited act of increasing the number of units in the Southern
21 Highlands community beyond the number stated in the original declaration. NRS 116.2122; *see also*
22 NRS 116.1206.

23 13. That effective October 1, 2015, NRS 116.31032 was amended by the legislature such
24 that the threshold was increased from 75 percent to 90 percent for terminating or relinquishing
25 declarant control of a common-interest community with 1,000 units or more through conveyance of
26 units created to unit’s owners other than declarant. This amendment (AB 192-2015) was enacted after
27 lobbying efforts by the Declarant and, upon belief, as a result Nevada became the first state in the
28 nation to establish a declarant control change threshold above 75 percent.

1 14. That NRS 116.093 (substituted in revision for NRS 116.11039) defines a “Unit” as “a
2 physical portion of the common-interest community *designated* for separate ownership or
3 occupancy[.]”

4 15. That the broad definition of “Unit” contained in NRS 116.093 includes, but is not
5 necessarily limited to, (1) residential units, (2) apartments, and (3) commercial units designated for
6 separate ownership or occupancy, regardless of whether or not they have been already permitted by
7 Clark County, constructed, and/or occupied.

8 16. That the Department of Comprehensive Planning for Clark County has determined that
9 as of September 11, 2019, the total number of units on record within Southern Highlands was 9,363.
10 *See* Email Correspondence attached as **Exhibit D**. This 9,363 units figure exceeds 90 percent of both
11 the un-adopted and improperly executed and recorded 10,400 number (90.02%) or the original 9,000
12 number (104.03%) of maximum units. Accordingly, the threshold for termination of the declarant
13 control period under NRS 116.31032, section 2.19 of the CC&Rs, and section 4.2(c) of the SHCA
14 Bylaws has been triggered.

15 17. That the Department of Comprehensive Planning for Clark County has determined that
16 as of October 13, 2020, the total number of units on record within Southern Highlands was 9,564. *See*
17 Email Correspondence attached as **Exhibit E**. This 9,564 unit figure exceeds 90 percent of both the
18 un-adopted and improperly executed and recorded 10,400 number (91.96%) or the original 9,000
19 number (106.27%) of maximum units. Accordingly, the threshold for termination of the declarant
20 control period under NRS 116.31032, section 2.19 of the CC&Rs, and section 4.2(c) of the SHCA
21 Bylaws has been triggered.

22 18. That the first date that the threshold for terminating declarant control was triggered
23 remains unclear at present; however, based on data released by Clark County, there is good reason to
24 believe that the threshold was triggered at least as early as September 11, 2019. Moreover, it is
25 possible, although presently unclear to Plaintiffs, that the declarant control period should have
26 terminated prior to the effective date of the amendment of NRS 116.31032, when the statutory
27 threshold for triggering the termination of declarant control was 75 percent of the maximum units.
28

1 28. That contrary to NRS 116.31034(1), the SHCA executive board has informed in its
2 communications to owners that it will provide a timely election for only one director position to the
3 SHCA executive board and continue to allow the three Declarant-appointed directors currently
4 serving on the SHCA executive board to exercise control over the SHCA executive board.

5 29. That, absent court intervention, on or around December 3, 2020, the SHCA
6 executive board will conduct an election for only one director position, divesting owners of their
7 right to elect all directors who will serve on the SHCA executive board upon termination of the
8 declarant control period. *See* Email Correspondence attached as **Exhibit F**.

9 30. That, absent emergent court intervention and as a consequence of the SHCA
10 executive board conducting a limited election, owners will suffer irreparable harm for which no
11 adequate remedy at law exists and be deprived of their right to choose executive board candidates
12 who will best represent their interests on the executive board.

13 31. That, absent emergent court intervention and as a consequence of the SHCA
14 executive board conducting a limited election, a limited election will perpetuate an improper
15 extension of the declarant control period, during which decisions contrary to the rightful interests of
16 the owners will be made.

17 32. That State of Nevada ex. rel. Nevada Real Estate Division (NRED) was notified of
18 the foregoing conditions, but has yet to formally respond to Plaintiff Kosor’s formal complaint.

19 33. If allowed to proceed according to plan, SHCA will hold an election on or about
20 December 3, 2020 that will divest owners of their right to choose each director on the SHCA
21 executive board. Nevada statutory law, the CC&Rs, and the SHCA Bylaws each require SHCA
22 hold a fair election among owners for each SHCA executive board position replacing those
23 currently appointed by the Declarant—prior to the end of the declarant control period.

24 34. Accordingly, injunctive and declaratory relief is required directing SHCA’s
25 compliance in conducting an election, wherein the owners choose each director on the SHCA
26 executive board.

27 35. Plaintiffs’ claims are timely and they have no avenue for relief outside of court.

28 ///

///

**Second Claim for Relief
Violation of Fiduciary Duty
NRS 116.3103, et seq.**

1
2
3 36. Plaintiffs repeat and reallege each of the averments set forth in Paragraphs 1 through
4 35 as though fully set forth herein.

5 37. That pursuant to NRS 116.3103(1), the SHCA executive board are fiduciaries required
6 to act on an informed basis, in good faith, and in the honest belief that their actions are in the best
7 interest of the association. And that pursuant to NRS 116.3103(2), the SHCA executive board may
8 not act to amend the declaration.

9 38. That the SHCA executive board failed to act in good faith and in the honest belief that
10 their actions are in the best interest of the association by failing to undertake any meaningful effort to
11 dispute the validity of the “Third Amendment” or, alternatively, to meaningfully cure the missing
12 owner’s vote/adoption of the “Third Amendment” and unauthorized execution and recordation of the
13 “Third Amendment.”

14 39. That the SHCA executive board has failed to act in good faith and in the honest belief
15 that their actions are in the best interest of the association by failing to alert the owners of the accurate
16 unit count relevant to the period of declarant control and the timing of its termination by Nevada law,
17 the SHCA Bylaws, and the CC&Rs.

18 40. Accordingly, as a matter of declaratory relief, an order should issue directing the SHCA
19 executive board to provide notice to the owners of the accurate unit count relevant to the period of
20 declarant control and the timing of its termination by Nevada law, the SHCA Bylaws, and the CC&Rs.

21 41. Plaintiffs’ claims are timely and they have no avenue for relief outside of court.

**Third Claim for Relief
Attorney Fees as Special Damages**

22 42. Plaintiffs repeats and realleges each of the averments set forth in Paragraphs 1
23 through 41 as though fully set forth herein.

24 43. Plaintiff Kosor has repeatedly attempted to notify SHCA executive board, its
25 counsel, and its agents of the rogue and invalid *ab initio* “Third Amendment” and the Department
26 of Comprehensive Planning for Clark County’s determinations concerning the total number of units
27 on record within Southern Highlands. Mr. Kosor has also repeatedly attempted to notify SHCA
28

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1 executive board that the threshold for terminating the Declarant’s control over the SHCA executive
2 board has been met and that SHCA has an obligation to provide for the election of all executive
3 board positions.

4 44. That SHCA executive board and its agents have repeatedly declined to address the
5 invalid *ab initio* “Third Amendment” and/or provide for the election of all SHCA executive board
6 positions or the relinquishment of the Declarant’s control.

7 45. That the SHCA executive board’s actions demonstrate that it intends to provide for
8 the election of only one SHCA executive board position and the continuance of Declarant-
9 appointed directors on the SHCA executive board.

10 46. As a consequence of the SHCA executive board’s actions to perpetuate the
11 Declarant’s control over the SHCA executive board and the divestment of the owners’ right to elect
12 the SHCA executive board, Mr. Kosor has been forced to retain counsel to represent Plaintiffs’
13 interests as Southern Highlands homeowners at personal expense to himself.

14 47. Accordingly, Plaintiff Kosor seeks an award of attorney’s fees and costs against
15 SCHA in having to engage counsel and file a legal action to secure the requested relief for the
16 owners.

17 **VI. REQUEST FOR RELIEF**

18 WHEREFORE, Plaintiffs respectfully requests that the Court issue the following relief:

- 19 (A) A declaration of the rights of Plaintiffs, including a declaration that the threshold unit count
20 for the termination of the Declarant’s control over the SHCA has been met;
- 21 (B) A temporary restraining order or preliminary injunction enjoining Defendant, and all
22 persons and entities acting under their direction or in concert with them from conducting the
23 election of a single director position on December 3, 2020, as currently intended by the
24 SHCA executive board;
- 25 (C) An order directing the SHCA executive board to provide notice to the owners that the
26 threshold for termination of the Declarant’s control has been met and to provide for an
27 election of all SHCA executive board positions (save for the sole mid-term elected director)
28 as soon as possible and no later than January 30, 2021;
- (D) An award of attorney fees, expenses, and costs incurred in prosecuting this lawsuit; and

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(E) All other and further relief as the Court deems proper.

DATED this 24th day of November, 2020.

BARRON & PRUITT, LLP



WILLIAM H. PRUITT, ESQ.
Nevada Bar No. 6783
JOSEPH R. MESERVY, ESQ.
Nevada Bar No. 14088
3890 West Ann Road
North Las Vegas, NV 89031
Attorneys for Plaintiffs

VERIFICATION

1 STATE OF NEVADA)
) ss.
2 COUNTY OF CLARK)

3 I, MICHAEL KOSOR, under penalty of perjury, being first duly sworn, depose and say:

4 That I am MICHAEL KOSOR, a Plaintiff in the above referenced matter. I have read the
5 foregoing **COMPLAINT REQUESTING INJUNCTIVE AND DECLARATORY RELIEF** and I
6 know and/or believe all the allegations contained therein that I have personal knowledge of to be true.
7 I believe the allegation contained therein that I do not have personal knowledge of to be true based on
8 specified information, documents, or both.

9
10
11 
MICHAEL KOSOR

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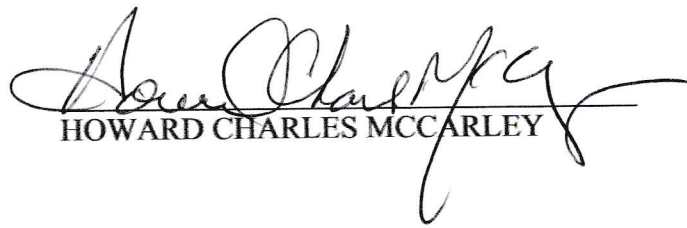
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VERIFICATION

1 STATE OF NEVADA)
) ss.
2 COUNTY OF CLARK)

3 I, HOWARD CHARLES MCCARLEY, under penalty of perjury, being first duly sworn,
4 depose and say:

5 That I am HOWARD CHARLES MCCARLEY, a Plaintiff in the above referenced matter. I
6 have read the foregoing **COMPLAINT REQUESTING INJUNCTIVE AND DECLARATORY**
7 **RELIEF** and I know and/or believe all the allegations contained therein that I have personal
8 knowledge of to be true. I believe the allegation contained therein that I do not have personal
9 knowledge of to be true based on specified information, documents, or both.

10
11 
12 HOWARD CHARLES MCCARLEY

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KOSOR v. SHCASOC.
EXHIBITS TO
COMPLAINT

EXHIBIT 3

1 **MDSM**
DON SPRINGMEYER, ESQ.
2 Nevada Bar No. 1021
BRADLEY S. SCHRAGER, ESQ.
3 Nevada Bar No. 10217
GREGORY P. KERR, ESQ.
4 Nevada Bar No. 10383
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bschrager@wrslawyers.com
8 gkerr@wrslawyers.com

9 *Attorneys for Defendant,*
Southern Highland Community Association

10
11 **EIGHTH JUDICIAL DISTRICT COURT**
IN AND FOR CLARK COUNTY, STATE OF NEVADA

12 MICHAEL KOSOR, JR., a Nevada resident;
13 HOWARD CHARLES MCCARLEY, a
14 Nevada resident; DOES I through X,
inclusive,

15 Plaintiffs,

16 v.

17 SOUTHERN HIGHLANDS COMMUNITY
18 ASSOCIATION; DOES I through X,
inclusive,

19 Defendant.

Case No. A-20-825485-C
Dept. No.: 30

**MOTION TO DISMISS PURSUANT
TO NRCP 19, FOR FAILURE TO JOIN
AN INDISPENSABLE PARTY, ON
ORDER SHORTENING TIME**

21 Defendant SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION (“SHCA”) moves
22 this Court for an order either directing Plaintiffs to name indispensable party Southern Highlands
23 Development Corp. (the “Declarant”), or to dismiss the action pursuant to NRCP 19. The motion is
24 based upon all pleadings, papers, and exhibits on file herein, the memorandum of points and
25 authorities below, and any argument the Court sees fit to allow at hearing on the matter. This
26 motion is brought on a request for order shortening time, because Plaintiffs’ application for a
27 temporary restraining order has already been ordered heard on such a basis, and is set for
28 December 15, 2020, at 10:30 a.m.

ORDER SHORTENING TIME

The Court having read and considered the below Declaration in Support of Order Shortening Time, and good cause appearing therefore, IT IS HEREBY ORDERED that the hearing on the **MOTION TO DISMISS PURSUANT TO NRCP 19, FOR FAILURE TO JOIN AN INDISPENSABLE PARTY, ON ORDER SHORTENING TIME**, is hereby

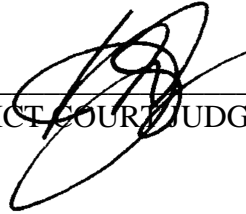
shortened to the 15th day of December, 2020, at the hour of 10:30A.
Dated this 2nd day of December, 2020

DATED this ____ day of December, 2020.

Opposition Due 12/8/20

Reply Due 12/10/20

DISTRICT COURT JUDGE



Submitted by:

/s/ Bradley S. Schrager
**WOLF, RIFKIN, SHAPIRO,
SHULMAN & RABKIN, LLP**
DON SPRINGMEYER, ESQ.
Nevada Bar No. 1021
BRADLEY S. SCHRAGER, ESQ.
Nevada Bar No. 10217
GREGORY P. KERR, ESQ.
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Las Vegas, Nevada 89120
3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120

CDA 765 4047 34CF
Jim Crockett
District Court Judge

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Plaintiffs in this action have failed to name as a defending party the developer of the
3 association, Declarant SOUTHERN HIGHLANDS DEVELOPMENT CORP., whose statutory
4 control period is the gravamen of the entire action. Though styled as an action to halt a regularly-
5 and properly-scheduled Board of Directors election, each element of the claims made by
6 Plaintiffs is based, at bottom, upon the purported actions or alleged inaction of the Declarant.

7 Specifically, the Complaint seeks orders of the Court directing action by SHCA based
8 upon an erroneous interpretation of whether the threshold for termination of Declarant control
9 has been met. This is, essentially, the entire basis of the suit, from which all prayers for relief
10 flow. *See* Complaint, 5-8.

11 In other words, Plaintiffs are asking the Court to direct SHCA to take action—improper
12 and incorrect action, unsupported by law or equity—based upon a theory regarding what the
13 Declarant did or did not do, or what its status and interests are, without the Declarant being
14 present to defend its own interests. A ruling for Plaintiffs would essentially be a ruling against
15 Declarant’s control interests, or that the Declarant has acted unlawfully, without opportunity to
16 be heard and participate.

17 NRCP 19 reads, in pertinent part,

18 (a) **Persons Required to Be Joined if Feasible.**

19 (1) **Required Party.** A person who is subject to service of process
20 and whose joinder will not deprive the court of subject-matter jurisdiction must
21 be joined as a party if:

22 (A) in that person’s absence, the court cannot accord complete relief
23 among existing parties; or

24 (B) that person claims an interest relating to the subject of the action
25 and is so situated that disposing of the action in the person’s absence may:

26 (i) as a practical matter impair or impede the person’s ability to
27 protect the interest; or

28 (ii) leave an existing party subject to a substantial risk of
incurring double, multiple, or otherwise inconsistent obligations because of the
interest.

Plaintiffs’ Complaint is replete with references, allegations, and claims that directly
affect the interests of Declarant. For example, Plaintiffs pray for a declaration of their rights that

1 “the threshold unit count for the termination of Declarant’s control over the SHCA has been
2 met.” Complaint, 8. This is a classic instance in which—whatever Plaintiffs believe their rights
3 to be—the Court cannot properly make any such declaration of rights as currently framed
4 because the rights they seek declared are either as between them and Declarant, or between
5 SHCA and declarant. In either event, it is not conceivable that this matter proceeds without
6 Declarant’s participation, as due process would be gravely offended. This is the essence of Rule
7 19.

8 Obviously, Declarant has, pursuant to NRCP 19, an interest in its rights as Declarant, and
9 it is not plausible that proceeding in this action as pled would not “impair or impede” its “ability
10 to protect the interest. NRCP 19(a)(1)(B)(i). And even hypothetically, SHCA is in no position to
11 comply with the demands for relief made by Plaintiffs without exposing itself to the potential for
12 additional litigation and exposure to inconsistent judgments, obligations, and proceedings.
13 NRCP 19(a)(1)(B)(ii). Plaintiffs are asking SHCA to act as if Declarant’s control has already
14 been ruled unlawful, which is clearly not the case, and SHCA declines expressly to entertain
15 such a rash and improper demand.

16 “If in equity and good conscience the action cannot proceed without the necessary party,
17 that party is ‘indispensable’ and the case must be dismissed.” *Potts v. Vokits*, 101 Nev. 90, 92,
18 692 P.2d 1304 (1985). Here, if Plaintiffs wish to force judicial consideration of whether
19 Declarant must relinquish or terminate control pursuant to law, they are free to attempt that; the
20 law and facts will be utterly against them in such a proceeding, but at least that would constitute
21 a properly-pled action. What they cannot do is run a flea-flicker that tries to achieve that goal
22 solely through current Defendant SHCA.

23 ///

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1 This is not a difficult or complicated motion; it merely points out the manifest
2 deficiencies in Plaintiffs' pleading. The Complaint speaks for itself and its flaws are clear on its
3 face.

4 For all reasons described herein, SHCA asks the Court either to direct joinder of
5 Declarant as an indispensable party or to dismiss the matter entirely.
6

7 DATED this 2nd day of December, 2020

8 **WOLF, RIFKIN, SHAPIRO,
9 SCHULMAN & RABKIN, LLP**

10 By: /s/ Bradley S. Schragger

11 DON SPRINGMEYER, ESQ.

12 Nevada Bar No. 1021

13 BRADLEY S. SCHRAGER, ESQ.

14 Nevada Bar No. 10217

15 GREGORY P. KERR, ESQ.

16 Nevada Bar No. 10383

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18 Las Vegas, Nevada 89120

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 2nd day of December, 2020, a true and correct copy of
3 **MOTION TO DISMISS** was served by electronically filing with the Clerk of the Court using
4 the Odyssey eFileNV system and serving all parties with an email-address on record, pursuant to
5 Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

6
7 By: /s/ Danielle Fresquez
8 Danielle Fresquez, an Employee of
9 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
10 RABKIN, LLP
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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Michael Kosor, Jr., Plaintiff(s) | CASE NO: A-20-825485-C
7 vs. | DEPT. NO. Department 30
8 Southern Highlands Community
9 Associaition, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/2/2020

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18 Gregory Kerr gkerr@wrslawyers.com
19 William Pruitt bpruitt@lvnvlaw.com
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22 MaryAnn Dillard mdillard@lvnvlaw.com
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EXHIBIT 4

1 **ORDR**

2 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**

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10 bschrager@wrslawyers.com

11 gkerr@wrslawyers.com

12 *Attorneys for Defendant*

13 *Southern Highlands Community Association*

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**DISTRICT COURT
EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA**

11 MICHAEL KOSOR, JR., a Nevada resident;
12 HOWARD CHARLES MCCARLEY, a
13 Nevada resident; and DOES I through X,
14 inclusive,

15 Plaintiffs,

16 vs.

17 SOUTHERN HIGHLANDS COMMUNITY
18 ASSOCIATION, and DOES I through X,
19 inclusive,

20 Defendants.

Case No. A-20-825485-C
Dept. 30

**ORDER RE: MOTION TO DISMISS OR,
IN THE ALTERNATIVE, TO FORCE
JOINDER OF A NECESSARY PARTY
PURSUANT TO NRCP 19**

21 On November 24, 2020, Plaintiffs Kosor and McCarley filed their complaint in this matter,
22 and filed an application for temporary restraining order and/or motion for preliminary injunction
23 on December 1, 2020, seeking to enjoin an election of board members of Defendant Southern
24 Highlands Community Association (the “Association”).

25 On December 2, 2020, the Association filed its motion to dismiss pursuant to NRCP 19,
26 arguing that Plaintiffs failed to name parties indispensable to resolution of this action and the
27 sought-after relief—here, the Southern Highlands Development Corporation, who developed
28 property in question and remains the current declarant of Southern Highlands (the “Declarant”).

1 On December 8, 2020, the Association filed its opposition to Plaintiffs' application for
2 temporary restraining order and/or motion for preliminary injunction.

3 Also on December 8, 2020, Plaintiffs filed their response to the Association's motion to
4 dismiss.

5 On December 10, 2020, the parties filed replies in support of their respective motions.

6 On December 15, 2020, the Court held hearing on the matter, William H. Pruitt, Esq. of
7 Barron & Pruitt, LLP appearing on behalf of Plaintiffs, and Bradley S. Schrager, Esq., of Wolf
8 Rifkin Shapiro Schulman & Rabkin LLP appearing on behalf of the Association.

9 Upon review of the papers and pleadings on file herein, the arguments of the parties, and
10 good cause appearing, Plaintiffs' application for temporary restraining order and/or motion for
11 preliminary injunction is DENIED as moot, while the Association's NRCP 19 motion is DENIED
12 IN PART and GRANTED IN PART. The Court finds the following facts and states the following
13 conclusions of law¹ as follows:

14 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

15 The Court finds that Plaintiffs' application for temporary restraining order and/or motion
16 for preliminary injunction was submitted in an attempt to stop the December 3, 2020 board
17 election of the Association from occurring. All parties agree that the election did, in fact, occur,
18 Whatever relief Plaintiffs may seek in the future on the claims and allegation contained in their
19 complaint, the object of the motion is now moot, and the Plaintiffs' application and/or motion is
20 therefore DENIED.

21 As to the Association's motion pursuant to NRCP 19 regarding Plaintiffs' failure to join a
22 party indispensable to resolution of this action, the Court agrees with the Association. The
23 gravamen of Plaintiffs' complaint is that the Declarant continues to exercise control of the board
24 of the Association after the time by which, under law, it should have devolved such control to the

25 _____
26 ¹ If any finding herein is in truth a conclusion of law, or if any conclusion is stated is in truth
27 a finding of fact, it shall be deemed so.

1 homeowner members of the Association. The Court agrees that Plaintiffs' claims implicate rights
2 and interests of the Declarant under NRS Chapter 116, so that proceeding in Declarant's absence
3 will, as a practical matter, impair and/or impede its ability to protect that interest (NRC
4 19(a)(1)(B)(i)) and threaten to leave the Association subject to a substantial risk of multiple or
5 inconsistent legal obligations (NRC 19(a)(1)(B)(ii)).

6 The Court therefore, in its discretion, declines to dismiss the action under NRC 19(b),
7 because it believes joinder of the Declarant to be feasible under the circumstances. The Court will,
8 however, order Plaintiffs to amend their complaint to join the Declarant pursuant to NRC
9 19(a)(2), within ten days of the entry of this order. The Court, therefore, DENIES IN PART and
10 GRANTS IN PART the Association's motion pursuant to NRC 19.

11 **IT IS SO ORDERED.**

Dated this 15th day of January, 2021

12 DATED this _____ day of _____, 2021.

13 
14 _____
DISTRICT COURT JUDGE

15 Submitted by:

60B 707 0E7B 6529
Jerry A. Wiese
District Court Judge

16 */s/ Bradley S. Schragger*

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

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21 Approved by:

22 */s/ Did not respond*

WILLIAM H. PRUITT, ESQ.

Nevada Bar No. 6783

23 JOSEPH R. MESERVY, ESQ.

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27 *Attorneys for Plaintiffs*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4		
5		
6	Michael Kosor, Jr., Plaintiff(s)	CASE NO: A-20-825485-C
7	vs.	DEPT. NO. Department 30
8	Southern Highlands Community	
9	Associaition, Defendant(s)	

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 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:

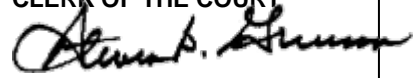
14 Service Date: 1/15/2021

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EXHIBIT 5



1 **COMP**
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12 *Attorneys for Plaintiffs*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 MICHAEL KOSOR, JR., a Nevada resident;
10 HOWARD CHARLES MCCARLEY, a Nevada
11 resident; DOES I through X, inclusive,
12 Plaintiffs,

13 vs.

14 SOUTHERN HIGHLANDS COMMUNITY
15 ASSOCIATION; SOUTHERN HIGHLANDS
16 DEVELOPMENT CORPORATION; DOES I
17 through X, inclusive,
18 Defendants.

Case No: A-20-825485-C

Dept. No: 30

**AMENDED COMPLAINT REQUESTING
INJUNCTIVE AND DECLARATORY
RELIEF**

*(Exempt from Arbitration, Declaratory Relief
Requested)*

19 Plaintiffs, Michael Kosor, Jr. and Howard Charles McCarley, by and through their attorneys,
20 Barron & Pruitt, LLP, hereby amend their complaint and allege against the above named Defendants
21 as follows:

22 **I. INTRODUCTION**

23 1. This is an action for declaratory and injunctive relief to enjoin Southern Highlands
24 Community Association (SHCA), its executive board, and its agents from further implementing and
25 carrying out elections for the SHCA executive board *without* including the election of each
26 executive board position currently appointed by Southern Highlands Development Corporation
27 (“Declarant”).

28 **II. JURISDICTION**

1. This Court has original jurisdiction over this action pursuant to Nevada Const. Art.
VI, § 6, as the matter is excluded by law from the original jurisdiction of justice courts.

///

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III. PARTIES

3. Plaintiff MICHAEL KOSOR, JR. is a resident of Clark County, Nevada and the owner of a home within the Southern Highlands master-planned community, to which he pays regular dues. Mr. Kosor was also a candidate for a director position on the SHCA executive board during the December 3, 2020 election.

4. Plaintiff HOWARD CHARLES MCCARLEY, is a resident of Clark County, Nevada and the owner of a home within the Southern Highlands master-planned community, to which he pays regular dues.

5. Defendant Southern Highlands Community Association (SHCA) is a homeowners association formed to represent the interest of the Southern Highlands master-planned community in Clark County, Nevada.

6. Defendant Southern Highlands Development Corporation (Declarant) is a domestic corporation formed under the law of the State of Nevada and headquartered in Clark County, Nevada. Declarant is the principal developer for the Southern Highlands master-planned community in Clark County, Nevada.

IV. FACTUAL ALLEGATIONS

7. That more than twenty years ago, on or about January 6, 2000, the Declarant caused to be recorded a Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements (CC&Rs) for Southern Highlands. *See* CC&R's attached as **Exhibit A**.

8. That pursuant to section 2.32 of the original CC&Rs, the maximum number of units approved for development in Southern Highlands was 9,000.

9. That pursuant to section 2.19 of the original CC&Rs and article 4, section 4.2(c) of the SHCA Bylaws, the Declarant's control over the SHCA, including its appointment of three of the five SHCA board members, shall terminate 60 days after the Declarant has conveyed 75% of the maximum units. *See* SHCA Bylaws attached as **Exhibit B**. Likewise, pursuant to NRS 116.31032, once a statutorily prescribed percentage of the maximum units were created to owners other than the Declarant, declarant control of the SHCA shall terminate within 60 days.

10. In Nevada, amendment of a declaration is governed by NRS 116.2117, which states in pertinent part that the declaration "**may be amended only by vote or agreement of the units' owners**

1 **of units** to which at least a majority of the votes in the association are allocated, unless the declaration
2 specifies a different percentage for all amendments ... If the declaration requires the approval of
3 another person as a condition of its effectiveness, the amendment is not valid without that approval ...
4 **Amendments to the declaration . . . must be prepared, executed, recorded and certified on behalf**
5 **of the association by any officer of the association designated for that purpose or, in the absence**
6 **of designation, by the president of the association.”** (emphasis added). *Cf.* NRS 116.3103(2)(a)
7 (“The executive board may not act to . . . amend the declaration.”)

8 11. Additionally, under NRS 116.2122, a declarant may amend its declaration if the right
9 to do so is preserved therein; however, **“the declarant may not in any event increase the number**
10 **of units in the planned community beyond the number stated in the original declaration[.]”**
11 (emphasis added).

12 12. Despite the foregoing restrictions on increasing the number of units in a planned
13 community, Declarant attempted to amend section 2.32 of the CC&Rs unilaterally, by executing a
14 “Third Amendment” to the CC&Rs on September 27, 2005 and recording the same on October 6,
15 2005. *See* “Third Amendment” attached as **Exhibit C**. That “Third Amendment” purported to
16 unilaterally increase the maximum number of units approved for development in Southern Highlands
17 from 9,000 to 10,400.

18 13. Declarant’s attempted “Third Amendment” was invalid *ab initio*, as it failed to satisfy
19 the conditions of NRS 116.2117. The attempted “Third Amendment” was not voted upon nor adopted
20 by the majority of the Southern Highlands unit owners. Because the proposed amendment was never
21 voted upon nor adopted, it was and remains invalid. NRS 116.2117(1); *see also* NRS 116.1206.
22 Furthermore, the attempted “Third Amendment” was not prepared, executed, recorded, or certified on
23 behalf of the SHCA by any officer of the SHCA. NRS 116.2117(5); *see also* NRS 116.1206; *but see*
24 NRS 116.3103(2)(a). Also, the attempted “Third Amendment” was, on its face, an invalid attempt by
25 the declarant to perform the statutorily prohibited act of increasing the number of units in the Southern
26 Highlands community beyond the number stated in the original declaration. NRS 116.2122; *see also*
27 NRS 116.1206.

28 14. That pursuant to section 25.5 of the CC&Rs, “[i]n the event that any provision of [the]
Declaration is found to violate such applicable provision of NRS Chapter 116, **such offending**

1 **provision of the Declaration shall be severed herefrom[.]**” (emphasis added). **Exhibit D.**
2 Accordingly, the “Third Amendment” provision purporting to unilaterally increase the maximum
3 number of units approved for development in Southern Highlands must be severed from the CC&Rs
4 because it violated provisions of NRS Chapter 116 as aforementioned.

5 15. That effective October 1, 2015, NRS 116.31032 was amended by the legislature such
6 that the threshold was increased from 75 percent to 90 percent for terminating or relinquishing
7 declarant control of a common-interest community with 1,000 units or more through conveyance of
8 units created to unit’s owners other than declarant. This amendment (AB 192-2015) was enacted after
9 lobbying efforts by the Declarant and, as a result, Nevada became the first state in the nation (upon
10 information and belief) to establish a declarant control change threshold above 75 percent.

11 16. That NRS 116.093 (substituted in revision for NRS 116.11039) defines a “Unit” as “a
12 physical portion of the common-interest community *designated* for separate ownership or
13 occupancy[.]”

14 17. That the broad definition of “Unit” contained in NRS 116.093 includes, but is not
15 necessarily limited to, (1) residential units, (2) apartments, and (3) commercial units designated for
16 separate ownership or occupancy, regardless of whether or not they have been already permitted by
17 Clark County, constructed, and/or occupied.

18 18. That the Department of Comprehensive Planning for Clark County has determined that
19 as of September 11, 2019, the total number of units on record within Southern Highlands was 9,363.
20 *See* Email Correspondence attached as **Exhibit E**. This 9,363 units figure exceeds 90 percent of both
21 the un-adopted and improperly executed and recorded 10,400 number (90.02%) or the original 9,000
22 number (104.03%) of maximum units. Accordingly, the threshold for termination of the declarant
23 control period under NRS 116.31032, section 2.19 of the CC&Rs, and section 4.2(c) of the SHCA
24 Bylaws has been triggered.

25 19. That the Department of Comprehensive Planning for Clark County has determined that
26 as of October 13, 2020, the total number of permitted units on record within Southern Highlands was
27 9,564. *See* Email Correspondence attached as **Exhibit F**. This 9,564 unit figure exceeds 90 percent
28 of both the un-adopted and improperly executed and recorded 10,400 number (91.96%) or the original
9,000 number (106.27%) of maximum units. Accordingly, the threshold for termination of the

1 declarant control period under NRS 116.31032, section 2.19 of the CC&Rs, and section 4.2(c) of the
2 SHCA Bylaws has been triggered.

3 20. That the first date that the threshold for terminating declarant control was triggered
4 remains unclear at present; however, based on data released by Clark County, there is good reason to
5 believe that the threshold was triggered at least as early as September 11, 2019. Moreover, it is
6 possible, although presently unclear to Plaintiffs, that the declarant control period should have
7 terminated prior to the effective date of the amendment of NRS 116.31032, when the statutory
8 threshold for triggering the termination of declarant control was 75 percent of the maximum units.

9 21. Nevertheless, even if the threshold for terminating declarant control was triggered on
10 October 13, 2020, the declarant's control period must end as an operation of law within 60 days
11 (December 12, 2020). *See* NRS 116.31032(1)(b).

12 22. Likewise, even if the threshold for terminating declarant control was triggered on
13 September 11, 2019, the declarant's control period must end as an operation of law within 60 days
14 (November 10, 2019). *See* NRS 116.31032(1)(b).

15 **V. CLAIMS FOR RELIEF**

16 **First Claim for Relief** 17 **Violation of CIC Law Requirement Regarding Executive Board Elections** 18 **NRS 116.31034**

19 23. Plaintiffs repeat and reallege each of the averments set forth in Paragraphs 1 through
20 22 as though fully set forth herein.

21 24. That the unit creation threshold precedent to the termination of the Declarant's
22 control over the SHCA has been satisfied. And, at present, termination of the Declarant's control is
23 overdue under the SHCA Bylaws, the CC&Rs, and Nevada law. In fact, it should have occurred
24 automatically as an operation of law.

25 25. That the Declarant has already raised the number of directors on the executive board
26 to five members as permitted by article 5, section 5.1 of the SHCA Bylaws.

27 26. That pursuant to NRS 116.31034(1), before the termination of the declarant's control
28 period, the SHCA must provide an election for an executive board of at least three members, all of
whom must be owners.

1 27. That the SHCA has failed to timely provide an election for an executive board of at
2 least three members, all of whom must be owners as required by NRS 116.31034(1).

3 28. That pursuant to NRS 116.31034(4), at least 30 days before the preparation of a
4 ballot for the election of members of the executive board, the SHCA secretary (or similarly
5 assigned officer) must cause notice to be given to each owner of the owner's eligibility to serve as a
6 member of the SHCA executive board.

7 29. That the SHCA secretary (or similarly assigned officer) has failed to timely provide
8 notice to each owner concerning the appropriate number of director positions that need to be elected
9 by the owners (at least three) and instead wrongly notified owners that a lesser number of directors
10 needed to be elected in prior elections including the December 3, 2020 election and a yet
11 undetermined number of other earlier elections.

12 30. That contrary to NRS 116.31034(1), the SHCA executive board continues to (1)
13 hold elections for less than the appropriate number of directors to the executive board and (2) allow
14 the three Declarant-appointed directors currently serving on the SHCA executive board to exercise
15 control over the SHCA executive board, divesting the rights and interests of owners to elect and
16 hold accountable all directors who will serve on the SHCA executive board upon termination of the
17 declarant control period. *See, e.g.*, Email Correspondence attached as **Exhibit G**.

18 31. That, absent emergent court intervention and as a consequence of the SHCA
19 executive board continuing to conduct limited elections, owners will suffer irreparable harm for
20 which no adequate remedy at law exists and be deprived of their right to choose executive board
21 candidates who will best represent their interests on the executive board.

22 32. That, absent emergent court intervention and as a consequence of the SHCA
23 executive board continuing to conduct limited elections in violation of NRS 116, such limited
24 elections will continue to perpetuate an improper extension of the declarant control period, during
25 which decisions contrary to the rightful interests of the owners will continue to be made.

26 33. If allowed to proceed with the status quo, SHCA will continue to hold periodic
27 elections (such as they did on December 3, 2020) that will continue to divest owners of their right to
28 choose each director on the SHCA executive board. Nevada statutory law, the CC&Rs, and the
SHCA Bylaws each require the SHCA to hold a fair election among owners for each SHCA

1 executive board position replacing those currently appointed by the Declarant—prior to the end of
2 the declarant control period.

3 34. Accordingly, injunctive and declaratory relief is required directing SHCA’s
4 compliance in conducting an election, wherein the owners choose each director on the SHCA
5 executive board.

6 35. Plaintiffs’ claims are timely and they have no avenue for relief outside of court.

7 **Second Claim for Relief**
8 **Violation of Fiduciary Duty**
9 **NRS 116.3103, *et seq.***

10 36. Plaintiffs repeat and reallege each of the averments set forth in Paragraphs 1 through
11 36 as though fully set forth herein.

12 37. That pursuant to NRS 116.3103(1), the SHCA executive board are fiduciaries required
13 to act on an informed basis, in good faith, and in the honest belief that their actions are in the best
14 interest of the association. And that pursuant to NRS 116.3103(2), the SHCA executive board may
15 not act to amend the declaration.

16 38. That the SHCA executive board failed to act in good faith and in the honest belief that
17 their actions are in the best interest of the association by failing to undertake any meaningful effort to
18 sever the “Third Amendment” consistent with section 25.5 of the CC&Rs or otherwise dispute the
19 validity of the “Third Amendment” or, alternatively, to meaningfully cure the missing owner’s
20 vote/adoption of the “Third Amendment” and unauthorized execution and recordation of the “Third
21 Amendment.”

22 39. That the SHCA executive board has failed to act in good faith and in the honest belief
23 that their actions are in the best interest of the association by failing to alert the owners of the accurate
24 unit count relevant to the period of declarant control and the timing of its termination by Nevada law,
25 the SHCA Bylaws, and the CC&Rs.

26 40. Accordingly, injunctive and declaratory relief is required directing the SHCA
27 executive board to provide notice to the owners of the accurate unit count relevant to the period of
28 declarant control and the timing of its termination by Nevada law, the SHCA Bylaws, and the CC&Rs.

41. Plaintiffs’ claims are timely and they have no avenue for relief outside of court.

**Third Claim for Relief
Attorney Fees as Special Damages**

1
2 42. Plaintiffs repeats and realleges each of the averments set forth in Paragraphs 1
3 through 42 as though fully set forth herein.

4 43. Plaintiff Kosor has repeatedly attempted to notify the SHCA executive board, its
5 counsel, and its agents of the rogue and invalid *ab initio* “Third Amendment” and the Department
6 of Comprehensive Planning for Clark County’s determinations concerning the total number of units
7 on record within Southern Highlands. Mr. Kosor has also repeatedly attempted to notify SHCA
8 executive board that the threshold for terminating the Declarant’s control over the SHCA executive
9 board has been met and that the SHCA has an obligation to provide for the election of all executive
10 board positions.

11 45. That SHCA executive board and its agents have repeatedly declined to address the
12 invalid *ab initio* “Third Amendment” and/or provide for the election of all SHCA executive board
13 positions or the relinquishment of the Declarant’s control.

14 46. That the SHCA executive board’s actions demonstrate that it intends to continue
15 providing for the periodic election of a number of SHCA executive board positions below that
16 required by law and the continuance of Declarant-appointed directors on the SHCA executive
17 board.

18 47. As a consequence of the SHCA executive board’s actions to perpetuate the
19 Declarant’s control over the SHCA executive board and the divestment of the owners’ right to elect
20 the SHCA executive board, Plaintiffs have been forced to retain counsel to represent their interests
21 as Southern Highlands homeowners at their own expense.

22 48. Accordingly, Plaintiffs seek an award of attorney’s fees and costs against SCHA and
23 the Declarant in having to engage counsel and file a legal action to secure the requested relief for
24 the owners.

VI. REQUEST FOR RELIEF

25 WHEREFORE, Plaintiffs respectfully requests that the Court issue the following relief:

- 26 (A) A declaration of the rights of Plaintiffs, including a declaration that (1) the threshold unit
27 count for the termination of the Declarant’s control over the SHCA has been met and (2) the
28

1 “Third Amendment” was invalid *ab initio* and that must be severed pursuant to section
2 25.5 of the CC&Rs;

- 3 (B) A temporary restraining order and preliminary injunction enjoining SHCA, and all persons
4 and entities acting under their direction or in concert with them, from conducting any
5 further elections that would allow Declarant-appointees to continue to serve as directors on
6 the SHCA executive board, as currently intended by the SHCA executive board;
- 7 (C) An order directing the SHCA executive board to provide notice to the owners that the
8 threshold for termination of the Declarant’s control has been met and to provide for an
9 election of all SHCA executive board positions not previously elected by the owners (rather
10 than appointed by the Declarant) as soon as reasonably possible and no later than March 25,
11 2021;
- 12 (D) An award of attorney fees, expenses, and costs incurred in prosecuting this lawsuit; and
- 13 (E) All other and further relief as the Court deems proper.

14 DATED this 25th day of January, 2020.

15 BARRON & PRUITT, LLP

16 /s/ William H. Pruitt

17

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19 JOSEPH R. MESERVY, ESQ.
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21 3890 West Ann Road
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23 *Attorneys for Plaintiffs*
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VERIFICATION

1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss.
3)

4 I, MICHAEL KOSOR, under penalty of perjury, being first duly sworn, depose and say:

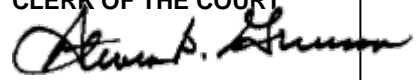
5 That I am MICHAEL KOSOR, a Plaintiff in the above referenced matter. I have read the
6 foregoing **AMENDED COMPLAINT REQUESTING INJUNCTIVE AND DECLARATORY**
7 **RELIEF** and I know and/or believe all the allegations contained therein that I have personal
8 knowledge of to be true. I believe the allegation contained therein that I do not have personal
9 knowledge of to be true based on specified information, documents, or both. As to the matters therein
10 which are stated on information and belief, I believe those matters to be true.

11 
12 MICHAEL KOSOR

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EXHIBIT 6



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7 *Attorneys for Defendant Southern
Highlands Development Corporation*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10
11 MICHAEL KOSOR, JR., a Nevada resident;
HOWARD CHARLES MCCARLEY, a
12 Nevada resident; DOES I through X,
inclusive

13 Plaintiffs,

14 vs.

15 SOUTHERN HIGHLANDS COMMUNITY
16 ASSOCIATION; SOUTHERN
HIGHLANDS DEVELOPMENT
17 CORPORATION; DOES I through X,
inclusive

18 Defendants.
19

Case No.: A-20-825485-C
Dept. No.: XXX

**DEFENDANT SOUTHERN
HIGHLANDS DEVELOPMENT
CORPORATION’S MOTION TO
DISMISS PLAINTIFFS’ AMENDED
COMPLAINT REQUESTING
INJUNCTIVE AND DECLARATORY
RELIEF**

[HEARING REQUESTED]

20
21 Defendant SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION (“SHDC”), by
22 and through its attorneys of record, hereby move for dismissal of Plaintiffs MICHAEL KOSOR, JR.
23 and HOWARD CHARLES MCCARLEY’s (“Plaintiffs”) Amended Complaint Requesting Injunctive
24 and Declaratory Relief.

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This motion is made and based upon the following Memorandum of Points and Authorities, any exhibits attached hereto, the pleadings and paper on file herein, the oral argument of counsel, and such other or further information as this Honorable Court may request.

Dated this 13th day of April, 2021.

KEMP JONES LLP

/s/ Madison Florance
J. RANDALL JONES, ESQ. (#1927)
NATHANAEL R. RULIS, ESQ. (#11259)
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Development Corporation*

1 “Division”) in 2016 and 2017, based on his flawed interpretation of the unit count and relating to the
2 alleged termination of the declarant control period. *See* 03/11/19 Order, attached hereto as **Exhibit 2**
3 at Findings of Fact (“FOF”) ¶¶ 5-6. Plaintiff Kosor previously argued that (1) the Third Amendment
4 was invalid and (2) pursuant to the 2015 ratified budget of the Association, the declarant control period
5 had terminated. *See id.* at FOF ¶¶ 4-6. The Division closed both complaints finding no good cause to
6 pursue the matter as the applicable one-year statute of limitations on any challenge to the 2005 Third
7 Amended had long since run. *See id.* at FOF ¶¶ 5-6; *see also Kosor v. Nevada Real Estate Division*
8 *Complaint*, attached hereto as **Exhibit 3** at ¶ 32.

9 Not satisfied with this decision, Plaintiff Kosor filed a Complaint for Declaratory Relief against
10 the Division on July 25, 2018, *Kosor v. Nevada Real Estate Division* Case No. A-18-778387-C,
11 requesting the following:

- 12 (A) For a declaratory judgment stating that Declarant’s attempted
13 amendment of the CC&Rs to increase the maximum number of units
14 for development in Southern Highlands was invalid;
- 15 (B) For a declaratory judgment stating that the conditions giving rise to
16 the termination of Declarant control over the Southern Highlands
17 Community Association have been satisfied;
- 18 (C) For a declaratory judgment stating that the termination of Declarant
19 control over the Southern Highlands Community Association is
20 required under the applicable CC&Rs;
- 21 (D) For a declaratory judgment stating that the Nevada Real Estate
22 Division is directed to reopen case no. 2017-913, having found no
23 good cause, and to require the Commission to expeditiously convene
24 a hearing to terminate Declarant’s control over the Southern
25 Highlands Community Association in accordance with applicable
26 CC&Rs and Nevada law, and to make appropriate findings and to take
27 necessary actions to implement the termination of control;
- 28 (E) For a declaratory judgment stating that the memorandum of the Office
of Attorney General dated January 5, 2018 is in error and is not to be
adopted or followed by the Nevada Real Estate Division.

Ex. 3 at pp.6-7.

The Division subsequently filed a Motion to Dismiss on November 19, 2018, and the matter
was fully heard on January 16, 2019. *See* 01/16/19 Hearing Transcript, attached hereto as **Exhibit 4**.

1 The District Court granted the Division’s Motion to Dismiss on February 11, 2019, finding “*that the*
2 *Division’s decision to dismiss the First and Second Complaints were proper under the relevant*
3 *sections of NRS 116 as they were time barred*” pursuant to both NRS 116.2117(2) and NRS
4 116.760(1). *See* Ex. 2 at Conclusions of Law (“COL”) ¶ 10 (emphasis added). Although clearly ruled
5 upon, Plaintiff Kosor has now filed a similar Complaint, this time adding Plaintiff McCarley in an
6 attempt to avoid issue preclusion. Such a Complaint is improper and should be dismissed in its entirety.

7 **III. ARGUMENT**

8 **A. Legal Standard**

9
10 NRCPC 12(b)(5) authorizes a court to dismiss an action for “failure to state a claim upon which
11 relief can be granted.” As such, dismissal is proper “if it appears beyond a reasonable doubt that
12 [Plaintiffs] could prove no set of facts, which, if true, would entitle it to relief.” *Buzz Stew, LLC v. City*
13 *of N. Las Vegas*, 124 Nev. 224, 228 (2008). A court recognizes all factual allegations in a plaintiff’s
14 complaint as true and will draw all inferences in its favor. *Id.* at 227. Although generally, a court will
15 not consider matters outside the pleadings being attacked, the court may take into account matters of
16 public record, orders, items present in the record of the case, and any exhibits attached to the complaint
17 when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted.
18 *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 848 P.2d 1258, 1261 (1993) (citations
19 omitted).

20 **B. Plaintiffs Failed to State a Claim Upon Which Relief Can be Granted.**

21 **1. Whether Defendants committed a violation of NRS 116.31034 and NRS 116.3103, et seq.** 22 **is within the sole discretion of the Division.**

23 NRS 116 governs Common-Interest Ownership. It is the role of the Division, and no other
24 commission or division, to regulate, administer, and interpret the statutes set forth in this chapter. *See*
25 *State Dept. of Business and Industry Financial Institutions Div. v. Nevada Assn Ser.*, 128 Nev. 362, 368,
26 294 P.3d 1223, 1227 (2012) (“There is no provision granting any other commission or department the
27 authority to regulate or interpret the language of the chapter [NRS 116]...We therefore determine that
28 the plain language of the statutes requires that the CCICCH [Commission for Common-Interest
Communities and Condominium Hotels (the “Commission”)] and the Real Estate Division, and no other

1 commission or division, interpret NRS Chapter 116.”). Because the Division is charged with regulating,
2 administering, and interpreting NRS 116, it also has the sole jurisdiction, along with the Ombudsman
3 and the Commission, to investigate and determine whether someone has committed a violation of NRS
4 116. *See* NRS 116.745 *et seq.*

5 NRS 116.750 provides:

6 In carrying out the provisions of NRS 116.745 to 116.795, inclusive,
7 the Division and the Ombudsman *have jurisdiction* to investigate and
8 the Commission and each hearing panel has jurisdiction to take
appropriate action against any person who commits a violation,
including, without limitation:

9 . . .

10 (e) Any declarant or affiliate of a declarant.

11 NRS 116.750(1)(e) (emphasis added). A violation is defined as a violation of “1. Any provision of this
12 chapter except NRS 116.31184; 2. Any regulation adopted pursuant to this chapter; or 3. Any order of
13 the Commission or a hearing panel.” NRS 116.745. Here, Plaintiffs have alleged that Defendants have
14 violated NRS 116.31034 and NRS 116.3103. Because these violations fall within the definition as set
15 forth in NRS 116.745(1), it is within the Division’s jurisdiction to investigate this matter, not the District
16 Court.

17 In Nevada, courts are instructed to give great deference to an agency’s, such as the Nevada Real
18 Estate Division’s, interpretation of a statute it is authorized to execute, i.e., NRS 116. *See Nuleaf CLV*
19 *Dispensary, LLC v. State Dep’t of Health and Human Servs., Div. of Pub. & Behavioral Health*, 414
20 P.3d 305, 308 (2018) (“An agency’s interpretation of a statute that is authorized to execute is entitled to
21 deference unless it conflicts with the constitution or other statutes, exceeds the agency’s powers, or is
22 otherwise arbitrary & capricious.”); *Prudential Ins. Co. v. Insurance Comm’r*, 82 Nev. 1, 5, 409 P.2d
23 248, 250 (1966); *see also Phelps v. Second Judicial Dist. Ct.*, 106 Nev. 917, 920-22, 803 P.2d 1101,
24 1105 (1990). The Division, as already affirmed by the District Court, held that Plaintiff Kosor’s two
25 complaints regarding the invalidity of the Third Amendment and the alleged termination of the declarant
26 control period are time barred pursuant to both NRS 116.2117(2) and NRS 116.760(1)¹. As such, this

27 ¹ NRS 116.760(1) states, “Except as otherwise provided in this section, a person who is aggrieved by an alleged violation
28 may, not later than 1 year after the person discovers or reasonably should have discovered the alleged violation, file with the
Division a written affidavit that sets forth the facts constituting the alleged violation.” The District Court held that Plaintiff
Kosor should have reasonably discovered the alleged violation (declarant control period termination) in 2014, while

1 Court should give great deference to the Division’s prior 2017 decision and should leave the
2 determination of the appropriate unit count² as defined in the CC&Rs and NRS 116 to the discretion of
3 the Division – the agency directed by Nevada statutes to regulate, administer, and interpret NRS 116.

4 **2. Plaintiffs’ Claims are Time Barred.**

5 NRS 116.117(2) designates the statute of limitations for actions challenging the validity of an
6 amendment adopted by an association. NRS 116.117(2) states:

7 No action to challenge the validity of an amendment adopted by the
8 association pursuant to this section may be **brought more than 1 year**
after the amendment is recorded.

9 NRS 116.117(2) (emphasis added). Based on the above unambiguous language, any challenge to the
10 validity of the Third Amendment **must** be brought within one year after it was recorded. Accordingly,
11 because the Third Amendment was adopted by the Association³ on September 27, 2005, and became
12 effective on October 6, 2005 (the date it was recorded), any challenge to its validity of the Third
13 Amendment must have been brought **no later than October 6, 2006.**

14 Regardless when this Complaint was filed, Plaintiffs’ allegation that the Third Amendment is
15 invalid is untimely and barred. Both Plaintiffs Kosor and McCarley *voluntarily* moved into Southern
16 Highlands *seven years and five years*, respectively, after the Third Amendment was adopted by the
17 Association and after receiving and acknowledging the Third Amendment. As such, any argument that
18 the Third Amendment is invalid or that the declarant control period has terminated as a result is barred
19 by the one-year statute of limitations.

20 ///

21
22 _____
23 reviewing the 2015 Budget; however, he brought his complaint to the Division over one year later in 2016 and 2017. *See* Ex.
2 at COL ¶ 9.

24 ² Although Plaintiffs present emails indicating the unit count is over 90%, the count provided is not accurate. As set forth in
25 NRS 116.31032(b), building permits are *not* part of the unit count.

26 ³ Any argument by Plaintiffs that the Association did not adopt the Third Amendment is baseless. NRS 116.31032(1) sets
27 forth that “The declaration may provide for a period of declarant’s control of the association, during which a declarant, or
28 persons designated by a declarant, may appoint and remove the officers of the association and members of the executive
board.” A declarant may exercise exclusive control over an association. *See* NRS 116.31032(1). Further, NRS 116.011 states
that an “association” is made up of “unit owners.” “Unit Owners”, as defined in NRS 116.095 includes a declarant.
Accordingly, at the time the Third Amendment was introduced, no formal adoption by the Association was necessary because
it occurred during the uncontested period of declarant control of the Association.

1 **3. Plaintiffs’ Claims are Barred by Issue Preclusion.**

2 “[I]ssue preclusion is applied to conserve judicial resources, maintain consistency, and avoid
3 harassment or oppression of the adverse party.” *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*,
4 130 Nev. 252, 321 P.3d 912 (2014). In order for an issue to be precluded in a subsequent action, the
5 moving party must show:

- 6 1. The issue decided in the prior litigation must be identical to the issue presented in the
7 current litigation.
8 2. The initial ruling must have been on the merits and have become final.
9 3. The party against whom the judgment is asserted must have been a party or in privity with
10 a party to the prior litigation.
11 4. The issue was actually and necessarily litigated.

12 *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008).

13 ***a. The prior litigation contained identical issues.***

14 An issue decided in a previous lawsuit is barred from re-litigation if the issue is identical to the
15 issue in the current lawsuit. *See Alcantara*, 130 Nev. at 258, 321 P.3d at 916. “Issue preclusion cannot
16 be avoided by attempting to raise a new legal or factual argument that involves the same ultimate issue
17 previously decided in the prior case.” *Id.* at 259. Plaintiff Kosor sued the Division for declaratory
18 relief on July 25, 2018, requesting, among other things:

- 19 (A) For declaratory judgment stating that Declarant’s attempted amendment
20 of the CC&Rs to increase the maximum number of units for development
21 in Southern Highlands was invalid;
22 (B) For a declaratory judgment stating that the conditions giving rise to the
23 termination of Declarant control over the Southern Highlands Community
24 Association have been satisfied;
25 (C) For a declaratory judgment stating that the termination of Declarant
26 control over the Southern Highlands Community Association is required
27 under the applicable CC&Rs and Nevada law
28 . . .

Ex. 3 at pp.6-7.

1 Similarly, here, Plaintiffs seek declaratory judgment against Defendants, for among other
2 things:

3 (A) A declaration of the rights of Plaintiffs, including a declaration that
4 (1) the threshold unit count for the termination of the Declarant’s
5 control over the SHCA has been met and (2) the “Third Amendment”
6 was invalid *ab initio* and that must be served pursuant to section 25.5
7 of the CC&Rs.

8 Compl. at p.8-9. It is undisputable that regardless of the underlying claims in the two lawsuits, these
9 issues are identical, specifically the argument that the Third Amendment is invalid.

10 ***b. The initial ruling was on the merits and final.***

11 The Nevada Supreme Court has adopted Restatement (Second) of Judgments § 13 (Am. Law
12 Inst. 1982) in determining when a judgment is final. *See Kirsch v. Traber*, 134 Nev. 163, 166, 414
13 P.3d 818, 821 (2018) Pursuant to the Restatement, a judgment is final if it is “sufficiently firm.” *Id.*
14 Factors to determine finality include: “(1) that the parties were fully heard; (2) that the court supported
15 its decision with a reasoned opinion; and (3) that the decision was subject to appeal.” *Id.* at 822
16 (quoting Restatement (Second) of Judgments § 13 at cmt. g) (internal quotations omitted). “In issue
17 preclusion cases, a decision is final and maintains its preclusive effect even if the judgment is on
18 appeal.” *City of Las Vegas v. Bluewaters Family Ltd. Partnership*, 2013 WL 431045, at *1 (Nev. Jan
19 31, 2013) (citing *Edwards v. Ghandour*, 123 Nev. 105, 117, 159 P.3d 1086, 1094 (2007), rejected on
20 other grounds by *Five Star Capital*, 124 Nev. at 1053-54, 194 P.3d at 712-13)).

21 The facts in this case evidence that the District Court’s granting of the Division’s Motion to
22 Dismiss was on the merits and final. First, both Plaintiff Kosor and the Division were fully heard on
23 the merits as evidenced by the transcript on the hearing for the Motion to Dismiss. *See* Ex. 4. Second,
24 the District Court prepared a detailed Findings of Fact, Conclusions of Law and Order explaining why
25 it granted the Division’s Motion to Dismiss. *See* Ex. 2. Lastly, the dismissal is subject to appeal as
26 Plaintiff Kosor is currently appealing the District Court’s dismissal. Accordingly, all the evidence
27 suggests that the District Court’s ruling on the validity of the Third Amendment was on the merits and
28 final.

///

1 ***c. Plaintiff Kosor was a party in the prior litigation and Plaintiff McCarley was***
2 ***adequately represented by Plaintiff Kosor’s interests.***

3 “Issue preclusion can only be used against a party whose due process rights have been met by
4 virtue of that party having been or in privity with a party in the prior litigation.” *Alcantara*, 130 Nev.
5 at 259, 321 P.3d at 917 (quoting *Bower v. Harrah’s Laughlin, Inc.*, 125 Nev. 470, 481, 215 P.3d 709,
6 718 (2009)). Here, it is unquestionable that Plaintiff Kosor’s due process rights have been met. As
7 evidenced in the hearing transcript, Plaintiff Kosor was a party in the prior litigation and was fully
8 heard on the issues in the prior litigation.

9 Further, the Nevada Supreme Court has recently “adopted the Restatement (Second) of
10 Judgments § 41, which additionally recognizes privity under an ‘adequate representation’ analysis,
11 but this applies only to persons who represent a litigant’s interests.” *Mendenhall v. Tassinari*, 133 Nev.
12 614, 619, 403 P.3d 364, 370 (2017) (citing *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 261,
13 321 P.3d 912, 917 (2014)). Adequate representation applies “when a nonparty was adequately
14 represented by someone with the same interests who [was] a party to the suit.” *Bower v. Harrah’s*
15 *Laughlin, Inc.*, 125 Nev. 470, 481, 215 P.3d 709, 717 (2009) (internal citations and quotations
16 omitted). Here, Plaintiff Kosor, a Southern Highlands homeowner, sought a declaration in the interest
17 of fellow homeowners, that the Third Amendment was invalid and that the declarant control period
18 terminated. These issues are identical to what both Plaintiffs Kosor and McCarley, a fellow Southern
19 Highlands homeowner, are seeking in this Complaint. Because the declarant control period and the
20 Third Amendment affects the Southern Highlands community and all its homeowners, it would be
21 counterintuitive to state that the prior lawsuit was solely for Plaintiff Kosor’s own interests and to
22 permit any homeowner to continue to make identical arguments in the future. Hence, the claims
23 brought in this suit by ***both*** plaintiffs are precluded and should be dismissed.

24 ***d. The issues were actually and necessarily litigated.***

25 An issue is actually litigated when the issue “is properly raised...and is submitted for
26 determination...” *Alcantara*, 130 Nev. at 262, 321 P.3d at 918 (quoting *Frei v. Goodsell*, 305 P.3d 70,
27 72 (Nev. 2013) (quoting Restatement (Second) of Judgments § 27 cmt. D (1992))) (internal quotations
28

1 omitted). In the previous case, *Kosor v. Nevada Real Estate Division*, Mr. Kosor sought declaratory
2 relief for the following:

- 3 1. For a declaratory judgment stating that Declarant’s attempted
4 amendment of the CC&Rs to increase the maximum number of units
5 for development in Southern Highlands was invalid;
- 6 2. For a declaratory judgment stating that the conditions giving rise to
7 the termination of Declarant control over the Southern Highlands
8 Community Association have been satisfied;
- 9 3. For declaratory judgment stating that the termination of Declarant
control over the Southern Highlands Community Association is
required under the applicable CC&Rs and Nevada law.

10 Ex. 3 at pp. 6-7.

11 The issues, specifically the validity of the Third Amendment, were properly raised and
12 submitted for determination in the parties’ pleadings and during the hearing on the Division’s Motion
13 to Dismiss. *See* Ex. 4.

14 An issue is necessarily litigated when “the common issue was ... *necessary to the judgment in*
15 *the earlier suit.*” *Id.* (quoting *Frei v. Goodsell*, 305 P.3d 70, 72 (Nev. 2013) (quoting *Univ. of Nev.*
16 *Tarkanian*, 110 Nev. 581, 599, 879 P.2d 1180, 1191))) (internal quotations omitted). The issues,
17 specifically as to the validity of the Third Amendment, were necessary to the judgment in the earlier
18 suit, as those were the sole issues decided by the District Court.

19 Based on the foregoing, it is clear that the issues, or at the least, the issue as to the validity of
20 the Third Amendment, are barred by issue preclusion.

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VI. CONCLUSION

1
2 Based on the foregoing, Plaintiffs' current lawsuit is barred by the applicable one-year statute
3 of limitations, issue preclusion, and fails to state a claim upon which relief can be granted.
4 Accordingly, pursuant to NRC 12(b)(5), Defendant Southern Highlands Development Corporation
5 respectfully request this Court dismiss the entirety of Plaintiffs' Amended Complaint.

6 Dated this 13th day of April, 2021.

7 KEMP JONES LLP

8 /s/ Madison Florance
9 J. RANDALL JONES, ESQ. (#1927)
10 NATHANAEL R. RULIS, ESQ. (#11259)
11 MADISON S. FLORANCE, ESQ. (#14229)
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13 Las Vegas, Nevada 89169
14 *Attorneys for Defendant Southern Highlands*
15 *Development Corporation*

EXHIBIT 7

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

MICHAEL KOSOR, JR., a Nevada Resident; HOWARD CHARLES MCCARLEY, a Nevada Resident; DOES I through X, inclusive,

Plaintiffs,

vs.

SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION; SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION; DOES I through X, inclusive,

Defendants.

CASE NO.: A-20-825485-C
DEPT. NO.: XXX

ORDER

INTRODUCTION

The above-referenced matter came on for a hearing on May 27, 2021 with regard to Defendant, Southern Highlands Development Corporation’s Motion to Dismiss, and Southern Highlands Community Association’s Joinder. After reviewing the pleadings and papers on file, and hearing oral argument on behalf of all involved parties, the Court enters this Order

FACTUAL AND PROCEDURAL HISTORY

The matter involves Southern Highland’s 2005 Third Amendment to the Covenants, Conditions, and Restrictions (“CC&Rs”). Plaintiffs are both current residents of Southern Highlands. Plaintiff Kosar has been a resident since 2012 and Plaintiff McCarley since 2010. Upon closing on their respective houses, Plaintiffs received and acknowledged receipt of the Community’s governing documents, including the CC&Rs, as required under NRS 116.41095. The CC&Rs would have included the Third Amendment, dated September 27, 2005, and recorded on October 6, 2005. Based on the authority set forth in Section 23 of the CC&Rs, the Third Amendment altered the number of “Maximum Units” from 9,000 to 10,400.

1 Since moving in, Plaintiff Kosar submitted various complaints to the Southern
2 Highlands Community Association (“the Association”) and at least two complaints to
3 the Nevada Real Estate Division (“the Division”) in 2016 and 2017 based on his
4 interpretation of the unit count and related to alleged termination of the declarant
5 control period.

6 Plaintiff Kosor previously argued that (1) the Third Amendment was invalid and
7 (2) pursuant to the 2015 ratified budget of the Association, the declarant control period
8 had terminated. (See Judge David Jones Order of 3/11/19 at FOF ¶¶ 4-6.) The Division
9 closed both complaints finding no good cause to pursue the matter as the applicable
10 one-year statute of limitations on any challenge to the 2005 Third Amended had long
11 since run. (See *id.* at FOF ¶¶ 5-6).

12 Kosar filed a Complaint for Declaratory Relief against the Division in the District
13 Court on July 25, 2018. *Kosor v. Nevada Real Estate Division* Case No. A-18-778387-C.
14 The Division filed a Motion to Dismiss on November 19, 2018, and a hearing occurred
15 on January 16, 2019. Judge David Jones granted the Division’s Motion to Dismiss on
16 March 11, 2019, finding “that the Division’s decision to dismiss the First and Second
17 Complaints were proper under the relevant sections of NRS 116 as they were time
18 barred” pursuant to both NRS 116.2117(2) and NRS 116.760(1). Kosar appealed the
19 decision, which is currently pending in the Nevada Supreme Court.

20 On November 24, 2020, Plaintiffs Kosor and McCarley filed their complaint in
21 this matter, and filed an application for temporary restraining order and/or motion for
22 preliminary injunction on December 1, 2020, seeking to enjoin an election of board
23 members of Defendant Association. On December 2, 2020, the Association filed its
24 motion to dismiss pursuant to NRCP 19, arguing that Plaintiffs failed to name parties
25 indispensable to resolution of this action and the sought-after relief—here, the
26 Southern Highlands Development Corporation, who developed property in question
27 and remains the current declarant of Southern Highlands (the “Declarant”). This Court
28 held a hearing on the matter on December 15, 2020, and issued an Order on January
15, 2021, finding that 1) the election had already occurred, and consequently, the
requested injunction to stop the 12/3/20 election was moot; and 2) the Plaintiffs had
failed to join a party indispensable to the resolution of this action, and the Court
ordered Plaintiffs to amend their complaint to join the Declarant.

1
2 Plaintiffs filed an Amended Complaint on January 25, 2021. Defendant
3 Association was served on March 17, 2021. Defendant Declarant was served with a copy
4 of the Summons and Amended Complaint on March 23, 2021.

5 Declarant filed the present Motion to Dismiss on April 13, 2021, which the
6 Association joined on the same day. Plaintiffs filed their Opposition on April 30, 2021.
7 On May 12, 2021, Declarant filed its Reply in Support of the Motion and the Association
8 filed a Joinder to the Reply.

8 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

9 Defendant Southern Highlands Development Corporation's ("Declarant")
10 Motion to Dismiss Plaintiff's Amended Complaint is premised on three arguments: (1)
11 the Nevada Real Estate Division has the sole discretion to interpret NRS 116; (2)
12 Plaintiff's claims are time barred under NRS 116.117(2), and (3) Plaintiff's claims are
13 barred by Issue Preclusion.

14 First, Declarant contends that it is the role of the Real Estate Division to
15 regulate, administer, and interpret the statutes as set forth NRS 116. See *State Dept. of*
16 *Business and Industry Financial Institutions Div. v. Nevada Assn Ser.*, 128 Nev. 362,
17 368, 294 P.3d 1223, 1227 (2012). In addition, Nevada courts are instructed to give
18 great deference to an agency's interpretation of a statute it is authorized to execute. See
19 *Nuleaf CLV Dispensary, LLC v. State Dept. of Health and Human Servs., Div. of Pub.*
20 *& Behavioral Health*, 414 P.3d 305, 308 (2018). Declarant argues that the Court
21 should defer to the Division, which has already adjudicated two of Plaintiff's complaints
22 regarding the invalidity of the Third Amendment to the CC&R's and alleged
23 termination of declarant control period, and found them time barred under NRS
24 116.2117(2) and NRS 116.760(1).

24 Second, Declarant argues that Plaintiffs' claims are time barred pursuant to NRS
25 116.117(2), which imposes a 1-year statute of limitations for actions such as the present.
26 As such, any challenge to the Third Amendment, which became effective on October 6,
27 2005, needed to have been brought no later than October 6, 2006. Declarant also
28 argues that Plaintiff's action loses credence since both moved into Southern Highlands
five and seven years respectively after the Third Amendment was adopted.

1 Lastly, Declarant argues that Plaintiffs' claims are barred under the doctrine of
2 issue preclusion. "[I]ssue preclusion is applied to conserve judicial resources, maintain
3 consistency, and avoid harassment or oppression of the adverse party." *Alcantara ex*
4 *rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 321 P.3d 912 (2014). Further,
5 Declarant argues issue preclusion exists here because: (1) the prior litigation contained
6 identical issues; (2) the initial ruling was based on the merits and final; (3) Plaintiff
7 Kosar was a party in the prior litigation and Plaintiff McCarley was adequately
8 represented by Plaintiff Kosar's interest; and (4) the issues were actually and
9 necessarily litigated. Citing *Five Star Capitol Corp. v. Ruby*, 124 Nev. 1048, 1055, 194
10 P.3d 709, 713 (2008).

11 According to Declarant, the issues in this case are identical to the issues in
12 Plaintiff Kosar's 2018 action. In 2018, Plaintiff Kosar sued the Division:

13 (A) For declaratory judgment stating that Declarant's attempted amendment of
14 the CC&Rs to increase the maximum number of units for development in
15 Southern Highlands was invalid;

16 (B) For a declaratory judgment stating that the conditions giving rise to the
17 termination of Declarant control over the Southern Highlands Community
18 Association have been satisfied;

19 (C) For a declaratory judgment stating that the termination of Declarant control
20 over the Southern Highlands Community Association is required under the
21 applicable CC&Rs and Nevada law.

22 Declarant argues that here, Plaintiffs' Amended Complaint seeks:

23 (A) A declaration of the rights of Plaintiffs, including a declaration that
24 (1) the threshold unit count for the termination of the Declarant's control over
25 the Association has been met and (2) the "Third Amendment" was invalid ab
26 initio and that must be served pursuant to section 25.5 of the CC&Rs.

27 Declarant argues that Judge David Jones's Findings of Facts and Conclusions of
28 Law and Order, which granted the Division's Motion to Dismiss, was based on the
29 merits and final. This is evidenced both by a file-stamped copy of Judge Jones's Order
30 and a portion of the certified hearing transcript, which Declarant provided for this
31 Court's review. Further supporting Declarant's argument that Judge Jones' Order was
32 a final judgment on the merits, Plaintiff Kosar is currently appealing that Order.

33 Declarant argues that although Plaintiff McCarley was not a party in the prior
34 litigation, Plaintiff Kosar adequately represented both of their interests and other
35 Southern Highlands residents' interests.

1 Declarant contends that because the issues were actually and necessarily
2 litigated first by the Real Estate Division and then upheld by Judge Jones, it should be
3 clear that all issues, especially the challenge to the Third Amendment to the CC&R's,
4 are barred by issue preclusion.

5 The Court notes that the Defendant Association joined Declarant's Motion.
6 Plaintiff argues against dismissal because (1) this Court has original jurisdiction and
7 related discretion over the case; (2) Declarant's Motion misapplies Nevada Law; (3)
8 Plaintiffs stated multiple claims upon which relief can be granted; (4) the case before
9 Judge Jones lacks preclusive effect and the issues are not identical and the parties lack
10 privity; and (5) dismissal would be adverse to the interests of justice.

11 In opposition, the Plaintiffs argue that this Court has original jurisdiction and
12 related discretion over the case. Nevada Const. Art. 6 § 6 states that the district courts
13 in the several judicial districts of the State have original jurisdiction in all cases
14 excluded by law from the original jurisdiction of justices' courts. Although the Division
15 may have discretion over breaches of NRS 116 before any other division of the executive
16 branch, Nevada district courts retain their original and constitutionally bestowed
17 jurisdiction and related discretion over cases involving breaches of NRS 116. Although
18 Nevada courts may give deference to the opinions of executive branch divisions,
19 Nevada courts should never allow arbitrary and capricious misapplications of Nevada
20 law to prevail.

21 Plaintiffs argue that Declarant's Motion misapplies Nevada Law. Defendants do
22 not and cannot prove that the Association "adopted" the third amendment to the
23 CC&Rs, and consequently, NRS 116.2117(2) is inapplicable to any challenge to the
24 amendment. Plaintiffs argue that NRS 116.2117 indicates that an amendment to the
25 CC&Rs can only be done "by vote or agreement of the units' owners of units to which at
26 least a majority of the votes in the association are allocated." Plaintiffs argue that in
27 this case, Declarant unilaterally executed and recorded the amendment. Section 2.25
28 of the CC&Rs mandates that any provision in violation of NRS 116 "shall be severed
here from." Therefore, the "attempted third amended was invalid ab initio."

Plaintiffs argue that Judge Jones inexplicably and erroneously misapplied NRS
116.2117(2) and dismissed Plaintiff Kosar's complaint for declaratory relief against

1 NRED, which decision is pending on appeal to the Nevada Court of Appeals (Case No.
2 79831).

3 Plaintiffs argue that Defendants' motion fails to address the Plaintiffs' allegation
4 that even if the Declarant-adopted third amendment to the CC&Rs was valid, the
5 Defendants still failed to transfer SHCA Board control to the homeowners in 2019 and
6 2020.

7 Plaintiffs allege that the number of units on record exceeded the threshold for
8 termination of declarant control. Plaintiffs contend that their argument that
9 Defendants violated NRS 116.31032, in 2019 and 2020 are not barred by any statute of
10 limitations and no preclusive judgment against those claims exists to date.

11 Plaintiffs assert that NRS 116.2122 provides that “the declarant may not in any
12 event increase the number of units in the planned community beyond the number
13 stated in the original declaration.” Therefore, no credible factual dispute exists as to
14 whether Declarant violated the statute when it recorded the third amendment to the
15 CC&Rs in 2005.

16 Plaintiffs argue that the case before Judge Jones lacks preclusive effect and the
17 issues are not identical and the parties lack privity. Plaintiffs’ assert the present case
18 raises new claims for the first time of new violations of NRS 116.31032 and the CC&Rs
19 occurring in 2019 and 2020, as well as claims that the SHCA Board breached its
20 fiduciary duty and violated NRS 116.31034. Also, the parties in Plaintiff Kosar’s prior
21 case lack privity, such that applying issue preclusion would deny them their due
22 process rights, specifically Plaintiff McCarley. Plaintiffs only intended the Association
23 to be a Defendant in this case, and it would be manifestly unjust to dismiss the present
24 case for “bringing their first-ever claims against the Association, only because Kosar
25 has previously sought to hold accountable [the Division]...” Further, Plaintiffs only
26 added Declarant as a defendant because this Court ordered it to.

27 Finally, Plaintiffs’ instant claim of breach of fiduciary duty or re 2019 and 2020
28 breaches of NRS 116.31032 were not part of any judgment in Plaintiff Kosar’s earlier
case. Plaintiffs state that there was also no judgement regarding “whether the
Declarant’s unilateral execution and recordation of the third amendment to the CC&Rs
should be severed consistent with section 2.25 of the CC&Rs.”

1 Plaintiffs contend that dismissal would be adverse to the interests of justice.
2 They claim that both Defendants “seek to silence [the] Plaintiffs and end any
3 investigation into control over the governance of that community.”

4 In reply, the Declarant argues that the Division’s 2017 ruling was neither
5 arbitrary nor capricious, and did not misapply NV Law. The Division sought guidance
6 from the Attorney General’s office as it relates to these two issues, and based on advice
7 from the Attorney General’s office, the Division determined Plaintiff Kosar was time
8 barred because the action was not brought within one year of the Third Amendment’s
9 recordation. The District Court already held that the Divisions’ ruling was not
10 arbitrary, capricious, nor did it misapply NV law.

11 The Declarant argues that if Plaintiffs have new evidence, they need to bring it
12 before the Division to determine whether the declarant control period has terminated
13 before they seek relief from this Court. Otherwise, they have not exhausted their
14 administrative remedies.

15 The Declarant argues that although the Plaintiffs have asserted new issues that
16 have not yet been litigated, it is clear that the issue as to whether the Third Amendment
17 to the CC&Rs is valid was fully and fairly decided in the prior case. Moreover, Plaintiff
18 McCarley’s absence from the prior litigation does not mean he was unrepresented.
19 Under the “adequate representation” analysis, as it relates to privity, a nonparty is
20 adequately represented “by someone with the same interests who [was] a party to the
21 suit.” *Bower v. Harrah’s Laughlin, Inc.*, 125 Nev. 470, 481, 215 P.3d 709, 717 (2009)
22 (internal citations and quotations omitted); see also *Alcantara*, 130 Nev. at 259, 321
23 P.3d at 917 (adopting the Restatement (Second) of Judgments “adequate
24 representation” test for privity in analyzing issue preclusion).

25 In the Association’s Joinder, it argues that Plaintiffs mistakenly believe that the
26 number of units as recognized by the Clark County Planning Department is
27 determinative as to whether or Declarant must transition control of the Association’s
28 Board of Directors to the Association membership. The Planning Department’s
recognition of a ‘unit’ is not intended to be determinative as to issues presented under
NRS 116. Accordingly, Plaintiffs are improperly focused on the total number of units as
recognized by the Planning Department rather than focusing on the total number of

1 units actually conveyed from Declarant to someone or some party other than Declarant
2 for the purposes of accurately applying NRS 116.31032.

3 The Association also argues that the Plaintiffs' claims against Association are
4 barred by a 3 year statute of limitations pursuant to NRS 11.190(3)(d), which provides
5 that claims for fraud or mistake are limited to three years from the date discovery of the
6 fraud or mistake. (see *In Re Amerco Derivative Litigation*, 127 Nev. 196, 252 P.3d 681
7 (2011), wherein the Court held, “[a] breach of fiduciary duty is analogous to fraud, and
8 thus, Nevada applies the three-year statute of limitation set forth in NRS 11.190(3)(d).”)

9 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

10 “A complaint must set forth sufficient facts to establish all necessary elements of
11 a claim for relief.” *Hay v. Hay*, 100 Nev. 196, 198 (1984). NRC 12(b)(5) provides that
12 a Defendant can request a dismissal by motion for the failure to state a claim upon
13 which relief can be granted. Such motions are proper where it appears to a certainty
14 that the Plaintiff is entitled to no relief under any set of facts that could be proved in
15 support of the claim. See *Bratcher v. City of Las Vegas*, 1123 Nev. 502 (1997).

16 For the purpose of considering a Rule 12(b)(5) motion, the charge of the
17 complaint is accepted as true. See *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870,
18 873 (2000). However, the Court is “not bound to accept as true a legal conclusion
19 couched as a factual allegation.” *Papasan v. Allain*, 478 U.S. 265, 286 (1986); see also
20 *George v. Morton*, 2007 WL 680787, at *6 (D. Nev. March 1, 2007) (stating that
21 conclusory legal allegations and unwarranted inferences will not prevent dismissal).
22 Therefore, dismissal is proper where the allegations are insufficient to establish the
23 elements of a claim for relief. See *Brent G. Theobald Const., Inc., v. Richardson Const.,*
24 *Inc.*, 122 Nev. 1163, 1166 (2006)(abrogated on other grounds by *Buzz Stew, LLC v. City*
25 *of N. Las Vegas*, 124 Nev. 224 (2008)). Further, a complaint should only be dismissed
26 “if it appears beyond a doubt that it could prove no set of facts, which, if true, would
27 entitle it to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008).
28 See also *Blackjack Bonding v. Las Vegas Mun. Ct.*, 116 Nev. 1213, 1217, 14 P.3d 1275,
1278 (2000) (disavowing several court decisions that required a showing of proof
beyond a reasonable doubt, and holding that the correct standard is a showing beyond
a doubt).

1 If, on a motion to dismiss, under NRCP 12(b)(5), the Court considers matters
2 outside the pleadings, the motion must be treated as one for summary judgment under
3 Rule 56. NRCP 12(c); see also *Stevens v. McGimsey*, 99 Nev. 840, 841 (1983).
4 Summary judgment is “appropriate when the pleadings, depositions, answers to
5 interrogatories, admissions, and affidavits, if any, that are properly before the court
6 demonstrate that no genuine issue of material fact exists, and the moving party is
7 entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731
8 (2005). When evaluating facts for the purpose of Summary Judgment, a factual dispute
9 is genuine, and therefore summary judgment is inappropriate, when the evidence is
10 such that a rational trier of fact could return a verdict for the nonmoving party. *Id.*
11 Further, it is not a judge’s function, at the summary judgment stage, to “weigh the
12 evidence and determine the truth of the matter.” *Anderson v. Liberty Lobby, Inc.*, 477
13 U.S. 242, 249 (1986).

13 “[I]ssue preclusion is applied to conserve judicial resources, maintain
14 consistency, and avoid harassment or oppression of the adverse party.” *Alcantara ex*
15 *rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 321 P.3d 912 (2014). In order for
16 an issue to be precluded in a subsequent action, the moving party must show:

- 17 1. The issue decided in the prior litigation must be identical to the issue
18 presented in the current litigation.
- 19 2. The initial ruling must have been on the merits and have become final.
- 20 3. The party against whom the judgment is asserted must have been a party or in
21 privity with a party to the prior litigation.
- 22 4. The issue was actually and necessarily litigated.

23 *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008).

24 Issue preclusion can only be used against a party whose due process rights have
25 been met by virtue of that party having been or in privity with a party in the prior
26 litigation.” *Alcantara*, 130 Nev. at 259, 321 P.3d at 917 (quoting *Bower v. Harrah’s*
27 *Laughlin, Inc.*, 125 Nev. 470, 481, 215 P.3d 709, 718 (2009)). The Nevada Supreme
28 Court has recently “adopted the Restatement (Second) of Judgments § 41, which
additionally recognizes privity under an ‘adequate representation’ analysis, but this
applies only to persons who represent a litigant’s interests.” *Mendenhall v. Tassinari*,
133 Nev. 614, 619, 403 P.3d 364, 370 (2017) (citing *Alcantara v. Wal-Mart Stores, Inc.*,
130 Nev. 252, 261, 321 P.3d 912, 917 (2014)). Adequate representation applies “when a
nonparty was adequately represented by someone with the same interests who [was] a

1 party to the suit.” *Bower v. Harrah’s Laughlin, Inc.*, 125 Nev. 470, 481, 215 P.3d 709,
2 717 (2009).

3 An issue is necessarily litigated when “the common issue was ... necessary to the
4 judgment in the earlier suit.” *Id.* (quoting *Frei v. Goodsell*, 305 P.3d 70, 72 (Nev. 2013)
5 (quoting *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 599, 879 P.2d 1180, 1191))).

6 The Court notes that Judge Jones previously entered an Order in which he
7 stated the following:

8 “NRS 116.2117(2) states that ‘[n]o action to challenge the validity of an
9 amendment adopted by the association pursuant to this section may be brought
10 more than 1 year after the amendment is recorded.’ . . . Here, the Division
11 dismissed the Second Complaint as untimely, pursuant to NRS 116.2117(2). The
12 Court agrees with the Division’s interpretation of the statute. Plaintiff . . . did
13 not submit the Second Complaint until twelve years after it was recorded. Thus,
14 the Division’s decision to dismiss the Second Complaint did not exceed its
15 powers, nor was it arbitrary and capricious.’ . . . The Division’s dismissal of the
16 First Complaint, though a year earlier, was also proper based on the reasoning in
17 the above paragraph. . . This Court also finds that Plaintiff’s First and Second
18 Complaints were time barred pursuant to NRS 116.760(1). . . .”

19 See Findings of Fact, Conclusions of Law, and Order, filed 3/11/2019, in Case A-18-
20 778387.

21 This Court finds and concludes that issue preclusion applies here because the
22 issue of whether the Plaintiff’s challenge to the Amendment was timely or not, was
23 previously addressed by Judge Jones, and that same identical issue is raised in the
24 instant case. That the same issue was resolved in the prior litigation, and the party
25 against whom the judgment is asserted (Kosor and McCarley) were parties or in privity
26 with a party to the prior litigation. And the issue was actually and necessarily litigated.
27 *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008). The
28 Court agrees with the Defendants that Kosor “adequately represented” the interests of
himself, McCarley, and other similarly situated homeowners. *Bower v. Harrah’s
Laughlin, Inc.*, 125 Nev. 470, 481, 215 P.3d 709, 717 (2009). Because the Court has
relied on Judge Jones’ Order in Case 778387, as a basis for the application of “issue
preclusion,” the Court must consider the pending Motion as one for Summary
Judgment under NRCP 56 instead of a Motion to Dismiss under NRCP 12.
Consequently, the “summary judgment” standard applies. The Court cannot find,
however, that a genuine issue of material fact remains with regard to the issue of

1 whether the Plaintiff's claim relating to the validity of the Third Amended CC&R's, was
2 time barred. It has been determined that that challenge was time barred. Whether this
3 Court agrees that the Amendment was "adopted by the association" pursuant to NRS
4 116.2117(2), is irrelevant, as the issue has already been finally determined and is on
5 appeal to the appellate courts.

6 The Court further finds, however, that there are issues raised in the instant
7 Complaint which are not subject to issue preclusion, and which preclude the Granting
8 of a Motion to Dismiss and or for Summary Judgment. Specifically, Plaintiffs' have
9 alleged that even if the Declarant-adopted third amendment to the CC&Rs was valid,
10 the Defendants still failed to transfer SHCA Board control to the homeowners in 2019
11 and 2020. This issue does not appear to be addressed by Judge Jones' Order, and
12 consequently, issue preclusion would not apply. Further, it does not appear that a
13 statute of limitations would preclude this issue from being litigated. Although the
14 Defendants have alleged that the Plaintiffs failed to exhaust their administrative
15 remedies, the Court was not provided sufficient evidence upon which to make such a
16 conclusion. Based upon these findings, Summary Judgment would be inappropriate
17 because genuine issues of material fact remain.

18 **CONCLUSION/ORDER**

19 Based upon the foregoing, and good cause appearing,

20 **IT IS HEREBY ORDERED** that Defendant, Southern Highlands
21 Development Corporation's Motion to Dismiss, and Southern Highlands Community
22 Association's Joinder thereto, are **GRANTED IN PART and DENIED IN PART**,
23 and the Motion is being treated as a Motion for Summary Judgment because the
24 Court's evaluation was based at least in part, on information and documentation,
25 outside of the Motion.

26 The Motion is **GRANTED** to the extent that it seeks relief relating to a
27 determination as to the validity or non-validity of the Third Amendment to the CC&R's,
28 as that issue was previously addressed by District Court Dept. 29, and that Court
determined that the challenge was untimely, and consequently, dismissal was
appropriate. Issue preclusion prevents this Court from re-addressing that issue. With
regard to the remaining issues addressed in the Motion, however, the Motion is
DENIED, as genuine issues of material fact remain, and/or, if the Court considers the

1 remaining issues under a Motion to Dismiss standard, the Court cannot conclude
2 “beyond a doubt that [Plaintiffs] could prove no set of facts, which, if true, would entitle
3 [them] to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008).

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5 Dated this 28th day of May, 2021

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11 Jerry A. Wiese
12 District Court Judge
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5		
6	Michael Kosor, Jr., Plaintiff(s)	CASE NO: A-20-825485-C
7	vs.	DEPT. NO. Department 30
8	Southern Highlands Community	
9	Associaition, Defendant(s)	

10

11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 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:

14 Service Date: 5/28/2021

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EXHIBIT 8

1 DAO

2 **EIGHTH JUDICIAL DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 MICHAEL KOSOR, JR. A NEVADA RESIDENT; HOWARD
6 CHARLES MCCARLEY, A NEVADA RESIDENT; DOES I
7 THROUGH X, INCLUSIVE

Case No. A-20-825485-C

8 Plaintiffs (s),

9 vs.

Dept. No. VII

10 SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION;
11 SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION;
12 DOES I THROUGH X, INCLUSIVE,

13 Defendants (s).

14 **DECISION AND ORDER**

15 This case involves a dispute over governance of the Southern Highlands Community
16 Association. Michael Kosor, Jr and Howard Charles McCarley filed a Motion for Voluntarily
17 Dismissal. SHCA and SHDC filed a Limited Opposition requesting dismissal with prejudice. SHCA
18 and SHDC also filed a Countermotion for fees and costs. After review of the papers filed and
19 consideration of oral arguments, the Motion for Voluntary Dismissal is granted with prejudice. The
20 Southern Highlands Defendants' countermotion for attorney fees and costs is granted.

21 **I. Factual and Procedural Background**

22 In this case, Mr. Kosor and Mr. McCarley assert the Third Amendment to the CC&Rs for the
23 Southern Highland HOA was invalid, and the Southern Highland control period over the HOA had
24 expired. In 2016, Mr. Kosor filed a Complaint against Southern Highlands with the Nevada Real
25 Estate Division regarding the termination of Southern Highland's control period. The case was closed
26 in June of 2016 with a finding by NRED that Mr. Kosor's complaint lacked merit to warrant any
27 further action. Mr. Kosor filed another Complaint with NRED regarding the same issue in 2017. The
28 Complaint was again closed because NRED found there was no good cause to pursue the investigation
further.

After the Complaints against Southern Highlands were closed by NRED, Mr. Kosor filed a

1 Complaint for Declaratory Relief against NRED in District Court on July 25, 2018. NRED filed a
2 Motion to Dismiss which was granted. The Court found that NRED's decision to dismiss the First and
3 Second Complaints against Southern Highlands was proper under the relevant sections of NRS 116
4 as they were time barred pursuant to both NRS 116.2117(2) and NRS 116.760(1). Mr. Kosar appealed
5 the decision, which was ultimately denied by the Nevada Supreme Court.

6 On November 24, 2020, Mr. Kosor and Mr. McCarley filed their Complaint in this matter for
7 (1) Violation of CIC Law Requirement Regarding Executive Board Elections NRS 116.31034; (2)
8 Violation of Fiduciary Duty NRS 116.3103; and (3) Attorney Fees as Special Damages. On December
9 2, 2020, SHCA filed a Motion to Dismiss pursuant to NRCP 19, arguing that Mr. Kosor and Mr.
10 McCarley failed to name indispensable parties – SHDC – to this action, resulting in SHDC being
11 added as a defendant.

12 SHDC filed a Motion to Dismiss on April 13, 2021, which SHCA filed a Joinder to, arguing
13 (1) NRED had the sole discretion to interpret NRS 116, (2) Mr. Kosor and Mr. McCarley's claims
14 were time barred under NRS 116.117(2), and (3) Mr. Kosor and Mr. McCarley's claims were barred
15 by issue preclusion. On May 28, 2021, The Court granted SHDC's motion in part in regards to Mr.
16 Kosor and Mr. McCarley's relief relating to a determination as to the validity or non-validity of the
17 Third Amendment to the CC&Rs, finding Mr. McCarley was adequately represented by Mr. Kosor in
18 the previous District Court case against NRED. The Court denied the Motion as to all other issues. On
19 January 10, 2022, Mr. Kosor and Mr. McCarley filed a Motion for Summary Judgment. The Court
20 denied their motion finding there was genuine issues of material fact because the interpretation of the
21 statutes at issue and the CC&Rs are case determinative, and the parties disagreed on the interpretation
22 of the statutes and CC&Rs.

23 After about eighteen months of litigation, Mr. Kosor and Mr. McCarley filed a Motion for
24 Voluntary Dismissal. SHCA and SHDC filed a Limited Opposition and Countermotion for fees and
25 costs on June 20, 2022, and this matter came before the Court on July 20, 2022.

26 **II. The remaining claims are dismissed with prejudice.**

27 The parties agree on dismissal of the case but dispute whether the dismissal should be with or
28 without prejudice. In order to determine whether a case should be dismissed with prejudice, the Court

1 may consider the following: “(1) the defendant’s effort and expense involved in preparing for trial, (2)
2 excessive delay and lack of diligence on the part of the plaintiffs in prosecuting the action and (3)
3 insufficient explanation of the need to take a dismissal,” not whether SHCA and SHDC will suffer
4 any legal prejudice. See Burnette v. Godshall, 828 F.Supp.1439, 1443 (N.D. Cal. 1993).

5 **A. Southern Highlands’ effort and expense involved in preparing for trial**

6 In an effort to defend itself in this action and comply with the rules of discovery, SHDC filed
7 a partially successful Motion to Dismiss and reply, Initial Disclosures, and two other supplements.
8 SHCA and SHDC also prepared two sets of written discovery requests to Mr. Kosor and one set of
9 written discovery requests to Mr. McCarley. SHDC and SHCA drafted three meet and confer letters
10 and various attempts to conduct a meet and confer in good faith. Moreover, SHDC and SHCA were
11 required to spend time preparing for and attending hearings, as well as preparing orders throughout
12 this litigation.

13 **B. Mr. Kosor and Mr. McCarley demonstrated an excessive amount of delay and lack
14 of diligence in prosecuting this action**

15 After looking at the record, there was excessive delay and lack of diligence on the part of Mr.
16 Kosor and Mr. McCarley in prosecuting this case. Mr. Kosor and Mr. McCarley completed a minimal
17 amount of discovery in this matter, and also sought two discovery extensions which continued the trial
18 date. Mr. Kosor and Mr. McCarley did not disclose any experts to support their position or claims in
19 this matter. Moreover, Mr. Kosor and Mr. McCarley filed a Motion for Summary Judgment, which
20 was denied, before conducting or responding to any discovery. Furthermore, Southern Highlands’
21 sought supplemental responses from Mr. Kosor through multiple requests for a meet and confer which
22 Mr. Kosor and Mr. McCarley did not respond to.

23 **C. Mr. Kosor and Mr. McCarley failed to provide a sufficient explanation of the need to
24 take a dismissal in this case**

25 Mr. Kosor and Mr. McCarley have initiated this voluntary dismissal due to economic reasons,
26 and to avoid the practical effects of this litigation on Mr. Kosor’s ability to perform his duties as an
27 Association Board Member. Mr. Kosor desires to dismiss the current litigation to avoid further
28 allegations of conflicts of interest and breached fiduciary duty resulting in his activities as a member
of the Association. These explanations for the need to take a dismissal are insufficient. While Mr.

1 Kosor has concerns over conflicts of interests related to his roles in the HOA, Mr. Kosor and Mr.
2 McCarley chose to initiate this litigation which created these conflicts by suing Southern Highlands
3 followed by running for a position on their Board. Furthermore, Mr. Kosor is familiar with the burdens
4 and financial expenses of litigation, having sued NRED once, as well as having multiple complaints
5 sent to NRED against Southern Highlands between 2017 and 2019, each of which was dismissed as
6 having no basis in fact. SHCA and SHDC have demonstrated significant efforts and expenses involved
7 in preparing for trial. Mr. Kosor and Mr. McCarley have not provided a sufficient explanation for the
8 need to take a dismissal. Therefore, the Motion for Voluntary Dismissal is granted with prejudice.

9 **III. SHCA and SHDC are entitled to attorney fees and costs under Section 19.7 of the**
10 **CC&Rs because they are considered a prevailing party.**

11 SHCA and SHDC also request attorneys' fees and costs under Section 19.7 of the CC&Rs.
12 Pursuant to Mr. Kosor and Mr. McCarley's Motion for Voluntary Dismissal being granted with
13 prejudice, SHCA and SHDC are considered prevailing parties and are entitled to attorney fees and
14 costs under Section 19.7 of the CC&Rs. See e.g., Zenith Ins. Co. v. Breslaw, 108 F.3d 205, 207 (9th
15 Cir. 1997) (holding that voluntary dismissal with prejudice conferred prevailing party status on
16 defendants), abrogated on other grounds by Ass'n of Mexican-Am Educators v. State of California,
17 231 F.3d 572 (9th Cir. 2000); Cobbler Nevada, LLC v. Gonzalez, 901 F.3d 1142, 1149 (9th Cir. 2018)
18 (finding defendant the prevailing party where plaintiff's claims were dismissed with prejudice).

19 Here, Section 19.7 of the CC&Rs states, "[i]n the event of an action instituted to enforce any
20 provision contained in the governing documents, the party prevailing in such action shall be entitled
21 to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs,
22 including administrative and lien fees, of such suit." See SHDC's 6/20/22 Appendix at Ex. D. Based
23 on the plain language of this provision, Section 19.7 of the CC&Rs entitles the prevailing party of an
24 action to enforce the governing documents to its reasonable attorneys' fees and costs.

25 Mr. Kosor and Mr. McCarley's Motion for Voluntary Dismissal is denied with prejudice,
26 making SHDC and SHCA a prevailing party. Due to Mr. Kosor and Mr. McCarley's claims being
27 directed at enforcing the governing documents, pursuant to Section 19.7 of the CC&Rs, Southern
28 Highlands is entitled to its reasonable fees and costs in defending this matter. As homeowners in the

1 Association, Mr. Kosor and Mr. McCarley are subject to the terms and conditions of the CC&Rs.
2 Therefore, they are contractually obligated to pay SHCA and SHDC’s reasonable attorneys’ fees and
3 costs.

4 Furthermore, Section 19.7 of the CC&Rs is not ambiguous as Mr. Kosor and Mr. McCarley
5 have failed to provide any reasonable alternative interpretation to the prevailing party provision. See
6 Quirrion v. Sherman, 109 Nev. 62, 65, 846 P.2d 1051, 1053 (1993) (“[W]here two interpretations of
7 a contract provision are possible, a court will prefer the interpretation which gives meaning to both
8 provisions.”). A contract provision does not become ambiguous just because the parties disagree on
9 how to interpret the contract. See Galardi LLC v. Naples Polaris LLC, 301 P.3d 364 (citing Anvui,
10 LLC v. G.L. Dragon, LLC, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007) (“A contract is ambiguous
11 if its terms may reasonably be interpreted in more than one way. . .”). Therefore, section 19.7 of the
12 CC&Rs is not ambiguous and will be enforced.

13 **IV. SHCA’s Counsel satisfied the Brunzell Factors.**

14 In evaluating the reasonableness of a request for attorney fees, “the district court is required to
15 consider the factors set forth...in Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349–50
16 (1969).” Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 865 (2005). Those factors are “the
17 advocate’s professional qualities, the nature of the litigation, the work performed, and the result.” Id.

18 **A. The qualities of the advocate**

19 SHCA’s counsel, Wolf Rifkin Shapiro, Schulman & Rabkin, LLP is an experienced litigation
20 firm that has handled multiple complex civil cases. Wolf Rifkin also specializes in handling matters
21 related to community associations. The knowledge and ability of counsel was demonstrated by the
22 extensive motion practice in this case. Furthermore, SHCA’s Motions were successful both before this
23 Court and the Nevada Supreme and Appellate Courts. The counsel working alongside Wolf Rikin
24 demonstrated their ability to perform the work necessary to protect their clients’ interests.

25 **B. The character of the work done**

26 In their Limited Opposition, SHCA’s counsel stated that they made multiple court
27 appearances, participated in drafting, litigating against, as well as analyzing Mr. Kosor and Mr.
28 McCarley’s Motions. SHCA’s counsel also participated in early case conference related activities as

1 well as discovery. Furthermore, SHCA’s counsel participated in drafting an Opposition to Mr. Kosor
2 and Mr. McCarley’s Motion for Summary Judgment and other motions in an attempt to defend their
3 client. All of these activities necessitated briefing, research, as well as arguments that were heard
4 before this Court.

5 **C. The work actually performed by the lawyer**

6 The Association’s counsel performed all necessary work in defending against Mr. Kosor and
7 Mr. McCarley’s Complaint in order to provide their client with a proper defense. Furthermore,
8 SHCA’s Counsel provided an itemized list of the time spent on this case.

9 **D. The result of the litigation**

10 SHCA’s counsel was successful on almost every motion it filed or in which it participated, and
11 successfully opposed every motion filed by Mr. Kosor and Mr. McCarley. Having put forth extensive
12 work, SHCA’s counsel have satisfied the requirements as articulated by the Brunzell Court, and
13 accordingly, attorneys’ fees totaling **\$67,521.25** will be awarded, as well as costs in the amount of
14 **\$261.19**.

15 **V. SHDC’s Counsel satisfied the Brunzell Factors.**

16 **A. The Qualities of the Advocate**

17 SHDC retained the Kemp Jones firm to defend against Mr. Kosor and Mr. McCarley’s claims.
18 Kemp Jones has a lengthy history of practice before the Eighth Judicial District Court. SHDC’s lead
19 trial counsel, Randall Jones, Esq., has been practicing law in Nevada for 40 years, has tried multiple
20 jury and bench trials to verdict, and has received numerous professional awards and recognitions as a
21 trial advocate. Nathanael Rulis, Esq., the other trial counsel in this matter, has over a decade of
22 litigation experience litigating civil matters before this Court, including multiple trials and has been
23 recognized for various professional awards.

24 **B. The character of the work done**

25 SHDC has produced evidence and responded to written discovery in this matter in good faith.
26 SHDC’s counsel also filed multiple motions on behalf of their client including the Limited Opposition
27 that is before this Court. All briefing prepared by SHDC’s counsel was supported by accompanying
28 exhibits. The work performed by Kemp Jones in this case supports SHDC’s requested award of

1 attorneys' fees.

2 **C. The work actually performed by the lawyer**

3 Kemp Jones prepared a partially successful Motion to Dismiss, which barred any arguments
4 regarding the invalidity of the Third Amendment to the CC&Rs, making the issue moot. Kemp Jones
5 served necessary and proportionate discovery requests to Mr. Kosor and Mr. McCarley. SHDC also
6 prepared a successful Opposition to Mr. Kosor and Mr. McCarley's Motion for Summary Judgment.

7 SHDC prepared a Motion to Dismiss Mr. Kosor and Mr. McCarley's Amended Complaint and
8 Reply in Support of the same, two sets of written discovery requests to Mr. Kosor, and one set of
9 written discovery requests to Mr. McCarley. SHDC also drafted three meet and confer letters and an
10 Opposition to Mr. Kosor and Mr. McCarley's Motion for Summary Judgment. SHDC prepared, and
11 successfully prevailed on, a Motion to Continue Hearing on Mr. Kosor and Mr. McCarley's Motion
12 to Voluntarily Dismiss. Accordingly, the volume and quality of the work performed by Kemp Jones
13 to defend its clients supports the reasonableness of SHDC's requested award of attorney's fees.

14 **D. The result of the litigation**

15 SHDC has prevailed, or at least partially prevailed, on all briefings filed in this matter. SHDC's
16 Motion to Dismiss, which was treated as a Motion for Summary Judgment, was granted in part. SHDC
17 subsequently successfully opposed Mr. Kosor and Mr. McCarley's Motion for Summary Judgment.
18 SHDC's counsel have satisfied the requirements as articulated by the Brunzell Court, and accordingly,
19 attorneys' fees totaling **\$79,637.50** will be awarded, as well as costs in the amount of **\$695.94**.

20 **III. Conclusion**

21 Based on the foregoing, the Court grants Mr. Kosor and Mr. McCarley's Motion to Voluntarily
22 Dismiss with prejudice. SHCA and SHDC are entitled to their attorneys' fees and costs pursuant to
23 the pertinent provisions of the CC&Rs. SHCA is awarded **\$67,521.25** in attorney fees, as well as costs
24 in the amount of **\$261.19**. SHDC is awarded **\$79,637.50** in attorney fees, as well as costs in the amount
25 of **\$695.94**. As a result of this order, the September 21, 2022 status check is VACATED. The October
26 19, 2022 Pre Trial Conference is VACATED. The December 21, 2022 Calendar Call is VACATED.
27 The January 3, 2023 Bench Trial is VACATED.

Dated this 29th day of September, 2022



LINDA MARIE BELL
DISTRICT COURT JUDGE

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LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Michael Kosor, Jr., Plaintiff(s) | CASE NO: A-20-825485-C
7 vs. | DEPT. NO. Department 7
8 Southern Highlands Community
9 Associaition, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Decision and 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:

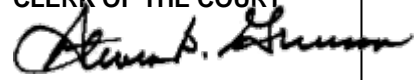
14 Service Date: 9/29/2022

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EXHIBIT 9



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7 *Attorneys for Defendant Southern
Highlands Development Corporation*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10
11 MICHAEL KOSOR, JR., a Nevada resident;
HOWARD CHARLES MCCARLEY, a
12 Nevada resident; DOES I through X,
inclusive

Case No.: A-20-825485-C
Dept. No.: VII

NOTICE OF ENTRY OF JUDGMENT

13 **Plaintiffs,**

14 vs.

15 SOUTHERN HIGHLANDS COMMUNITY
16 ASSOCIATION; SOUTHERN
HIGHLANDS DEVELOPMENT
17 CORPORATION; DOES I through X,
inclusive

18 **Defendants.**

19
20
21 TO: Plaintiffs; and,

22 TO: Their respective counsel:

23 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on October 21, 2022, a

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Judgment was entered in the above referenced case. A copy of said Judgment is attached hereto.

Dated this 21st day of October 2022.

KEMP JONES, LLP

/s/ Nathanael Rulis
J. RANDALL JONES, ESQ. (#1927)
NATHANAEL R. RULIS, ESQ. (#11259)
MADISON S. FLORANCE, ESQ. (#14229)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
*Attorneys for Defendant Southern
Highlands Development Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2022, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT** via the Court’s electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Lott
An Employee of KEMP JONES, LLP

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7 *Attorneys for Defendant Southern
Highlands Development Corporation*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10
11 MICHAEL KOSOR, JR., a Nevada resident;
HOWARD CHARLES MCCARLEY, a
12 Nevada resident; DOES I through X,
inclusive

Case No.: A-20-825485-C
Dept. No.: VII

JUDGMENT

13
14 **Plaintiffs,**

vs.

15 SOUTHERN HIGHLANDS COMMUNITY
16 ASSOCIATION; SOUTHERN
HIGHLANDS DEVELOPMENT
17 CORPORATION; DOES I through X,
inclusive

18
19 **Defendants.**

20
21 This Court entered a DECISION AND ORDER regarding Southern Highlands Development
22 Corporation’s Countermotion for Attorney’s Fees in the above-captioned matter on September 29, 2022
23 (the “Order”). As a result of the Court’s decision in that Order, the Court hereby enters judgment in
24 favor of Southern Highlands Development Corporation as follows:

25 ///

26 ///

27 ///

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that the Defendant SOUTHERN
2 HIGHLANDS DEVELOPMENT CORPORATION recover the sun amount of **EIGHTY THOUSAND**
3 **THREE HUNDRED THIRTY-THREE DOLLARS AND FORTY-FOUR CENTS (\$80,333.44)**
4 from Plaintiffs Michael Kosor, Jr. and Howard Charles McCarley, jointly and severally.

5 Dated this 21st day of October, 2022

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7 

8
9 **FAA 3C8 FC70 3890**
10 **Linda Marie Bell**
11 **District Court Judge**

12
13 Respectfully submitted,

14 KEMP JONES LLP

15 /s/ Nathanael Rulis

16 J. RANDALL JONES, ESQ. (#1927)
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21 *Attorneys for Defendant Southern*
22 *Highlands Development Corporation*

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6	Michael Kosor, Jr., Plaintiff(s)	CASE NO: A-20-825485-C
7	vs.	DEPT. NO. Department 7
8	Southern Highlands Community	
9	Associaition, Defendant(s)	

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 18th day of October, 2022, a true and correct copy of **NOTICE**
3 **OF ENTRY OF JUDGMENT** was served by electronically filing with the Clerk of the Court
4 using the Odyssey eFileNV system and serving all parties with an email-address on record,
5 pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

6
7 By: /s/ Danielle Fresquez
8 Danielle Fresquez, an Employee of
9 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
10 RABKIN, LLP
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EXHIBIT 1

EXHIBIT 1

1 **JUDG**

BRADLEY S. SCHRAGER, ESQ.

2 Nevada Bar No. 10217

GREGORY P. KERR, ESQ.

3 Nevada Bar No. 10383

WOLF, RIFKIN, SHAPIRO,

4 **SCHULMAN & RABKIN, LLP**

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7 *Attorneys for Defendant,*

8 *Southern Highlands Community Association*

9
10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **IN AND FOR CLARK COUNTY, STATE OF NEVADA**

12 MICHAEL KOSOR, JR., a Nevada resident;
HOWARD CHARLES MCCARLEY, a
13 Nevada resident; DOES I through X,
inclusive,

14
15 Plaintiffs,

16 v.

17 SOUTHERN HIGHLANDS COMMUNITY
ASSOCIATION; SOUTHERN HIGHLANDS
DEVELOPMENT CORPORATION; DOES I
18 through X, inclusive,

19
20 Defendants.

Case No. A-20-825485-C
Dept. No.: 7

JUDGMENT

22 This Court entered a DECISION AND ORDER re: Southern Highlands Community
23 Association's Countermotion for Attorney's Fees in this case on September 29, 2022 (the
24 "Order"). As a result of the Court's decision in that Order, the Court hereby enters judgment in
25 favor of Southern Highlands Community Association as follows:

26 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Defendant
27 SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION recover the sum amount of **SIXTY**
28 **SEVEN THOUSAND SEVEN HUNDRED EIGHTY TWO DOLLARS AND 44 CENTS**

1 (\$67,782.44) from Plaintiffs Michael Kosor, Jr. and Howard Charles McCarley, jointly and
2 severally.

Dated this 18th day of October, 2022

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7 **2E9 081 B813 267C**
8 **Linda Marie Bell**
9 **District Court Judge**

10 Respectfully submitted,

11 **WOLF, RIFKIN, SHAPIRO,**
12 **SCHULMAN & RABKIN, LLP**

13 */s/ Bradley S. Schragger*

14

15 **BRADLEY S. SCHRAGER, ESQ.**
16 Nevada Bar No. 10217
17 **GREGORY P. KERR, ESQ.**
18 Nevada Bar No. 10383
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20 Las Vegas, Nevada 89169

21 Attorneys for Defendant
22 *Southern Highlands Community Association*
23
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Michael Kosor, Jr., Plaintiff(s) | CASE NO: A-20-825485-C
7 vs. | DEPT. NO. Department 7
8 Southern Highlands Community
9 Associaition, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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13 Court. The foregoing Judgment was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

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EXHIBIT 10

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6 *Attorneys for Defendant Southern
Highlands Development Corporation*

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 MICHAEL KOSOR, JR., a Nevada resident;
HOWARD CHARLES MCCARLEY, a
11 Nevada resident; DOES I through X,
inclusive

12
13 Plaintiffs,

14 vs.

15 SOUTHERN HIGHLANDS COMMUNITY
ASSOCIATION; SOUTHERN
16 HIGHLANDS DEVELOPMENT
CORPORATION; DOES I through X,
17 inclusive

18 Defendants.

Case No.: A-20-825485-C
19 Dept. No.: ~~XXX~~ 7

20
21 **ORDER DENYING PLAINTIFFS' MOTION
TO AMEND FINDINGS OF FACT UNDER
NRCP 52(B) AND GRANTING IN PART
22 PLAINTIFFS' MOTION TO AMEND THE
FINAL ORDER AND JUDGMENT UNDER
NRCP 59**

23 **Date of Hearing:** Dec. 7, 2022

24 **Time of Hearing:** 9:00 a.m.

25 THIS MATTER having come before the Court on December 7, 2022, with Nathanael Rulis,
26 Esq. and J. Randall Jones, Esq. appearing on behalf of Defendant Southern Highlands Development
27 Corporation ("SHDC"), Bradley Schrager, Esq. appearing on behalf of Defendant Southern Highlands
28 Community Association ("SHCA"), and Joseph Meservy, Esq. appearing on behalf of Plaintiffs
Michael Kosor, Jr. and Howard Charles McCarley ("Plaintiffs"), on Plaintiffs' Motions to Amend
Finding of Facts under NRCP 52(b) and to Amend Decision and Order and Judgment under NRCP 59
and a Motion to Stay Execution of Judgment Pending Disposition of Motions to Amend Findings of
Fact under NRCP 52(b) and to Amend Decision and Order and Judgment under NRCP 59. The Court

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1 having reviewed and considered Plaintiffs’ Motions to Amend, SHDC’s and SHCA’s Oppositions, and
2 Plaintiffs’ Reply; and having heard the arguments of counsel, with good cause appearing, the Court
3 denies Plaintiffs’ Motion to Amend Finding of Fact under NRCP 52(b), and grants in part Plaintiffs’
4 Motion to Amend Decision and Order and Judgment under NRCP 59 for the following reasons:

5 **A. PROCEDURAL HISTORY**

6 On September 29, 2022, the Court issued a Decision and Order in the above matter granting
7 Plaintiffs’ Motion for Voluntary Dismissal, with prejudice, and awarded both SHCA and SHDC
8 attorneys’ fees and costs pursuant to the pertinent provisions of the CC&Rs discussed in the Decision
9 and Order.

10 Plaintiffs filed their Motions to Amend Findings of Fact under NRCP 52(b) and to Amend
11 Decision and Order and Judgment under NRCP 59 on October 26, 2022. Plaintiffs also filed a Motion
12 to Stay Execution of Judgment pending disposition of the above Motions to Amend on October 27,
13 2022. Defendants SHCA and SHDC filed Oppositions to Plaintiffs’ Motions to Amend on November
14 9, 2022, and Oppositions to Plaintiffs’ Motion to Stay on November 10, 2022. On November 30, 2022
15 Plaintiffs’ filed their Replies in Support of their Motions to Amend and Motion to Stay Execution. On
16 December 7, 2022, the Court heard oral argument regarding Plaintiffs’ above-referenced Motions
17 before granting Plaintiffs’ Motion to Stay Execution.

18 **B. PLAINTIFFS MOTION TO AMEND FINDINGS OF FACT UNDER NRCP**
19 **52(b):**

20 With respect to Plaintiffs’ Motion to Amend Findings of Fact under NRCP 52(b), Plaintiffs’
21 request is DENIED, as the Court’s decision to grant a dismissal with prejudice and award attorney fees
22 for Defendants was proper.

23 “On a party’s motion filed no later than 28 days after service of written notice of entry of
24 judgment, the court may amend its findings—or make additional findings—and may amend the
25 judgment accordingly.” NRCP 52(b). Factual findings will not be set aside unless they are clearly
26 erroneous or unsupported by substantial evidence. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739,
27 100 P.3d 658, 660–61 (2004).

1 Plaintiffs argued that the Court’s final order violated NRCP 41(a)(2) and should be amended to
2 expressly grant the moving Plaintiffs a reasonable opportunity to refuse the conditional voluntary
3 dismissal and withdraw their motion. The Court finds that in this case, the Plaintiffs were granted this
4 opportunity as the Plaintiffs knew what the terms of the voluntary dismissal could have been before the
5 Court’s September 29, 2022 Decision and Order. Prior to the Court issuing its order, both SHCA and
6 SHDC responded to Plaintiffs’ Motion for Voluntary Dismissal with oppositions that set forth the legal
7 grounds and facts that supported a dismissal with prejudice and, in conjunction therewith,
8 counter motions for attorney fees. Plaintiffs responded with a reply brief on the issue of a dismissal
9 with prejudice and an opposition to the counter motions for attorney fees. The hearing on Plaintiffs’
10 Motion to Voluntarily Withdraw and Defendants SHDC’s and SHCA’s Counter motions for Attorney
11 Fees was conducted on July 20, 2023, approximately two months prior to the Court’s Decision and
12 Order. The Court finds that Plaintiffs were sufficiently provided due process or whatever notice NRCP
13 41(a)(2) might otherwise afford for a dismissal order containing “terms that the court considers proper.”
14 Therefore, the Court finds that Plaintiffs were afforded a reasonable time to accept the conditions of
15 dismissal or withdraw their Motion for Voluntary Dismissal.

16 As part of their Motions to Amend, Plaintiffs further assert that the Court made an erroneous
17 finding of fact related to the 2016 NRED Complaint and the 2017 NRED Complaint. Defendants
18 SHDC and SHCA asserted in their Oppositions to Plaintiffs Motions to Amend that evidence to
19 substantially support the Court’s factual findings related to the NRED Complaints was included in the
20 Exhibits attached to Plaintiffs’ Motion to Amend. The Court finds that, in this case, the factual findings
21 made in the Decision and Order related to the 2016 NRED Complaint and 2017 NRED Complaint are
22 supported by substantial evidence as detailed in SHCA’s and SHDC’s Oppositions to Plaintiffs’ Motion
23 to Amend.

24 For all the foregoing reasons, Plaintiffs’ Motion to Amend Findings of Fact under NRCP 52(b)
25 is DENIED.

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1 **C. PLAINTIFFS’ MOTION TO AMEND THE FINAL ORDER AND JUDGMENT**
2 **UNDER NRCP 59:**

3 With respect to Plaintiffs’ Motion to Amend the Final Order and Judgment under NRCP 59,
4 Plaintiffs’ request is granted in part due to a manifest error, specifically as to the attorney fees and costs
5 awarded to SHCA.

6 “An NRCP 59(e) motion to alter or amend a judgment may be appropriate to correct manifest
7 errors of law or fact, address newly discovered or previously unavailable evidence, prevent manifest
8 injustice, or address a change in controlling law.” *Panorama Towers Condo. Unit Owners’ Ass’n v.*
9 *Hallier*, 137 Nev. Adv. Op. 67, 498 P.3d 222, 224 (2021) (emphasis added) (citing to *AA Primo*
10 *Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010)).

11 In their Motion to Amend, Plaintiffs asserted that the fees awarded to SHCA should be reduced
12 due to the lack of evidentiary basis to support the award as to Gregory P. Kerr, Daniel Bravo, A. Jill
13 Guingcango, David Stern, Nina Stone, and Kurt Bond. They also argued that the attorney fees awarded
14 to SHDC should be reduced by \$2,352.50 as those fees were incurred prior to the issuance of a
15 summons in this action.

16 Plaintiffs’ Motion to Amend the Final Order and Judgment under NRCP 59 is DENIED as to
17 the attorney fees and costs awarded to SHDC. SHDC’s Judgment will stand as SHDC supported their
18 attorney fees under the *Brunzell*¹ factors. Furthermore, SHDC provided the Court with sufficient
19 evidence of billing entries, affidavits, and hourly rates for the attorneys that worked on the above matter.
20 The attorney fees incurred were all directly related to this suit as detailed in SHDC’s Opposition to
21 Plaintiffs’ Motions to Amend, as the fees were directly related to SHDC’s efforts to intervene in the
22 current action.

23 The Court finds that the Motion to Amend the Final Order and Judgment under NRCP 59 is
24 GRANTED IN PART as it relates to the attorney fees and costs awarded as to SHCA. The Judgment
25 will be amended in regards to SHCA, as SHCA failed to support the qualities of certain advocates and
26 the reasonableness of their hourly rates. In its countermotion for fees and costs, SHCA failed to set

27 _____
28 ¹ *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

1 forth any of the qualities of Daniel Bravo, A. Jill Guingcango, David Stern, Nina Stone, and Kurt Bond
2 which is required under the first factor of *Brunzell*. In their Reply, SHCA set forth the qualities of
3 Gregory P. Kerr, but without any affidavit/declaration or proof of those qualities. Therefore, the Court
4 finds that the Judgment shall be amended in regards to SHCA only. The attorney fees requested for
5 Gregory P. Kerr, Daniel Bravo, A. Jill Guingcango, David Stern, Nina Stone, and Kurt Bond will be
6 reduced from the total original judgment amount of \$67,782.44, resulting in a new total judgment
7 amount of \$45,129.94 in favor of SHCA.

8 **CONCLUSION AND ORDER**

9 Based upon the foregoing, and good cause appearing,

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to Amend
11 Finding of Facts under NRCP 52(b) is DENIED.

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to
13 Amend Final Judgment under NRCP 59 is GRANTED IN PART and DENIED IN PART. The Motion
14 is GRANTED to the extent that Judgment be amended to reduce the amount of SHCA's attorney fees
15 for a new total Judgment amount in favor of SHCA of \$45,129.94.

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1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to
2 Amend Final Judgment under NRCP 59 is DENIED to the extent the motion requested SHDC's
3 judgment for its award of attorney fees and costs be amended.

4 **IT IS SO ORDERED.**

Dated this 23rd day of January, 2023



**D5B ED3 AC38 8AAD
Michael Villani
District Court**

DISTRICT COURT JUDGE
For Judge Linda Marie Bell

12 Respectfully Submitted by:

13 KEMP JONES, LLP

14 /s/ Nathanael R. Rulis

15 J. Randall Jones, Esq. (#1927)
16 Nathanael R. Rulis, Esq. (#11259)
17 Madison S. Florance, Esq. (#14229)
18 KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
*Attorneys for Defendant Southern
Highlands Development Corporation*

Approved as to form and content by:

DATED this 20th day of January, 2023.

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABIN, LLP

/s/ Bradley Schragar
Gregory Kerr, Esq. (#10383)
Bradley Schragar, Esq. (#10217)
3773 Howard Hughes Parkway
Suite 590 South
Las Vegas, NV 89169

BARRON & PRUITT, LLP

Circulated / Competing Order
William H. Pruitt, Esq. (#6783)
Joseph Meservy, Esq. (#14088)
3890 West Ann Road
North Las Vegas, NV 89031

From: [Maddie Florance](#)
To: "[Joseph Meservy](#)"; [Bradley Schrager](#); [Bill Pruitt](#)
Cc: [Nathanael Rulis](#); [Breanna Switzler](#); [Ali Lott](#)
Subject: RE: [External]RE: [External]RE: Kosor v. SHCA; Proposed Order Regarding Plaintiffs' Motions to Amend
Date: Friday, January 20, 2023 5:47:38 PM
Attachments: [image001.png](#)
[image002.png](#)
[Proposed Order re Plaintiffs Motions to Amend.docx](#)

Joseph,

We have changed the hearing date and altered the language on page 2 to read "On September 29, 2022, the Court issued a Decision and Order in the above matter granting Plaintiffs' Motion for Voluntary Dismissal, with prejudice, and awarded both SHCA and SHDC attorneys' fees and costs pursuant to the pertinent provisions of the CC&Rs discussed in the Decision and Order." In order to comply with EDCR 7.21, and since it is already past 5:30 p.m., we are submitting the attached order (which closely mirrors the Court's minute order). The rule only requires the order be submitted – not signed - within 14 days. Regardless, it is our understanding that a senior judge is available to review and sign orders. If you choose to submit a competing order please feel free to do so.

Thanks,
Maddie

From: Joseph Meservy <JMeservy@lvnlaw.com>
Sent: Friday, January 20, 2023 4:49 PM
To: Maddie Florance <m.florance@kempjones.com>; Bradley Schrager <BSchrager@wrslawyers.com>; Bill Pruitt <BPruitt@lvnlaw.com>
Cc: Nathanael Rulis <n.rulis@kempjones.com>; Breanna Switzler <b.switzler@kempjones.com>; Ali Lott <a.lott@kempjones.com>
Subject: [External]RE: [External]RE: Kosor v. SHCA; Proposed Order Regarding Plaintiffs' Motions to Amend

Maddie:

I am currently working on it. With all due respect, to my knowledge there is no judge in that department capable of signing off on this order yet anyway. But, to begin, the hearing date listed is the wrong year. Also, the procedural history section on pg. 2 describes an all caps "Voluntary Motion with Prejudice" as though that was the name of the motion, which it was not. More to come...

Sincerely,
Joseph R. Meservy, Esq.
Barron & Pruitt, LLP
LAWYERS

This transmission and any attached files are privileged, confidential or otherwise the exclusive property of the intended recipient or the law firm of Barron & Pruitt, LLP. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is strictly prohibited. If you have received this transmission in error, please contact us immediately by e-mail by hitting reply or telephone (702) 870-3940 and promptly destroy the original transmission and its attachments.

From: Maddie Florance [<mailto:m.florance@kempjones.com>]
Sent: Friday, January 20, 2023 3:10 PM
To: Joseph Meservy <JMeservy@lvnlaw.com>; Bradley Schrager <BSchrager@wrslawyers.com>; Bill Pruitt <BPruitt@lvnlaw.com>
Cc: Nathanael Rulis <n.rulis@kempjones.com>; Breanna Switzler <b.switzler@kempjones.com>; Ali Lott <a.lott@kempjones.com>
Subject: RE: [External]RE: Kosor v. SHCA; Proposed Order Regarding Plaintiffs' Motions to Amend

Good Afternoon,

I am following up regarding my email sent on January 17, 2023, regarding the Proposed Order, which is due today per EDCR 7.21. I have attached the order again for convenience. We will be submitting the order today at 5:00 p.m. If we do not receive your comments before then we will file our order as is and you may submit a competing order.

Thanks,
Maddie

Maddie Florance, Esq.



3800 Howard Hughes Pkwy., 17th Floor | Las Vegas, NV 89169
(P) 702-385-6000 | (F) 702 385-6001 | m.florance@kempjones.com
[\(profile\)](#) [\(vCard\)](#)

This e-mail transmission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to sender, or by telephone at (702) 385-6000, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.

From: Joseph Meservy <JMeservy@lvnlaw.com>
Sent: Tuesday, January 17, 2023 3:33 PM
To: Bradley Schrage <BSchrager@wrslawyers.com>; Maddie Florance <m.florance@kempjones.com>; Bill Pruitt <BPruitt@lvnlaw.com>
Cc: Nathanael Rulis <n.rulis@kempjones.com>; Breanna Switzler <b.switzler@kempjones.com>
Subject: [External]RE: Kosor v. SHCA; Proposed Order Regarding Plaintiffs' Motions to Amend

I have a variety of matters that I am attending to here. Please be patient. I will be in touch with either feedback for the draft you sent me or something for all counsel to review as soon as possible.

Thanks,
Joseph R. Meservy, Esq.
Barron & Pruitt, LLP
LAWYERS

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From: Bradley Schrage [<mailto:BSchrager@wrslawyers.com>]
Sent: Tuesday, January 17, 2023 3:03 PM
To: Joseph Meservy <JMeservy@lvnlaw.com>; Maddie Florance <m.florance@kempjones.com>; Bill Pruitt <BPruitt@lvnlaw.com>
Cc: Nathanael Rulis <n.rulis@kempjones.com>; Breanna Switzler <b.switzler@kempjones.com>
Subject: Re: Kosor v. SHCA; Proposed Order Regarding Plaintiffs' Motions to Amend

So prepare it, who's stopping you.

From: Joseph Meservy <JMeservy@lvnlaw.com>
Date: Tuesday, January 17, 2023 at 2:55 PM
To: Bradley Schrage <BSchrager@wrslawyers.com>, Maddie Florance <m.florance@kempjones.com>, Bill Pruitt <BPruitt@lvnlaw.com>
Cc: Nathanael Rulis <n.rulis@kempjones.com>, Breanna Switzler <b.switzler@kempjones.com>
Subject: RE: Kosor v. SHCA; Proposed Order Regarding Plaintiffs' Motions to Amend

CAUTION: EXTERNAL EMAIL

I have not yet even had a chance to review what Maddie sent. I simply responded telling you that we intend to prepare an order.

Joseph R. Meservy, Esq.
Barron & Pruitt, LLP
LAWYERS

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From: Joseph Meservy
Sent: Tuesday, January 17, 2023 2:50 PM
To: 'Bradley Schrager' <BSchrager@wrslawyers.com>; Maddie Florance <m.florance@kempjones.com>; Bill Pruitt <BPruitt@lvnlaw.com>
Cc: Nathanael Rulis <n.rulis@kempjones.com>; Breanna Switzler <b.switzler@kempjones.com>
Subject: RE: Kosor v. SHCA; Proposed Order Regarding Plaintiffs' Motions to Amend

No, that is absolutely not what I mean Brad. And, I am entirely certain that you know it.

Joseph R. Meservy, Esq.
Barron & Pruitt, LLP
LAWYERS

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From: Bradley Schrager [<mailto:BSchrager@wrslawyers.com>]
Sent: Tuesday, January 17, 2023 2:43 PM
To: Joseph Meservy <JMeservy@lvnlaw.com>; Maddie Florance <m.florance@kempjones.com>; Bill Pruitt <BPruitt@lvnlaw.com>
Cc: Nathanael Rulis <n.rulis@kempjones.com>; Breanna Switzler <b.switzler@kempjones.com>
Subject: Re: Kosor v. SHCA; Proposed Order Regarding Plaintiffs' Motions to Amend

Maddie--I take that to mean Mr. Meservy has no edits or comments on this version of a proposed order. You are authorized to append our e-signature to this, and to submit it to the Court whenever you like. Mr. Meservy is free, of course, to submit a competing order at his leisure.

Bradley Scott Schrager
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Parkway, #590 South
Las Vegas, Nevada 89169
Tel: 702-639-5102
bschrager@wrslawyers.com

From: Joseph Meservy <JMeservy@lvnlaw.com>
Date: Tuesday, January 17, 2023 at 2:32 PM
To: Maddie Florance <m.florance@kempjones.com>, Bill Pruitt <BPruitt@lvnlaw.com>
Cc: Bradley Schrager <BSchrager@wrslawyers.com>, Nathanael Rulis <n.rulis@kempjones.com>, Breanna Switzler <b.switzler@kempjones.com>
Subject: RE: Kosor v. SHCA; Proposed Order Regarding Plaintiffs' Motions to Amend

CAUTION: EXTERNAL EMAIL

Hi Maddie,

Since we were granted (albeit in part) the relief we sought on motion, I believe the Court asked us to prepare the subject order. That practice would be consistent with DCR 21. I will try and circulate something to you by Friday for your approval.

Thanks,
Joseph R. Meservy, Esq.
Barron & Pruitt, LLP
LAWYERS

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From: Maddie Florance [<mailto:m.florance@kempjones.com>]

Sent: Tuesday, January 17, 2023 2:05 PM

To: Joseph Meservy <JMeservy@lvnlaw.com>; Bill Pruitt <BPruitt@lvnlaw.com>

Cc: Bradley Schragger <BSchrager@wrslawyers.com>; Nathanael Rulis <n.rulis@kempjones.com>; Breanna Switzler <b.switzler@kempjones.com>

Subject: Kosor v. SHCA; Proposed Order Regarding Plaintiffs' Motions to Amend

Good Afternoon,

Attached for your review and approval is the Proposed Order Regarding Plaintiffs' Motions to Amend. We plan on filing this Order on Friday, January 20, 2023.

Thanks,
Maddie

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4		
5		
6	Michael Kosor, Jr., Plaintiff(s)	CASE NO: A-20-825485-C
7	vs.	DEPT. NO. Department 7
8	Southern Highlands Community	
9	Associaition, Defendant(s)	

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 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:

14 Service Date: 1/23/2023

15	Bradley Schrager	bschrager@wrslawyers.com
16	Dannielle Fresquez	dfresquez@wrslawyers.com
17	Gregory Kerr	gkerr@wrslawyers.com
18	Nina Stone	nstone@wrslawyers.com
19	Jon Jones	r.jones@kempjones.com
20	Ali Augustine	a.augustine@kempjones.com
21	Nathanael Rulis	n.rulis@kempjones.com
22	Pamela Montgomery	p.montgomery@kempjones.com
23	William Pruitt	bpruitt@lvnvlaw.com
24	Joseph Meservy	jmeservy@lvnvlaw.com
25	David Barron	dbarron@lvnvlaw.com
26		
27		
28		

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MaryAnn Dillard

mdillard@lvnvlaw.com

Deb Sagert

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Lexi Kim

l.kim@kempjones.com

Maddie Florance

m.florance@kempjones.com

Barron Pruitt Law Firm

barronpruittlawfirm@gmail.com

Breanna Switzler

b.switzler@kempjones.com

EXHIBIT 11

Appellate Case Management System

C-Track, the browser based CMS for Appellate Courts

Cases

Case Search

Participant Search

Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing. For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 684-1600.

Case Information: 85621

Short Caption:	KOSOR, JR. VS. S. HIGHLANDS CMTY. ASS'N	Court:	Supreme Court
Lower Court Case(s):	Clark Co. - Eighth Judicial District - A825485	Classification:	Civil Appeal - General - Other
Disqualifications:		Case Status:	Disposition Filed/Case Closed
Replacement:		Panel Assigned:	Panel
To SP/Judge:	11/15/2022 / Hauser, Charles	SP Status:	Completed
Oral Argument:		Oral Argument Location:	
Submission Date:		How Submitted:	

+ Party Information

Docket Entries

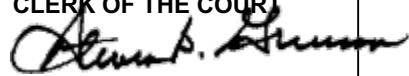
Date	Type	Description	Pending?	Document
11/08/2022	Filing Fee	Filing Fee due for Appeal. (SC)		
11/08/2022	Notice of Appeal Documents	Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (SC)		22-35146
11/08/2022	Notice/Outgoing	Issued Notice to Pay Supreme Court Filing Fee. No action will be taken on this matter until filing fee is paid. Due Date: 7 days. (SC)		22-35148
11/08/2022	Filing Fee	E-Payment \$250.00 from William H. Pruitt. (SC)		
11/09/2022	Notice/Outgoing	Issued Notice of Referral to Settlement Program. This appeal may be assigned to the settlement program. Timelines for requesting transcripts and filing briefs are		

Privacy - Terms

		stayed. Docketing Statement mailed to counsel for appellants - due: 21 days. (SC)	
11/15/2022	Settlement Notice	Issued Notice: Assignment to Settlement Program. Issued Assignment Notice to NRAP 16 Settlement Program. Settlement Judge: Charles K. Hauser. (SC)	22-35873
11/30/2022	Docketing Statement	Filed Appellants' Civil Docketing Statement. (SC)	22-37672
12/01/2022	Notice/Outgoing	Issued Notice to Provide Proof of Service on Settlement Judge for Docketing Statement. Due date: 7 days. (SC)	22-37761
12/09/2022	Notice/Incoming	Filed Proof of Service for Docketing Statement. (SC)	22-38756
01/17/2023	Settlement Program Report	Filed ECAR/Appropriate for Settlement Program. This case is appropriate for mediation and a settlement conference is scheduled for March 23, 2023, at 1:30 PM. (SC)	23-01417
02/23/2023	Notice of Appeal Documents	Filed Notice of Appeal/Amended/Supplemental. (SC)	23-05633
02/24/2023	Notice of Appeal Documents	Filed District Court Minutes for 12/07/22. (SC)	23-05664
04/03/2023	Settlement Program Report	Filed Final Report/No Settlement. The parties were unable to agree to a settlement of this matter. (SC).	23-10034
04/04/2023	Settlement Order/Procedural	Filed Order: No Settlement/Briefing Reinstated. The parties were unable to agree to a settlement. Appellant(s): 14 days transcript request; 90 days opening brief and appendix. (SC)	23-10289
04/19/2023	Transcript Request	Filed Request for Transcript of Proceedings. Transcripts requested: 07/20/22 and 12/07/22. To Court Reporter: Stacey Ray. (SC)	23-12132
06/05/2023	Transcript	Filed Notice from Court Reporter. Stacey Ray stating that the requested transcripts were delivered. Dates of transcripts: 07/20/22 and 12/07/22. (SC)	23-17663
07/03/2023	Motion	Filed Appellants' Motion to Extend Time to File Opening Brief and Appendix. (SC)	23-21169
07/05/2023	Notice/Outgoing	Issued Notice Motion to Extend Time to File Opening Brief and Appendix Approved. Due: 08/02/23. (SC)	23-21267
08/01/2023	Notice/Incoming	Filed Appellant's Notice of Withdrawal of Appeal. (SC).	23-24697
08/02/2023	Order/Dispositional	Filed Order/Voluntary Dismissal. Order Dismissing Appeal. Having reviewed the motion, we grant it, and we hereby dismiss this appeal. "This appeal is dismissed." Case Closed/No Remittitur Issued. (SC)	23-24765

[Combined Case View](#)

EXHIBIT 12



1 **COS**
2 Robert E. Werbicky (6166)
3 Piers R. Tueller (14633)
4 **HUTCHISON & STEFFEN, PLLC**
5 10080 West Alta Drive, Suite 200
6 Las Vegas, NV 89145
7 Tel: (702) 385-2500
8 Fax: (702) 385-2086
9 rwerbicky@hutchlegal.com

10 *Attorneys for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 MICHAEL KOSOR, JR., an individual
14
15 Plaintiff,

Case No.: A-23-881474-W
Department: 31

16 v.

CERTIFICATE OF SERVICE

17 SOUTHERN HIGHLANDS COMMUNITY
18 ASSOCIATION, a Nevada Non-Profit
19 Corporation; SOUTHERN HIGHLANDS
20 DEVELOPMENT CORPORATION, a
21 Nevada Corporation; CHRIS
22 ARMSTRONG, an individual; RICK
23 REXIUS, an individual; MARC
24 LIEBERMAN, an individual; DOES I-X; and
25 RO BUSINESS ENTITIES I-X, inclusive.

26 Defendants.

27 Pursuant to NRCPC 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC,
28 and that on the 21st day of November, 2023, I sent a copy of Plaintiff's Motion for (1)
Temporary Restraining Order and (2) Preliminary Injunction on an Order Shortening Time,
filed on November 21, 2023, setting the hearing date for November 29, 2023 at 9:00 a.m. and
the Appendix of Exhibits thereto, by e-mailing the parties at the following addresses:

aclarkson@the-clg.com; carmstrong@olympiacompanies.com;

1 ggoett@olympiacompanies.com; jeffreydeanroberts@gmail.com; mlieber342@live.com;
2 rrexius@olympiacompanies.com; and arock@olympiacompanies.com.

3 Further, the office of the undersigned will be arranging personal service of the same to
4 be effectuated as soon as possible. Upon receipt of the affidavit of service, the office of the
5 undersigned will file the same with the Court.

6 DATED this 21st day of November, 2023. HUTCHISON & STEFFEN, PLLC

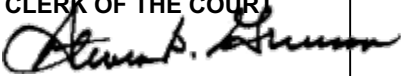
7 */s/ Robert E. Werbicky*

8 _____
9 Robert E. Werbicky (6166)
10 Peccole Professional Park
11 10080 West Alta Drive, Suite 200

12 *Attorneys for Plaintiff*

13
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EXHIBIT 13



1 **ACOM**
2 Robert E. Werbicky (6166)
3 Piers R. Tueller (14633)
4 HUTCHISON & STEFFEN, PLLC
5 10080 West Alta Drive, Suite 200
6 Las Vegas, NV 89145
7 Tel: (702) 385-2500
8 Fax: (702) 385-2086
9 rwerbicky@hutchlegal.com
10 ptueller@hutchlegal.com

11 *Attorneys for Plaintiff*

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

14 MICHAEL KOSOR, JR., an individual
15
16 Plaintiff,

17 v.

18 SOUTHERN HIGHLANDS COMMUNITY
19 ASSOCIATION, a Nevada Non-Profit
20 Corporation; SOUTHERN HIGHLANDS
21 DEVELOPMENT CORPORATION, a
22 Nevada Corporation; CHRIS
23 ARMSTRONG, an individual; RICK
24 REXIUS, an individual; MARC
25 LIEBERMAN, an individual.

26 Defendants.

Case No.: A-23-881474-W
Dept. No.: 31

FIRST AMENDED COMPLAINT

JURY TRIAL REQUESTED

**EXEMPTIONS FROM MANDATORY
ARBITRATION:**

- 1) Seeking Declaratory Relief;
- 2) Seeking Equitable Relief;
- 3) Seeking Injunctive Relief.

27 Plaintiff MICHAEL KOSOR, JR. (“Plaintiff” or “Col. Kosor”), by and through his
28 counsel of record, HUTCHISON & STEFFEN, PLLC, hereby files this First Amended Complaint
and alleges against Defendants SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION,
SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION, CHRIS ARMSTRONG,
RICK REXIUS, and MARC LIEBERMAN as follows:

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1 **PARTIES AND JURISDICTION**

2 1. Plaintiff MICHAEL KOSOR, JR. (“**Plaintiff**” or “**Kosor**”) is an individual
3 residing in Clark County, Nevada.

4 2. Plaintiff is a retired United States Air Force Colonel and former hospital executive
5 who owns a home within the SHCA.

6 3. Defendant SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION
7 (“**SHCA**”) is a Nevada non-profit Corporation with its principal place of business in Clark
8 County, Nevada.

9 4. The SHCA is the homeowners’ association for the Southern Highlands master-
10 planned community located in the southern foothills of Las Vegas, Nevada.

11 5. Defendant SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION (the
12 “**Declarant**”) is a Nevada Corporation with its principal place of business in Clark County,
13 Nevada.

14 6. Defendant Chris Armstrong (“**Defendant Armstrong**”) is an individual residing
15 in Clark County, Nevada but is not a unit owner in Southern Highlands.

16 7. Defendant Rick Rexus (“**Defendant Rexus**”) is an individual residing in Clark
17 County, Nevada but is not a unit owner in Southern Highlands.

18 8. Defendant Marc Lieberman (“**Defendant Lieberman**”) is an individual residing
19 in Clark County, Nevada and is a unit owner in Southern Highlands.

20 9. This Court has jurisdiction over this matter pursuant to NRS 14.065, NRS 30.030,
21 and NRS 38.300/310.

22 10. This Court has jurisdiction over the Injunctive Relief requested as this matter is
23 exempted from the mediation/referral program because it is “an action in equity for injunctive
24 relief,” pursuant to NRS 38.300(3).

25 11. If necessary, after Plaintiff has exhausted the requirements of the CC&R
26 alternative dispute resolution process and his administrative remedies, Plaintiff will amend to
27 assert appropriate claims against defendants.
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1 12. Venue is proper in the Eighth Judicial District Court for the State of Nevada
2 because the Plaintiff's causes of action, or some part thereof, arose in Clark County, Nevada,
3 pursuant to NRS 13.010, 13.020, and/or 13.040.

4 **GENERAL ALLEGATIONS RELEVANT TO ALL CAUSES OF ACTION**

5 **A. Background Information.**

6 13. The Master Declaration of Covenants, Conditions, and Restrictions of the SHCA
7 ("CC&Rs") were created and adopted on December 27, 1999.

8 14. The CC&Rs were recorded by the Clark County Recorder in early 2000.

9 15. The Southern Highlands Development Corporation is defined in the CC&Rs as the
10 Declarant.

11 16. The SHCA is governed by a five-member Board of Directors ("**Board**").

12 17. The Declarant appointed three (3) of the five (5) Directors currently on the Board.

13 18. The remaining two (2) Directors on the Board are elected by popular vote of the
14 homeowners within the SHCA.

15 19. The President of the Declarant is Garry V. Goett ("Garry").

16 20. Gary's son, Brett Goett ("Brett") is a Director of the Declarant.

17 21. Garry and Brett Goett are also Managers of Olympia Companies, LLC ("Olympia
18 Companies"), Olympia Management Services, LLC, and Olympia Gaming, LLC ("Olympia
19 Gaming") are companies of the Declarant.

20 22. The Goetts own a majority interest in the Declarant, Olympia Companies, Olympia
21 Management Services, LLC, and Olympia Gaming.

22 23. According to the SHCA's 2024 proposed budget, the SHCA paid almost
23 \$1,600,000 in management fees in 2023.

24 24. Defendant Armstrong, one of the Declarant-appointed Directors, is the Senior
25 Vice President of Olympia Companies which is controlled by the Goetts.

26 25. Defendant Rexius, another Declarant-appointed Director, is the Vice President
27 Construction for Olympia Gaming LLC which is also controlled by the Goetts.

28 26. Defendant Lieberman was also appointed by the Declarant.

1 27. The SHCA provided documentation and correspondence to the Nevada Real
2 Estate Division representing that, at the very least, 79.88% of the Maximum Units were conveyed
3 to people/entities other than the Declarant by January 26, 2022.

4 28. Pursuant to the CC&Rs, the Declarant Control Period ended sixty (60) days after
5 75% of the Maximum Units had been conveyed.

6 29. Pursuant to NRS 116.31034(1) the SHCA is required to hold homeowner elections
7 of all Board members not later than the termination of the Declarant Control Period.

8 30. The SHCA has not conducted or scheduled homeowner elections for all five (5)
9 Board members thereby disenfranchising the thousands of homeowners of the SHCA.

10 31. As three of the five Board members have not been elected by the homeowners, the
11 Board is illegitimate, and its actions are ultra vires.

12 **B. Election and Removal of Plaintiff as Director of SHCA Board.**

13 32. On December 17, 2021, Plaintiff was publicly elected by the SHCA homeowners
14 as a Director on the Board.

15 33. One of the principal messages of Plaintiff’s campaign was his commitment to
16 relinquish Declarant’s control over the SHCA and its Board of Directors to the thousands of
17 homeowners within the SHCA pursuant to the terms of the CC&Rs.

18 34. NRS 116.31036 and the SHCA Bylaws govern removal of Board members.

19 35. On May 16, 2023, counsel for the Declarant-controlled Board informed Plaintiff
20 of his removal from his elected position without a removal election and thereby further
21 disenfranchised SHCA homeowners.

22 36. Current Board actions and decisions are invalid as they are done without Plaintiff
23 who is one of two duly elected Directors.

24 37. The SHCA plans to conduct or is already conducting the election to the fill the
25 empty Director seat on the SHCA Board.

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1 **FIRST CLAIM FOR RELIEF**

2 **(Request for Injunctive Relief Against All Defendants)**

3 38. Plaintiff restates and incorporates all prior allegations asserted above as if set forth
4 fully herein.

5 39. Defendants' illegal actions as outlined herein have caused and will continue to
6 cause irreparable harm to Plaintiff for which immediate injunctive relief is necessary, including,
7 without limitation, (1) halting any election which does not allow homeowner elections of all
8 Directors, (2) the immediate cessation of all SHCA Board decisions except as explicitly
9 authorized by this Court in writing; and (3) halting any election to replace Plaintiff which could
10 render quo warranto induction relief ineffective.

11 40. Plaintiff has a likelihood of success on the merits and is entitled to injunctive relief
12 because, *inter alia*,

13 a. Pursuant to the CC&Rs, the SHCA was required to hold homeowner elections
14 no later than when 75% of the Units within the SHCA had been conveyed,
15 and the Declarant has failed to do so.

16 b. The Declarant-controlled SHCA Board's removal of Plaintiff from his
17 publicly elected Director position on the SHCA Board failed to comply with
18 the minimum due process requirements of NRS 116.

19 c. The Board's vote to remove Plaintiff from his position was void under Nevada
20 law as Declarant's control over the SHCA Board had long since expired, and
21 three of the four Directors' votes cast were Declarant-appointed Directors
22 (i.e., Defendants Armstrong, Rexius, and Lieberman).

23 41. Based on the illegal and unauthorized action of the Declarant-controlled SHCA
24 Board, Plaintiff should be reinstated to his position, and the current Board should be halted and
25 precluded from making any decisions except those specifically and explicitly authorized by the
26 Court.

27 42. Plaintiff has retained legal counsel to litigate this dispute and is entitled to an award
28 of all such fees and costs.

1 **SECOND CLAIM FOR RELIEF**

2 **(Request for Declaratory Relief Against All Defendants)**

3 43. Plaintiff restates and incorporates all prior allegations asserted above as if set forth
4 fully herein.

5 44. A justiciable controversy exists between Plaintiff and Defendants regarding
6 Declarant's control over the SHCA Board in that:

- 7 a. The CC&Rs require the Declarant Control Period to terminate upon
8 conveyance of 75% of the Units within the SHCA;
- 9 b. Over 75% of the Units within the SHCA have been conveyed;
- 10 c. Declarant continues to appoint Directors to the SHCA Board;
- 11 d. The SHCA has failed or refused to arrange for or hold elections for the five
12 Directors on the Board.
- 13 e. The appointed Directors, Defendants Armstrong, Rexus, and Lieberman
14 continue to act and exercise authority as Directors of the SHCA Board,
15 despite having been appointed by the Declarant rather than elected by the
16 homeowners; and
- 17 f. The Board continues to act after illegally removing one of the two duly
18 elected Directors from the Board.

19 45. Plaintiff has asserted herein a claim of a legally protected right, namely, his right
20 to continue to serve as a publicly elected Director of the SHCA Board and petition for relief to
21 live within the SHCA without the Declarant and its appointed Directors usurping authority and
22 power that they do not have based on the clear terms of the CC&Rs.

23 46. The interpretation of the CC&Rs and NRS 116 is ripe for judicial determination
24 given the fact that:

- 25 a. The Declarant-controlled SHCA Board has rejected Plaintiff's repeated
26 requests for the Declarant to justify its authority to control the SHCA;
- 27 b. The Declarant-controlled SHCA and the Declarant itself have already and will
28 continue to retaliate against Plaintiff for making such inquiries; and

1 c. Declarant-controlled SHCA Board has unlawfully ousted Plaintiff from the
2 Board.

3 47. Plaintiff respectfully asks the court to determine the parties' relative rights under
4 the CC&Rs and under NRS 116 based on Nevada law, and issue an order declaring that (1) the
5 Declarant lacks authority, and has lacked that authority since 75% of the SHCA Units were
6 conveyed, to control the SHCA or its Board; (2) as a result, the Declarant-controlled Board's
7 removal of Plaintiff from the Board was improper, Plaintiff shall be reinstated as a Director of the
8 SHCA Board as he was duly and publicly elected; and (3) all current Declarant-appointed
9 Directors—i.e., Defendants Armstrong, Rexius, and Lieberman—be removed from the Board.
10 Plaintiff has retained legal counsel to litigate this dispute and is entitled to an award of all
11 reasonable fees and costs.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

- 14 1. For a determination that the Control Period has ended and that the SHCA must (a)
15 remove all appointed Directors from the Board and (b) hold a valid election to fill the vacancies
16 created by the removal of the Declarant-appointed Directors;
- 17 2. For injunctive relief preventing Defendants from making any decisions affecting
18 the SHCA, except those specifically and explicitly authorized by this Court;
- 19 3. For all reasonable attorney's fees and costs; and
- 20 4. For such other and further relief as the Court deems just and proper.

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22 **DATED** this 17th day of November 2023.

23 **HUTCHISON & STEFFEN, PLLC**

24 */s/ Robert E. Werbicky*

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26 Robert E. Werbicky (6166)
27 Piers R. Tueller (14633)
28 10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 17th day of November, 2023, I caused the above and foregoing document entitled **FIRST AMENDED COMPLAINT** to be served through the Court's mandatory electronic service system, per EDCR 8.02, upon the following:

ALL PARTIES ON THE E-SERVICE LIST

/s/Kaylee Conradi
An employee of Hutchison & Steffen, PLLC

EXHIBIT 14

NRS 116.1206 Provisions of governing documents in violation of chapter deemed to conform with chapter by operation of law; procedure for certain amendments to governing documents.

1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter:

(a) Shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

(b) Is superseded by the provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective before the enactment of the provision of this chapter that is being violated.

2. In the case of amendments to the declaration, bylaws or plats of any common-interest community created before January 1, 1992:

(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.

3. An amendment to the declaration, bylaws or plats authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of [chapter 117](#) or [278A](#) of NRS and, except as otherwise provided in subsection 8 of [NRS 116.2117](#), with the procedures and requirements specified by those instruments. If an amendment grants to a person a right, power or privilege permitted by this chapter, any correlative obligation, liability or restriction in this chapter also applies to the person.

(Added to NRS by [1991, 543](#); A [1999, 2999](#); [2003, 2224](#); [2009, 1610, 2877](#); [2011, 2420](#))