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RN5034-001

March 15, 2019

**VIA ELECTRONIC**  
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Board of Directors  
Somerset Owners Association  
c/o First Service Residential  
7650 Town Square Way  
Reno, Nevada 89523

Attention: Tracy Carter

Re: Somerset Owners Association (the "Association")

Dear Board Members:

This is a letter which is not subject to the attorney client privilege and which may be disseminated to members of the Association regarding certain matters in which we are presently representing the Association. The purpose of this letter is to apprise the members of such matters and/or for them to utilize such letter in complying with NRS 116.4109 if they are selling their homes.

**Somerset Owners Association adv. Herbert and Linda James**  
Washoe Co. District Court Case No. CV16-00220

On or about February 12, 2016, the Jameses filed a complaint in the district court alleging that the Association did not have the right to enforce the CC&Rs against additional property the Jameses acquired from the former Northgate golf course adjacent to their original parcel, and which they subsequently incorporated into their original parcel. Among other things, the Jameses are seeking a declaration from the court that the Association cannot enforce its CC&Rs against the Jameses' entire property, only the original portion. The Association filed an answer and cross-complaint against the Jameses relating to their failure to comply with the Association's CC&Rs with respect to the Northgate land acquisition and incorporation of it into their original parcel.

On August 19, 2016, the Association amended its declaratory relief crossclaims to add thirteen homeowners, in addition to the Jameses, who purchased former Northgate golf course property and incorporated it into their original parcels. After the Association served each of the 13 new owners with copies of the counterclaims against them, counsel representing 12 of the new parties filed a motion to dismiss the claims, arguing the Association must proceed through the NRS Chapter 38 mediation requirements before it can file suit against the 13 owners. The Association unsuccessfully went through the mediation process with Mr. and Mrs. James. On November 18, 2016, the Association filed an opposition to the motion to dismiss, along with a motion asking that, if the court agrees with the new parties that the claims against them must first go to mediation. The James' claims were stayed until the mediation was completed with the 13 new parties. If the matter was not stayed, the Association could possibly have had to pursue the 13 owners (or some of them) in a different case than the James case, even though the issues were exactly the same.

The Association did not want to try the same issues in different district courts as the cases might provide different results, leaving the Association and the owners with inconsistent rulings. On December 1, 2016, the attorney for the 12 new parties filed their reply brief in support of their motion to dismiss the new claims. On December 7, 2016, the attorney for the Jameses filed their opposition to our motion to stay their portion of the case pending Chapter 38 mediation with the 13 new parties.

The Association prevailed as to the issue of stay, and agreed to dismissal followed by re-filing after mediation with the new parties. The mediation took place on June 16, 2017, with all parties except the Vasquez owners. The Association was able to reach settlements with all of the owners, except for the Jameses and Vasquez. The Association negotiated settlement agreements to reflect the terms agreed to with all defendants except the Jameses and Vasquez.

On August 30, 2017, the parties attended a Pre-Trial Conference, wherein the parties reported that six Settlement Agreements were executed and four were expected to be executed within two weeks. The parties also moved to vacate the September 7, 2017 Status Check and the September 11, 2017 Trial date. The Judge denied as to the Status Check and granted vacating the trial date and lifted the stay. The parties were ordered to prepare a Stipulation and Order, which was filed on August 31, 2017.

On September 7, 2017, the parties attended the Status Hearing. The parties reported that seven of the twelve Settlement Agreements had been executed. The Court scheduled a Status Hearing for November 9, 2017. On September 11, 2017, an Order Lifting Stay and Vacating Trial Setting Date was filed.

The settlement checks were sent to those owners whose lot expansion agreements were recorded.

An additional day of mediation was held on October 10, 2017, to address the issues of Homeowner Vasquez. The mediation was successful and the parties concluded the final details of Homeowner Vasquez's Lot Expansion Agreement. As a result, in addition to Mr. and Mrs. James, the litigation will go forward with only two remaining property owners.

On December 27, 2017, the Association filed a First Amended Counterclaim (Third Party Complaint) against Homeowners Ditchvevs and McCullochs. The McCullochs responded to the First Amended Counterclaim (Third Party Complaint) and filed a counterclaim. The Association responded to McCullochs' Counterclaim on March 15, 2018.

The Ditchvevs settled and a lot expansion agreement was recorded against their property. The Ditchvevs were dismissed from the action.

A status hearing took place on April 10, 2018. During the status check, Plaintiffs notified the Court they were ready to move the case forward. Counsel for Somerset indicated the need for additional discovery. The Court inquired as to whether the parties would participate in a Settlement Conference. Somerset counsel agreed, however, noted that this matter has been mediated twice previously. Plaintiffs' counsel indicated that settlement has not worked in the past as key legal issues exist. The Court entered a trial Scheduling Order and set a firm bench trial date for November 19, 2018.

Defendants James and McCulloch filed separate Motions for Summary Judgment. On August 24, 2018, a combined opposition was filed on behalf of the Association to both Motions for Summary Judgment. Mr. and Mrs. James filed their reply brief on September 14, 2018. On September 17, 2018, McCulloch's counsel filed a Request for Submission requesting the Court rule on their Motion for Summary Judgment. On September 18, 2018, counsel for the Jameses filed a Notice requesting oral argument on their Motion for Summary Judgment. On November 1, 2018, the Court denied a hearing and denied both motions.

On September 21, 2018, the Association requested to inspect the properties of both Defendants James and McCulloch. The inspection of both properties took place on October 18, 2018.

On November 2, 2018, a Request for a Mandatory Settlement Conference was filed on behalf of the Association. The Association believed that a bench officer may be able to facilitate a settlement of the matter. The Court declined to order a Mandatory Settlement Conference.

The Pretrial Conference was originally scheduled for November 8, 2018, however the Court vacated due to a scheduling conflict. The pretrial conference was rescheduled to November 7, 2018 and went forward on that date.

Critical witness Blake Smith notified counsel for the Association that he could not attend the trial in person due to an illness in the family. On November 8, 2018, Judge Walker notified the parties via email, that he would not continue the trial and directed the Association to file a motion requesting permission for the critical witness to appear for trial testimony telephonically. On November 8, 2018, on behalf of the Association, an Emergency Motion to Continue the November 19, Trial Date was filed due to the unavailability of a critical witness. Plaintiffs filed their opposition briefs, and the Association filed reply briefs. The Court denied the Motion.

The Association filed its Trial Statement on November 13, 2018, and both Defendants filed their separate Trial Statements on November 14, 2018. The parties prepared for trial which commenced on November 19, 2018, and concluded on November 20, 2018. The Court's tentative ruling was in favor of James and McCullough. The Judge directed counsel for the prevailing parties to prepare a proposed findings of fact and conclusion of law for his use as a baseline order. The proposed findings were submitted on or about November 30, 2018, by opposing counsel. The Court scheduled a hearing for February 7, 2019, to announce the final ruling, rescheduled said hearing to February 28, 2019, and then rescheduled again to March 12, 2019.

On March 12, 2019, the Court held a hearing and announced its Findings of Fact and Conclusions of Law, and entered Judgment finding in favor of the Plaintiff and Counter-Defendants, and against the Association. Among other rulings, the Court held that the Somerset CC&Rs do not apply to the transferred properties at issue in this case.

**Somerset Owners Association adv. Lawrence Adam Morrison**  
Washoe Co. District Court Case No. CV14-01081

On or about May 20, 2014, Lawrence Adam Morrison filed a complaint in the district court against Pulte Mortgage, LLC, Barbara Holmes and Bank of America, N.A. ("BANA") requesting quiet title on the property. Mr. Morrison requested the court to rule that he, as the present owner post-foreclosure, owns the property free and clear of the other parties' interests in the property, such as a bank lien due to the original owner's mortgage. On June 3, 2016, BANA filed their Amended Answer and Counterclaim against the Association and served the

Counterclaim on July 25, 2016. BANA's Counterclaim argued that the foreclosure was improper and therefore they still have a security interest in the property, i.e. that their original mortgage lien was not wiped out by the foreclosure. On August 15, 2016, the Association filed their Answer with a Counterclaim against United Legal Services, Inc. ("ULS") and Atkinson Law Associates, Ltd. The Association alleged that they contracted with and relied upon ULS to perform the collections and/or foreclosure services correctly and in accordance with all legal requirements.

On August 22, 2016, the Association filed a Voluntary Dismissal of Atkinson Law Associates. On September 1, 2016, an Order extending discovery deadlines was executed and filed. The original discovery cut off was January 5, 2017. The Association served their initial disclosures on September 21, 2016. Additionally, the Association will analyze documents disclosed by the other parties as they are produced. On March 3, 2017, due to a pending Supreme Court case, the court stayed the case and ordered Plaintiff to maintain the status quo and payments.

A status conference was scheduled for August 18, 2017, however it did not go forward and was not rescheduled before the stay went into place.

On September 15, 2017, counsel for Plaintiff filed a Motion to Withdraw due to non-payment of attorney's fees. On November 1, 2017, the Law Office of Mike Beede, PLLC substituted in as counsel for Plaintiff Lawrence Adam Morrison.

On November 30, 2017, this matter was stayed by the Court. BANA's counsel provided a proposed Stipulation and Order and on behalf of the Association, we agreed to sign the Stipulation. However, Plaintiff refused to agree to a lift of the stay; therefore on February 8, 2019, counsel for Bank of America filed a Motion to Lift Stay.

On February 28, 2019, Plaintiff filed an Opposition to Bank of America's Motion to Lift the Stay claiming the motion to lift the stay is premature. Plaintiff's opposition states there is still pending case law that is considered central issues to this case. On March 12, 2019, Plaintiff and Bank of America filed a stipulation to extend the deadline for Bank of America to file its reply in support of its motion to lift the stay. The new deadline is March 25, 2019. Once the reply is filed, the parties are required to file a request for submission before the court will take the matter under advisement.

**Somerset Owners Association v. Somerset Development, et al.**

Washoe County District Court Case No. CV17-02427

On December 29, 2017, on behalf of the Association, we filed a civil action against Somerset Development and other parties regarding defects found by American Geotechnical in the over 70,000 lineal feet of common area rockery walls. One day earlier we served the NRS Chapter 40 defect notices on the same entities. The developer has engaged counsel who has been in contact with the Association's counsel to discuss preliminary issues and scheduling. We will be in a position to provide more details in future updates as the litigation proceeds.

On April 11, 2018, a Doe Amendment to the Complaint was filed, substituting true named parties for fictitious names.

Inspections of the property took place on April 23, 2018. On April 27, 2018, Parsons Bros Rockeries California, Inc. was dismissed without prejudice and on May 10, 2018, Parsons Rocks! LLC was also dismissed without prejudice.

On May 3, 2018, a First Amended Complaint was filed on behalf of the Association. On May 10, 2018, a Stipulation and Order for Dismissal Without Prejudice was filed, dismissing Parsons Rocks! LLC.

Mediation between the principal litigants was held on June 22, 2018. Mediation proceedings are confidential, so the details of the session cannot be disclosed. However, although the case did not settle, significant progress was made among and between respective counsel regarding certain procedural matters which will expedite determining the rights of the parties and the course of the case.

On July 31, 2018, as part of discovery, we began disclosing documents to all parties on behalf of the Association and will continue to disclose as required by the rules.

On August 13, 2018, Q&D Construction filed its Answer to the First Amended Complaint. On August 17, 2018, Somerset Development Company filed an Answer to the First Amended Complaint and Cross-Claim. On August 17, 2018, Somerset Development Company, Somerset LLC and Somerset Development Corporation ("Somerset Defendants") filed a Demand for Jury Trial. On August 21, 2018, Parsons Bros Rockeries filed its Answer to the First Amended Complaint. On August 29, 2018, the Somerset Defendants filed a Third-Party Complaint against Stantec Consulting, Inc., which filed its Answer on August 30, 2018.

On August 31, 2018, a Request for Exemption from Arbitration was filed due to the case involving an amount in excess of \$50,000 per plaintiff. The Request was unopposed and granted on September 11, 2018.

The Early Case Conference took place on September 11, 2018, and the Joint Case Conference Report was filed on October 17, 2018. The discovery cutoff was set for December 31, 2019, with a jury trial scheduled for February 3, 2020.

The discovery phase commenced with the parties propounding discovery requests and responding to the requests.

On December 26, 2018, a Notice of Repairs was served upon the parties notifying them that repairs, alteration, and/or modifications on the slope stabilization will commence on or after January 21, 2019, in the common area along Gypsy Hill Trail at Timaru Trail. The repairs will continue until completion.

On January 17, 2019, on behalf of the Association, we filed a Motion to Strike Certain Affirmative Defenses Relating to Statutes of Limitations and Repose.

On January 31, 2019, Defendant Parsons Bros Rockeries served their First Set of Requests for Admissions upon the Association and Defendant Somerset Development Company. The Association and Defendant Somerset Development Company responded on March 5, 2019.

Additional inspections took place on February 15, 2019.

There being no opposition to the Association's January 17, 2019 Motion to Strike Certain Affirmative Defenses, on March 7, 2019, the Judge executed and filed the Association's proposed Order dismissing the claim for breach of statutory warranties contained in NRS 116.4114 and NRS 116.4115 as partially identified in Plaintiff's Second Claim for Relief, without prejudice, as to Defendant Parsons Bros Rockeries only. Opposition pleadings are due from the Defendants by March 28, 2018. It is anticipated that by that same date the Defendants will file their own Motions for Summary Judgment.

**Somerset Owners Association adv. Todd and Rachelle Shaw - NRED case  
number 2018-1904**

On or about July 19, 2018, owners Todd and Rachelle Shaw filed a complaint against the Association with the Nevada Real Estate Division seeking mediation. The complaint alleges that

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the Association improperly denied the Shaws' application for architectural changes to their home consisting of certain exterior lights and paint, and further, alleging that the Association improperly fined them for installing the proposed changes without having first obtained association approval. The Association tendered the complaint to its insurance company for defense and coverage. The insurance company assigned this matter to the law firm of Lewis Brisbois. Lewis Brisbois filed a response on behalf of the Association.

The parties participated in mediation regarding this matter on September 25, 2018; the mediation was unsuccessful. The parties executed an agreement stating the Association will take no enforcement action to collect fines owed as a result of the work performed at the Shaw's home for three (3) months.

On January 14, 2019, the Shaws filed a complaint in the Second Judicial District Court alleging the following claims: 1) violation of NRS 116; 2) breach of contract; 3) contractual breach of the implied covenant of good faith and fair dealing; 4) tortious breach of the implied covenant of good faith and fair dealing; 5) constructive fraud; 6) breach of fiduciary duty; 7) slander of title; 8) injunctive relief; and 9) declaratory relief. An Answer was filed on behalf of the Association on February 19, 2019.

The insurance carrier assigned the law firm of Lewis Brisbois Bisgaard and Smith LLC to defend the Association in the District Court matter in addition to the above NRED matter.

Except as stated herein, the undersigned knows of no other pending litigation of the Association, as of the date of the writing of this letter. You should contact the Community Manager to determine whether or not the Association is involved in any other litigation matters.

Very truly yours,

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP



MICHAEL T. SCHULMAN

MTS:tam