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5 Attorneys for Plaintiff ANDREA COLLIER, as
trustee of the JACT TRUST

6 **DISTRICT COURT**
7
8 **CLARK COUNTY, NEVADA**

9
10 ANDREA COLLIER, as trustee of the JACT
TRUST,

11 Plaintiff,

12 v.

13 PENNIE MOSSETT-PUHEK, individually;
14 ANTHEM HIGHLANDS COMMUNITY
ASSOCIATION, a Nevada Non-Profit Corporation;
DOES I through X and ROE BUSINESS
ENTITIES I through X, inclusive,

15 Defendants.
16

Case No.: A-22-852032-C
Dept.: 8

[Hearing Requested]

**PLAINTIFF ANDREA COLLIER'S
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT**

17 COMES NOW Plaintiff ANDREA COLLIER, as trustee of the JACT TRUST (“Plaintiff” or
18 “Collier”), by and through her counsel of record, Timothy Elson, Esq., of The Law Offices of
19 Timothy Elson, PLLC, and hereby files this Motion For Leave To File Amended Complaint.

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1 This Motion is made and based upon the Memorandum of Points and Authorities attached
2 hereto, the pleadings and papers on file herein, and any oral argument the Court wishes to entertain at
3 the hearing on this Motion.

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5 DATED: August 15, 2023

Respectfully Submitted,

6 THE LAW OFFICES OF TIMOTHY ELSON

7
8 By: /s/ Timothy P. Elson

9 Timothy P. Elson, Esq.

10 Nevada State Bar # 11559

8965 S. Eastern Ave., Suite 382

11 Las Vegas, Nevada 89123

12 Attorneys for Plaintiff ANDREA COLLIER, as trustee of
13 the JACT TRUST
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Collier owns real property located within Defendant Anthem Highlands Community Association (“Anthem”). Defendant Pennie Mossett-Puhek (“Mossett-Puhek”) was the President of the executive board of Anthem or otherwise served on the executive board at all times material this action. Collier alleges that Mossett-Puhek and Anthem targeted, harassed, or otherwise bullied Collier with various fines after Collier’s friendship with Mossett-Puhek soured. Doc ID# 1. Collier further alleges that the enforcement actions taken by Anthem lack a substantive basis or otherwise procedurally failed to comply with Nevada law, whether Chapter 116 of the Nevada Revised States or Anthem’s governing documents.

On July 13, 2023, the parties held a status conference with the Court, discussing the discovery deadlines, the need to continue all deadlines, a pending motion to dismiss / summary judgment (Doc ID# 24), and other upcoming motion practice (such as motions for leave to amend). On August 4, 2023, Collier filed opposed the motion to dismiss and filed a countermotion for leave to amend. Doc ID# 30. On August 10, 2023, Defendants opposed the countermotion, in part, on procedural grounds. Doc ID# 31 and 32. Out of an abundance of caution, Collier files this Motion to resolve potential issues that Defendants previously raised and to ensure that this matter is properly brought before this Court.

II. LEGAL ARGUMENT

A. Legal Standard.

Good cause exists to allow Collier to file Amended Complaint. Nevada Rule of Civil Procedure 15 generally governs amendments of pleadings. NRCP 15(b) provides, in pertinent part:

(b) **Other Amendments.** In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. *The court should freely give leave when justice so requires.*

See NRCP 15(b) (bold in original; underline and italics is added).

The trial court possesses the sound discretion to permit a party to amend its pleading. *Stephens v. Southern Nevada Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). However, NRCP 15 requires the trial court allow a party leave to amend when justice so requires. *Adamson v.*

1 *Bowker*, 85 Nev. 115, 121, 450 P.2d 796, 800 (1969). The Nevada Supreme Court has cited, with
 2 favor, the United States Supreme Court’s view of Rule 15(a): “Rule 15(a) declares that leave to
 3 amend ‘shall be freely given when justice so requires;’ this mandate is to be heeded.” *Id.*, at 121, 800
 4 (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962)). In *Foman*, the Court held
 5 that a trial court should consider the following four factors when determining whether or not to grant
 6 leave to amend pleadings: (1) undue delay; (2) bad faith or dilatory motive; (3) futility of
 7 amendment; or (4) prejudice to the opposing party. *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct.
 8 227, 230 (1962). “Not all of the factors merit equal weight. As [the Ninth Circuit] and [other
 9 circuits] have held, it is the consideration of prejudice to the opposing party that carries the greatest
 10 weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). The party
 11 opposing the amendment “bears the burden of showing prejudice.” *DCD Programs, Ltd. v.*
 12 *Leighton*, 833 F.2d 183, 186-87 (9th Cir.1987). “Absent prejudice, or a strong showing of any of the
 13 remaining Foman factors, there exists a presumption under Rule 15(a) in favor of granting leave to
 14 amend.” *Eminence Capital*, 316 F.3d at 1052.

17 **B. Good Cause Exists To Allow The Proposed Amendment Regarding Mossett-**
 18 **Puhek.**

19 Good cause exists to allow Collier to file the Amended Complaint (**Exhibit 1**) as it relates to
 20 Mossett-Puhek. First, Collier completed the NRED process as it relates to Mossett-Puhek. Collier
 21 should be permitted to amend her pleading to definitely state so. Second, Collier should be permitted
 22 to name additional causes of action against Mossett-Puhek. Collier continues to discover evidence
 23 that support such claims, which largely occurred at the depositions of Breeden and Woo in late June
 24 2023. No prejudice will result in the additional causes of action, such as conspiracy. Furthermore, to
 25 the extent Collier did not complete the NRED process, Collier should still be permitted to include
 26 these causes of action as they fall outside the purview of NRS 38.310.

27 **C. Collier Is Willing To Reopen The NRED Process To The Extent This Court Finds**
 28 **Such Steps Are Required And This Court Should Continue Any Ruling On The**

1 **Motion And Countermotion Until It Is Completed.**

2 To the extent this Court would orders Collier to reopen the NRED Process and complete the
3 mediation, Collier is more than willing to do so (although it makes more sense for the parties to discuss
4 resolution with Anthem present). However, Collier respectfully requests that this Court stay any ruling
5 on the Motion and Countermotion until it is completed. No prejudice will result to Mossett-Puhek
6 with this approach.

7 **D. Good Cause Exists To Allow The Amendment As It Relates To Eassa And**
8 **TerraWest.**

9 Good cause exists to allow the amendment (**Exhibit 1**) as it relates to Eassa and TerraWest,
10 both of which have engaged in actionable conduct. The community manager and management
11 company clearly failed to fulfill their obligations to Collier and the Anthem Community, thereby
12 resulting in this litigation. Collier is entitled to pursue these claims.

13 To the extent these claims are required to be submitted to NRED, which they aren't for the
14 same reasons analyzed above, Collier has already submitted the Third NRED Claim as it relates to
15 Eassa and TerraWest. Doc ID# 30, **Exhibit 29**. After discussing these issues at the Status Check on
16 July 13, 2023, this Court ordered Collier to proceed to file the motion for leave to amend prior to
17 completing the NRED process so the Court could better evaluate these issues. As such, Collier
18 respectfully requests appropriate judicial relief, such as continuing any hearing on these issues until
19 after Collier completes the NRED process as it relates to Eassa and TerraWest. Alternatively, Collier
20 respectfully requests that the deadline for leave to amend be continued.

21 **E. Defendants Cannot Demonstrate Prejudice Or Any Other Factors That Outweigh**
22 **Collier's Right To Amend.**

23 There is no prejudice to Defendants. Defendants will not carry their burden of proof to
24 demonstrate the same to this Court. There is no lost evidence, witnesses, or some other prejudice.
25 Furthermore, this case is roughly one year old. Collier immediately sought to amend her complaint
26 upon deposing two critical witnesses in late June 2023, *i.e.*, two former members of the executive
27 board that support the claims against Mossett-Puhek, Anthem, Eassa, and TerraWest. Collier did not
28 delay in bringing these claims, to the extend Defendants attempt to argue the same.

1 **III. CONCLUSION**

2 Based on the foregoing, Collier respectfully requests that this Court grant the instant Motion
3 and permit Collier to file her Amended Complaint (**Exhibit 1**).
4

5 DATED: August 15, 2023

Respectfully Submitted,

6 THE LAW OFFICES OF TIMOTHY ELSON
7

8 By: /s/ Timothy P. Elson

9 Timothy P. Elson, Esq.

10 Nevada State Bar # 11559

11 8965 S. Eastern Ave., Suite 382

12 Las Vegas, Nevada 89123

13 Attorneys for Plaintiff ANDREA COLLIER, as trustee of
14 the JACT TRUST
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CERTIFICATE OF SERVICE

The undersigned, an employee of the law firm of The Law Offices of Timothy Elson, hereby further certifies that on August 15, 2023, he served a copy of the foregoing **PLAINTIFF ANDREA COLLIER'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

Edward D. Boyack, Esq.
Boyack Orme Anthony & McKiever
7432 W. Sahara Ave., Suite 101
Las Vegas, NV 89117
Counsel for Defendant Anthem Highlands Community Association

Michael Edwards, Esq.
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3993 Howard Hughes Parkway, Suite 100
Las Vegas, NV 89169
Counsel for Defendant Pennie Mossett-Puhek

/s/ Erin L. Wood
An employee of
The Law Offices of Timothy Elson

EXHIBIT 1

EXHIBIT 1

1 Timothy P. Elson, Esq.
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6 **DISTRICT COURT**
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 8 **CLARK COUNTY, NEVADA**

9 ANDREA COLLIER, as trustee of the JACT
 TRUST,

10 Plaintiff,

11 v.

12 PENNIE MOSSETT-PUHEK, individually;
 ANTHEM HIGHLANDS COMMUNITY
 13 ASSOCIATION, a Nevada Non-Profit Corporation;
 14 CARMEN EASSA, an individual; K.G.D.O.
HOLDING COMPANY, LLC d/b/a TERRA
WEST MANAGEMENT SERVICES, a Nevada
 15 limited liability company; DOES I through X and
 ROE BUSINESS ENTITIES I through X,
 16 inclusive,

17 Defendants.

Case No.: A-22-852032-C
 Dept.: 8

[PROPOSED] AMENDED COMPLAINT

**CASE EXEMPT FROM ARBITRATION
 (DECLARATORY RELIEF REQUESTED)**

18
 19 COMES NOW Plaintiff ANDREA COLLIER, as trustee of the JACT TRUST, by and
 20 through her counsel of record, Timothy Elson, Esq., of The Law Offices of Timothy Elson, PLLC,
 21 and hereby complains and alleges as follows:

22 **PARTIES, JURISDICTION AND VENUE**

23 1. Plaintiff ANDREA COLLIER ("Plaintiff" or "Collier") is, and at all relevant times
 24 was, an individual residing in Clark County, Nevada. Ms. Collier is trustee of the JACT Trust (the
 25 "Trust"), and holds title to real property as trustee of the Trust located at 2822 Culloden Ave.,
 Henderson, Nevada 89044, Parcel No. 191-24-813-013 (the "Property").

26 2. Defendant PENNIE MOSSETT-PUHEK ("Mossett-Puhek") is, and at all relevant
 27 times was, an individual residing in the state of Nevada. Mossett-Puhek served as an officer and/or
 28

1 director of Defendant ANTHEM HIGHLANDS COMMUNITY ASSOCIATION (“Anthem”) at all
 2 times relevant to this action. Mossett-Puhek conducted business and otherwise engaged in the activity
 3 at all times material to this Complaint and as further described herein in Clark County, Nevada.

4 3. Anthem is, and at all relevant times was, a Nevada non-profit corporation, and is
 5 conducting business in Clark County, Nevada at all times material to this Complaint and as further
 6 described herein. Anthem is the homeowner’s association that governs the Property pursuant to
 7 Chapter 116 of the Nevada Revised Statutes and the Declaration of Covenants, Conditions, and
 8 Restrictions (the “CC&Rs”) recorded against the Property, as well as the other governing documents.

9 4. Defendant CARMEN EASSA (“Eassa”) is, and at all relevant times was, an individual
 10 residing in the state of Nevada. Eassa served as the community manager Anthem at all times relevant
 11 to this action. Eassa conducted business and otherwise engaged in the activity at all times material to
 12 this Complaint and as further described herein in Clark County, Nevada.

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13 3-5. Defendant K.G.D.O. HOLDING COMPANY, LLC d/b/a TERRA WEST
 14 MANAGEMENT SERVICES (“TerraWest”) is a Nevada limited liability company,, and is
 15 conducting business in Clark County, Nevada at all times material to this Complaint and as further
 16 described herein. TerraWest contracted with Anthem as the management company at all times
 17 relevant to this action. TerraWest employed Eassa.

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18 4-6. Defendants DOES 1 through 20, inclusive, are sued herein under fictitious names, their
 19 true names and capacities being unknown to Plaintiff but are believed to reside in the State of Nevada
 20 or otherwise have sufficient contacts with Nevada; Defendant will ask leave of Court to amend its
 21 Complaint by inserting their true names and capacities in the place and stead of said fictitious names
 22 when the same have been ascertained.

23 5-7. Defendants ROE CORPORATIONS 1 through 80, inclusive, are sued herein under
 24 fictitious names, their true names and capacities being unknown to Plaintiffs but are believed to be
 25 corporations authorized to conduct business in the State of Nevada; Plaintiffs will ask leave of Court
 26 to amend its Complaint by inserting their true names and capacities in the place and stead of said
 27 fictitious names when the same have been ascertained.

28 6-8. Plaintiff is informed and believes and based upon such information and belief allege

1 that each Defendant designated herein as DOES 1 through 20, inclusive, and ROE CORPORATIONS
 2 1 through 80, inclusive, is responsible, either directly, indirectly, or through vicarious liability, in some
 3 way and/or manner for the acts and occurrences herein alleged, whether such acts and occurrences
 4 were committed intentionally, negligently, recklessly or otherwise, and that each DOE Defendant and
 5 ROE CORPORATION Defendant is liable to Plaintiff for the damages and/or relief sought herein.

6 ~~7-9.~~ Upon information and belief, Plaintiff alleges that Mossett-Puhek, Anthem, Eassa,
 7 TerraWest, each DOE Defendant, and each ROE CORPORATION Defendants (collectively the
 8 “Defendants”) are responsible, negligently, intentionally, or in some other actionable manner, for the
 9 events and happenings hereinafter referred to, and caused the injuries and damages proximately
 10 thereby to Plaintiff as alleged in this Complaint.

11 ~~8-10.~~ Venue is appropriate in Clark County, Nevada given that the Property is located in
 12 Clark County, Nevada and the obligations of the restrictive covenants at issue are to take place in
 13 Clark County, Nevada. Furthermore, venue is appropriate in Clark County, Nevada given that
 14 Mossett-Puhek resides in Clark County, Nevada. In addition, venue is appropriate in Clark County,
 15 Nevada as Mossett-Puhek and Anthem conduct business in Clark County, Nevada and/or events giving
 16 rise to this action occurred in Clark County, Nevada. Alternatively, venue is appropriate in Clark
 17 County, Nevada pursuant to NRS 13.040 as Plaintiff designates venue in Clark County, Nevada.

18 **FACTUAL ALLEGATIONS**

19 **A. Collier and Mossett-Puhek’s Relationship.**

20 ~~9-11.~~ On or about December 31, 2015, Collier purchased the Property. The Property is a
 21 single-family, two-story residence that is approximately 2,462 square feet on 0.17 acres. Collier takes
 22 great pride in maintaining the Property at all times, as well as the surrounding neighborhood.

23 ~~10-12.~~ For years, Collier never had any issues with Anthem. Collier did not receive any
 24 notices of any alleged violations from Anthem given that her Property was properly maintained.

25 ~~11-13.~~ After several years of residing in Anthem, Collier noticed a general decline in the
 26 neighborhood. For example, Collier was frustrated with an increase in crime in the neighborhood,
 27 including an increase in car burglaries. The appearance of the neighborhood also decreased given an
 28 increase in unkept landscaping. Unit owners and their guests also routinely parked vehicles on the

1 streets, including commercial vehicles and inoperable vehicles, which only worsened the appearance
2 of the neighborhood. This general decline frustrated Collier.

3 ~~12.~~14. Around June 2020, given her increased frustration, Collier reached out to Mossett-
4 Puhek, who had recently been elected to Anthem's board of directors, to congratulate Mossett-Puhek
5 on her election victory. Collier also informed Mossett-Puhek of her concerns with the Anthem
6 Community, offering her support in anyway that could assist Anthem. At various times, Collier
7 offered to join committees or otherwise become part of the solution to the general decline in the
8 Anthem Community. During the call, Mossett-Puhek acknowledged many of Collier's concerns with
9 the Anthem Community, specifically in the Glengarry area of Anthem. Mossett-Puhek also informed
10 Collier that she would address these issues, including the parking situation.

11 ~~13.~~15. Over the next seven to eight months, Collier and Mossett-Puhek continued to work
12 with one another. Collier and Mossett-Puhek discussed forming various neighborhood task forces to
13 assist Anthem's community management company, Terra West Management Services ("Terra West"),
14 with the various issues in the neighborhood. Mossett-Puhek requested that Collier take pictures of
15 infractions, landscaping issues, parking problems, or other issues within the Anthem Community.
16 Mossett-Puhek informed Collier during this time period that she would then address these issues with
17 Terra West to allow Anthem to follow proper procedure in addressing the complaints with the
18 appropriate unit owners.

19 16. During this timeframe, Mossett-Puhek also requested that Collier, as well as those
20 working with Collier to improve the neighborhood, take to social media to assist Mossett-Puhek. For
21 example, Nextdoor is an online website where neighbors communicate with one another. This creates
22 a neighborhood network. Mossett-Puhek was (and still is) the subject of many negative comments.
23 Mossett-Puhek originally informed Collier that these comments stemmed from disgruntled
24 homeowners, convincing Collier that the comments were not true. Mossett-Puhek encouraged Collier
25 and those working with Collier to post positive comments about Mossett-Puhek and her work to
26 improve the Anthem Community to help improve her status in the Anthem Community. Mossett-
27 Puhek constantly complained to Collier that she could not take significant steps to improve the
28 neighborhood during this timeframe given "covid" restrictions put in place by Terra West and the

1 State of Nevada, Department of Business and Industry, Real Estate Division (“NRED”).

2 ~~14-17.~~ During this timeframe, Collier also made complaints to Mossett-Puhek, as well as
3 Anthem, about other homeowners in the Anthem Community. For example, Collier complained about
4 commercial vehicles parked on the street. At times, Anthem took action as a result of these complaints.

5 ~~15-18.~~ Toward the end of January 2021, as Mossett-Puhek and Collier continued to work with
6 one another, Collier invited Mossett-Puhek to the Property for drinks and appetizers in Collier’s
7 backyard (the “Dinner Party”). Mossett-Puhek asked if she could bring a guest or two. Mossett-Puhek
8 brought Frank Capello and his wife, Dahl Capello. Mr. Capello is Mossett-Puhek’s close friend, who
9 also happens to serve as the head of Anthem’s architectural review committee. They arrived around
10 6:00 p.m.

11 ~~16-19.~~ During the Dinner Party, Mossett-Puhek mentioned that the President of Earlstone,
12 another subcommunity within Anthem, complained about Collier’s oleander bushes. Mossett-Puhek
13 and Mr. Capello informed Collier not to worry as they had already determined that the oleanders were
14 “grandfathered” in and not in violation of Anthem’s governing documents. Mossett-Puhek and Mr.
15 Capello then commented on Collier’s beautiful yard, including her flagpole in the front yard. Mossett-
16 Puhek also commented about the trim of Collier’s home, discussing that she loved the way it matched
17 the patio and gates, even the gates throughout the Anthem Community. Mossett-Puhek made
18 numerous comments about how she wished that more homeowners would maintain their property as
19 Collier did and it was unfortunate that the “covid” restrictions prevented her from taking additional
20 measures to address the degradation of the Anthem Community. During the Dinner Party, as well as
21 during other conversations, Mossett-Puhek discussed other unit owners with Collier in direct violation
22 of privacy restrictions of Nevada law.

23 ~~17-20.~~ At the Dinner Party, Mossett-Puhek asked if Sydney Woo, the treasurer of Anthem,
24 could join the ongoing festivities. Mossett-Puhek, Mr. Woo, and Mr. Capello (as well as his wife) all
25 enjoyed the food and drink for several hours. Mr. Capello and his wife departed around 11:30 p.m..
26 Prior to their departure, Collier invited Mossett-Puhek and Mr. Woo to dinner at Michael’s Gourmet
27 Room at South Point Hotel & Casino, who accepted Collier’s invitation. Mossett-Puhek and Mr. Woo
28 stayed until approximately 2:00 a.m.

1 ~~18-21.~~ On February 14, 2021, as Collier continued to develop a friendship with Mossett-
 2 Puhek, Collier, Mossett-Puhek, and Mr. Woo went to dinner at Michael's Gourmet Room. During
 3 dinner, Collier discussed with Mossett-Puhek the ongoing issues in the Anthem Community. Mossett-
 4 Puhek continued to inform Collier that the "covid" restrictions were delaying her efforts. Eventually,
 5 Mossett-Puhek became intoxicated and began making loud comments, including toward other notable
 6 guests in the restaurant sitting near their table. Eventually, Collier was able to calm down Mossett-
 7 Puhek, and they finished their meal and left the restaurant. Collier paid for the entire meal, which
 8 Mossett-Puhek should not have accepted as this would violate NAC 116.480.

9 ~~19-22.~~ Shortly after February 14, 2021, Collier and Mossett-Puhek had another two to three
 10 conversations about the lack of progress with the Anthem Community. Mossett-Puhek continued to
 11 inform Collier she was working on it. Just as Mossett-Puhek had done in prior conversations,
 12 including at the Dinner Party, Mossett-Puhek improperly revealed confidential information to Collier
 13 about other unit owners and her efforts to "clean up" the Anthem Community.

14 ~~20-23.~~ In March 2021, Collier decided to open the lines of communication with Terra West.
 15 Collier spoke with Carmen Eassa, who was the community manager at Terra West assigned to the
 16 Anthem. Ms. Eassa informed Collier that this was the first that Ms. Eassa had heard of many, if not
 17 all, of Collier's concerns. This greatly surprised Collier, given the repeated assurances from Mossett-
 18 Puhek that Mossett-Puhek had addressed these concerns.

19 ~~21-24.~~ Collier's conversation with Ms. Eassa enraged Mossett-Puhek. The nature of Collier's
 20 relationship with Mossett-Puhek greatly changed following that conversation. Mossett-Puhek no
 21 longer conversed with Collier in a friendly manner. Instead, significant animosity appeared to exist
 22 from Mossett-Puhek toward Collier.

23 **B. The Violation Letters And Continued Harassment From Anthem And Mossett-**
 24 **Puhek.**

25 ~~22-25.~~ Almost immediately after Collier's relationship with Mossett-Puhek soured, Collier
 26 became the subject of an unfair and intense investigation by Mossett-Puhek and Anthem. That is,
 27 Mossett-Puhek utilized her power to inappropriately target Collier.

28 ~~23-26.~~ On or about April 12, 2021, Anthem allegedly issued Collier a Courtesy Notice

1 pertaining to the oleanders in her front yard. The Courtesy Notice indicated that Collier “need to
2 submit an ARC for approval for Oleanders. It is a view obstruction.” The alleged provision of the
3 CC&Rs that was violated was Article 4, Section 4.1.4, which dealt with alteration of Improvements
4 without prior written approval of the ARC. Despite the oleanders being present in her front yard for
5 several years, as well as vegetation in a similar manner prior to the oleanders, Anthem never addressed
6 this issue with Collier until her relationship with Mossett-Puhek soured.

7 ~~24-27.~~ On or about April 14, 2021, Anthem also issued a letter to Collier regarding its position
8 on parking enforcement. Therein, Anthem indicated that it started to take additional steps to address
9 parking in the Anthem Community largely due to the complaints by Collier. Therein, Anthem
10 indicated it was now enforcing parking violations to the fullest extent it could under Nevada law.

11 ~~28.~~ On May 4, 2021, Anthem issued a Formal Notice to Collier regarding the oleanders in
12 the front yard. The Formal Notice mirrored the Courtesy Notice.

13 ~~25-29.~~ On May 5, 2021, Collier requested general records from Anthem pursuant to NRS
14 ~~116.31175(5).~~

15 ~~26-30.~~ On May 12, 2021, Anthem issued a Courtesy Notice pertaining to Collier’s paint
16 scheme on the front of her house. The Courtesy Notice indicated as follows:

17 Need to submit an ARC for approval for the exterior paint. Current paint does not match the
18 community approved color scheme. Please go to [https://www.sherwin-](https://www.sherwin-williams.com/homeowners/color/find-and-explore-colors/hoa/henderson/nv/anthem-highlands-glengarry/)
19 [williams.com/homeowners/color/find-and-explore-colors/hoa/henderson/nv/anthem-](https://www.sherwin-williams.com/homeowners/color/find-and-explore-colors/hoa/henderson/nv/anthem-highlands-glengarry/)
highlands-glengarry/ to find all of the approved paint schemes for your community.

20 The alleged provision of the CC&Rs that was violated was Article 4, Section 4.1.4, which dealt
21 with alteration of Improvements without prior written approval of the ARC.

22 ~~27-31.~~ As it relates to background pertaining to the paint scheme, Collier had the body of her
23 house painted on or about May 28, 2018. Anthem does not argue that the body of Collier’s house
24 violates the Governing Documents. In early to mid 2020, Collier noticed issues with the trim of her
25 house due to faulty and rusted metal flashing. As such, Collier took steps to paint the trim of her
26 house. Before doing so, Collier attempted to contact Terra West on several occasions by telephone.
27 Whether due to covid or other issues with Terra West, Collier was not able to speak with anyone at
28 Terra West. Collier also reviewed the Anthem Community website and Sherwin Williams’ website

1 to verify whether any specific paint scheme requirements existed. From January 1, 2020 until
 2 approximately August 15, 2021, the Glengarry Community of Anthem was not listed on either website
 3 as to the requirements of the paint schemes. As such, Collier selected a color that was authorized from
 4 the Anthem Community, which is used on other houses and in other places on the Property (such as
 5 the gates, doors, and patio coverings). Anthem does not allege that Collier selected an unauthorized
 6 color, only that Collier chose a color that was not authorized with the body of her house (which is not
 7 true given that the paint schemes were not listed on the websites as required to provide notice to Collier
 8 and other unit owners in the Anthem Community). Importantly, Anthem never addressed this issue
 9 with Collier until her relationship with Mossett-Puhek soured, despite the fact that the trim was painted
 10 for over a year.

11 28-32. On or about May 24, 2021, Anthem issued Collier a Notice of Hearing pertaining to
 12 the oleander bushes. The Notice of Hearing set a violation hearing for June 9, 2021. Therein, Anthem
 13 alleged for the first time as follows:

14 Unauthorized planting of Oleander bushes near the side yard lot is a safety issue as it creates a
 15 view obstruction for those residents or guests turning from Crathes onto Culloden in both
 16 directions. The plant material is especially obstructive to low profile vehicles. The plant
 17 material creates a safety issue in the community. Please remove plant material completely,
 18 immediately.

19 The alleged provision of the CC&Rs that was violated was Article 4, Section 4.3, which was
 20 the first time that Anthem addressed this provision with Collier.

21 29-33. Section 4.3 of the CC&Rs deals with nuisances. It states, in pertinent part, as follows:
 22 No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any
 23 Unit, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any
 24 such Unit or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to
 25 any other property in the vicinity thereof or to the occupants of such other property. No other nuisance
 26 shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other
 27 property in the vicinity thereof or to its occupants

28 The oleanders did not constitute a nuisance under Nevada law, to the extent any view
 obstruction even existed.

30-34. On May 24, 2021, Anthem also issued a Second Notice of Hearing pertaining to the
 oleander bushes. The Second Notice of Hearing set a violation hearing for June 9, 2021. Therein,

1 Anthem alleged violations similar to the Courtesy Notice and Formal Notice pertaining to the oleander
2 bushes.

3 35. On or about May 25, 2021, Collier via those acting on her behalf exchanged a series of
4 emails with Anthem via Mossett-Puhek and Terra-West via Eassa. Therein, for example, Collier
5 requested additional time to address the painting scheme issues, respectfully requesting 45 days to
6 coordinate with the painter on what happened with the paint scheme and an additional 12 months to
7 comply with any painting requirements given budget requirements. Mossett-Puhek continued her
8 threatening and demeaning conduct toward Collier, avoiding any discussion of resolution with Collier
9 on the outstanding issues. Mossett-Puhek did so without consulting the executive board in violation
10 of Nevada law. Anthem, Mossett-Puhek, TerraWest, and Eassa never provided these emails to the
11 executive board.

12 36. On June 5, 2021, Collier requested additional general records from Anthem pursuant
13 to NRS 116.31175(5).

14 ~~34~~37. On June 8, 2021, Collier requested additional records from Anthem pursuant to NRS
15 116.31175(5), which included, but is not limited to: 1) Ms. Mossett-Puhek's candidate informational
16 statement, along with any other disclosures. This is for the most recent year and all other elections;
17 2) TerraWest's contract with Anthem.; 3) Boyack Orme Anthony & McKiever's contract with Anthem;
18 4) Meeting minutes wherein TerraWest was retained. 5) Any disclosures by the HOA and/or the
19 TerraWest pertaining to the retention of TerraWest; 6) Meeting minutes wherein the Boyack Firm was
20 retained; 7) Any disclosures by the HOA and/or the Boyack Firm pertaining to the retention of the
21 Boyack Firm; 8) Meeting minutes wherein it was approved to solicit bids for community managers
22 (the time prior to TerraWest being retained); 9) To the extent they were retained, any bids for
23 community manager solicited in response to Item No. 8; 10) Meeting minutes wherein it was approved
24 to solicit bids for general counsel (the time prior to the Boyack Firm being retained). 11) To the extent
25 they were retained, any bids for general counsel solicited in response to Item No. 10;12) Any
26 recordings of the board meetings for any of the minutes produced in response to this email. And 13)
27 All invoices by the Boyack Firm since its retention. To date, Anthem never fully complied with this
28 request.

1 ~~32-38.~~ Prior to June 9, 2021, in a further effort to resolve the outstanding disputes with
2 Anthem, Collier took additional measures to trim the oleanders. Prior to trimming the oleander bushes,
3 Collier consulted with Henderson Code Enforcement and various regulations on this issue, as Mossett-
4 Puhek (acting on behalf of Anthem) had previously targeted and harassed Collier by referring her to
5 Henderson Code Enforcement. Neither Mossett-Puhek nor Anthem referred other unit owners to
6 Henderson Code Enforcement who had similar vegetation in similar areas with similar heights to
7 Henderson Code Enforcement, which Collier confirmed with Henderson Code Enforcement.
8 Henderson Code Enforcement did not pursue the issue with Collier at the time of the referral by
9 Mossett-Puhek (acting on behalf of Anthem), thereby furthering Collier's belief that the oleanders
10 were not problematic and/or a view obstruction even before she trimmed the same. Mossett-Puhek
11 (acting on behalf of Anthem) even involved the Henderson Police Department, which also did not
12 pursue the issue with Collier, thereby furthering Collier's belief that the oleanders were not
13 problematic and/or a view obstruction. The Henderson Police Department also confirmed with Collier
14 that neither Mossett-Puhek nor Anthem referred other similarly situated homeowners to the Henderson
15 Police Department. Nonetheless, Collier took steps to attempt to resolve the issue with Anthem by
16 trimming the oleanders.

17 ~~33-39.~~ On June 9, 2021, Collier sent written correspondence to Anthem addressing the
18 procedural and substantive issues pertaining to the violation hearing. A true and correct copy of this
19 correspondence is attached hereto as **Exhibit A**. That same day, Collier also provided an additional
20 photograph to Anthem from the vantage point of a car to demonstrate that no view obstruction existed.
21 A true and correct copy of this Photograph is attached hereto as **Exhibit B**. These correspondences
22 conclusively demonstrate that Collier was not in violation of the Governing Documents, to the extent
23 the issues were even properly noticed. Mossett-Puhek, Eassa, Anthem, and TerraWest never provided
24 this correspondence to the executive board.

25 ~~34-40.~~ On June 9, 2021, Anthem issued a Formal Notice pertaining to the paint scheme. The
26 Formal Notice mirrored the Courtesy Notice as to the allegations regarding the paint scheme.

27 ~~41.~~ On June 9, 2021, Collier appeared at the violation hearing. Mossett-Puhek acted in an
28 abusive and otherwise engaged in inappropriate conduct toward Collier and those acting on her behalf,

1 knowing full well that Nevada law did not permit Collier to record the executive session. Mossett-
2 Puhek refused to allow Collier and those acting on her behalf to address the executive board and the
3 alleged violation. Mossett-Puhek refused to allow Collier to present documents or evidence at the
4 hearing. Several times during the executive session, Anthem muted Collier and/or those acting on her
5 behalf to intentionally interrupt and preclude Collier from presenting evidence at the hearing. In fact,
6 other members of the executive board asked Collier or those acting on her behalf questions, which
7 Mossett-Puhek refused to allow Collier to answer.

8 35.42. Despite an obligation to ensure that the executive meeting was conducted in accordance
9 with Nevada law, neither Eassa nor TerraWest intervened. Eassa and TerraWest permitted (putting
10 their pecuniary interests ahead of the duties owed to Anthem) Mossett-Puhek to conduct the meeting
11 in an abusive and unprofessional manner.

12 43. Immediately following the meeting and in accordance with Nevada law, Collier
13 memorialized the misconduct to both Eassa, Terra-West and legal counsel for Anthem, attempting to
14 report this misconduct to supervisory authorities. At no point did Terra-West, legal counsel for
15 Anthem, and/or Anthem substantively respond to Collier's allegations of misconduct as it pertaining
16 to the conduct at the executive session.

17 36.44. It was later learned and discovered that conflicts of interest exist between Terra West,
18 legal counsel for Anthem, and Mossett-Puhek, none of which have been disclosed to the Anthem
19 Community in violation of Nevada law. For example, Mossett-Puhek did not disclose her pre-existing
20 relationships with these vendors on her candidate statement as required by Nevada law. The vendors
21 also did not disclose these relationships at the time Mossett-Puhek and the executive board retained
22 them.

23 37.45. On June 10, 2021, Anthem issued a Courtesy Notice to Collier alleging that Collier and
24 her counsel were improperly contacting Anthem's legal counsel without board approval. Anthem
25 threatened to assess Collier for legal fees generated by their legal counsel. As a basis, Anthem cited
26 Article 7, Section 7.2.4, which does not support Anthem's improper threats to Collier. It was later
27 learned that this Courtesy Notice was sent without approval of the executive board. Mossett-Puhek,
28 Anthem, Eassa, and TerraWest inappropriately sent this Courtesy Notice to Collier to silence Collier's

1 reporting of the misconduct by Mossett-Puhek.

2 38.46. On June 11, 2021, Anthem issued a Notice of Hearing Result as it relates to the
3 oleanders. Anthem alleged that the oleanders presented a health, safety, and welfare violation, thereby
4 fining Collier \$2,000.00 if she did not remove the oleanders within 14 days.

5 39.47. On June 11, 2021, Anthem issued a Second Notice of Hearing Result as it relates to the
6 oleanders. Anthem alleged that the oleanders are not on the approved plant list, thereby imposing a
7 \$50.00 fine if the oleanders are not removed in the next 14 days. Thereafter, Anthem threatened
8 Collier with an additional \$50.00 fine every seven (7) days until the oleanders are removed.

9 40.48. On June 11, 2021, in an effort to comply with Anthem's request, Collier submitted a
10 Home Improvement Application, therein requesting to change the plant material to oleanders.

11 41.49. On June 14, 2021, in a further effort to comply with Anthem's request, Collier
12 submitted a supplement to her ARC submittal.

13 42.50. On June 17, 2021, in accordance with Nevada law on the preservation of evidence,
14 Collier issued a preservation of evidence request to Anthem, thereby notifying Anthem of a potential
15 claim against Anthem given the conduct toward Collier to date. As yet another example of the
16 improper conduct by Mossett-Puhek, Mossett-Puhek contacted Collier (or those working on her
17 behalf) to notify them that Mossett-Puhek had "unilaterally" determined that Anthem would not abide
18 by the preservation of evidence request and/or Nevada law on ensuring that discoverable information
19 is properly maintained and/or stored. A true and correct copy of Mossett-Puhek's email is attached
20 hereto as **Exhibit C**, thereby confirming additional procedural violations of the Governing Documents
21 and Nevada law. It was later learned that Mossett-Puhek's actions were not done with the approval of
22 the executive board. Nonetheless, Eassa and TerraWest allowed this conduct to continue.

23 43.51. On June 24, 2021, Anthem issued a denial pertaining to Collier's ARC submittal
24 regarding the oleanders. Anthem alleged that Collier could not plan oleanders as the plants are now
25 (as of 2018) on Anthem's prohibited plant list.

26 44.52. On June 28, 2021, Anthem produced violation logs in response to document requests
27 by Collier. The violation logs further support that Collier is being targeted and harassed by Anthem
28 as Anthem has not taken steps to pursue other similarly-situated unit owners, whether for alleged

1 violations of the oleanders, paint scheme, and/or flagpole.

2 45.53. On or about September 1, 2021, Collier submitted an Alternative Dispute Resolution
3 Claim Form with the State of Nevada, Department of Business and Industry, Real Estate Division
4 (“NRED”).

5 46.54. On October 4, 2021, Anthem’s harassment continued regarding the oleanders. Despite
6 already fining Collier pertaining to the same, Anthem issued another Courtesy Notice to Collier
7 regarding the oleanders, this time alleging a violation of Article 5, Section 5.3.1.

8 47.55. On October 8, 2021, Collier timely served the Claim Form on Anthem as required by
9 Nevada law.

10 48.56. On November 1, 2021, Anthem took a new approach to harassing Collier. This time,
11 Anthem issued a Courtesy Notice to Collier regarding a flagpole in her front yard. This is yet another
12 example of the harassment by Anthem and Mossett-Puhek as Anthem (being directed by Mossett-
13 Puhek) issued the notice of violation related to the flagpole as a direct response to the Claim Form that
14 Collier served on Anthem. It would be disingenuous for Anthem to allege that it was unaware of the
15 flagpole prior to November 1, 2021, given the number of inspections and related issues with the
16 Property, as well as that the flagpole was first installed on or about 2017. The Courtesy Notice
17 indicated that Collier needed to submit an ARC for approval for the flagpole. Eassa and TerraWest
18 also continued to engage in this conduct putting their own pecuniary interests ahead of their respective
19 duties owed to Collier, Anthem, and the Anthem Community. Despite numerous other homeowners
20 having flagpoles, who also never submitted ARC applications, Collier was the only homeowner
21 targeted by Mossett-Puhek, Anthem, Eassa, and TerraWest. Collier was the first homeowner to ever
22 receive this type of notice.

23 49.57. On January 6, 2022, Anthem issued Collier a Notice of Continuing Fine pertaining to
24 the paint scheme.

25 50.58. On January 7, 2022, Anthem issued a hearing notice to Collier pertaining to the
26 flagpole. Therein, Anthem set a hearing for January 26, 2022, pertaining to the flagpole. Given
27 various procedural and substantive due process violations that Collier pointed out at the prior hearing,
28 Anthem inappropriately stated that hearing responses must be submitted five (5) days prior to the

1 scheduled meeting.

2 ~~51-59.~~ On January 7, 2022, Collier attended the mediation with Anthem pursuant to the NRED
3 process. The parties were not able to resolve their differences, which necessitated the filing of this
4 legal action.

5 ~~52-60.~~ On January 12, 2022, Anthem forwarded Collier courtesy copies by email of notices
6 sent out pertaining to the paint scheme and flagpole so that Collier could confirm she received all
7 notices. This enclosure included notices that Collier had never received, including, but not limited to,
8 a Notice of Hearing pertaining to the paint scheme. Ironically, the Notice of Hearing Result stated as
9 follows:

10 We understand that these are difficult times for everyone due to the current environment,
11 however, as homeowners/residents, we have a fiduciary duty to maintain our property and
12 property values. Please do what you can to rectify the issue or respond to us in writing with a
13 reasonable plan to take care of this issue in the near future.

14 Collier did exactly that prior to the Notice of Hearing being issued, as set forth above.
15 However, Mossett-Puhek informed Collier without ever consulting the board that Collier's proposal
16 was rejected. It is unclear whether Ms. Eassa or Mossett-Puhek ever addressed Collier's proposal
17 with the board given that Collier did not even receive the Notice of Hearing or the result.

18 ~~53-61.~~ On February 10, 2022, Collier submitted a Home Improvement Application pertaining
19 to the flagpole.

20 ~~54-62.~~ On February 10, 2022, Collier submitted a Home Improvement Application pertaining
21 to the paint scheme.

22 ~~55-63.~~ On February 28, 2022, Anthem issued Collier a response to the Home Improvement
23 Application. In an effort to further harass Collier, Anthem required that Collier submit the following
24 information:

25 1) Brochure or manufacturers information on this type of flag pole; 2) Name of contractor who
26 installed flagpole; 3) Any permits (if required) to install the flagpole; 4) Color of flagpole; 5)
27 Height of flagpole (from ground to tip); 6) Method of installation (if concrete footer, how deep
28 is concrete footer); 7) Diagram/drawing of placement on property showing distance from
property lines; 8) Size of flag being flown; 9) Pictures/proof of lines and metal clips are be
shrouded or tied in a manner that eliminates noise caused wind; and 10) Has lighting been
installed.

1 This response from Anthem continues to demonstrate the harassment and targeting of Collier.
2 ~~Upon information and belief~~, Anthem has not required other unit owners to submit similar information.
3 ~~, to the extent Anthem has even pursued “flagpole” violations with other unit owners. This information~~
4 ~~was requested to continue to frustrate Collier’s ability to have her flagpole approved by Anthem.~~
5 ~~Given Defendants’ refusal to treat Collier fairly, Collier obtained building permits from the City of~~
6 ~~Henderson (despite no obligation to do so) pertaining to her flagpole to conclusively demonstrate it~~
7 ~~was properly installed.~~

8 ~~56-64.~~ On March 1, 2022, Anthem issued Collier a Notice of Hearing Result pertaining to the
9 flagpole. Anthem found Collier in violation for failing to submit a Home Improvement Application
10 pertaining to the flagpole. Anthem fined Collier \$50.00 if the violation was not cured within the next
11 14 days, and thereafter threatened to impose fines against Collier for \$50.00 every seven (7) days
12 thereafter the violation was not cured.

13 ~~57-65.~~ On March 1, 2022, Anthem also notified Collier that her Home Improvement
14 Application pertaining to the paint scheme had been rejected. Anthem alleged that Collier was mixing
15 and matching paint schemes, which is why they could not approve the same.

16 ~~58-66.~~ Since January 7, 2022 to Present, Collier has been in contact with Henderson Code
17 Enforcement. Mossett-Puhek (acting on behalf of Anthem) continues to harass Henderson Code
18 Enforcement, attempting to manufacture a false view obstruction against Collier. Despite the fact that
19 Henderson Code Enforcement has informed Mossett-Puhek on several occasions that no violation
20 exists, Mossett-Puhek continues to push Henderson Code Enforcement to pursue Collier. Henderson
21 Code Enforcement continues to inform Collier that it does not intend to do so and that Mossett-Puhek
22 has not reported any other unit owners in the Anthem Community, despite the fact that worse
23 blockages exist (as the oleanders do not pose a view obstruction whatsoever). Mossett-Puhek and
24 Anthem’s conduct, which includes unrelenting harassment and threats, continue to create a hostile
25 environment for Collier.

26 ~~59-67.~~ As a member of the executive board, Mossett-Puhek was the primary driving factor of
27 the conduct by Anthem toward Collier. Mossett-Puhek exchanged emails with Collier and those acting
28 on her behalf. Mossett-Puhek controlled the violation hearings. Mossett-Puhek directly

1 communicated with vendors, such as the community manager and legal counsel, on behalf of Anthem.
 2 Mossett-Puhek conducted countless inspections of Collier's property. Mossett-Puhek harassed
 3 Henderson Code Enforcement and other agencies to pursue Collier. Mossett-Puhek otherwise engaged
 4 in the course of conduct contained herein and purposely and intentional caused Anthem to pursue an
 5 inappropriate course of conduct against Collier to fulfill her personal agenda.

6 ~~60-68.~~ Upon information and belief, Mossett-Puhek has a history of abusive conduct while
 7 serving as a member of the executive board. Mossett-Puhek targets individuals and utilizes the
 8 inherent powers of a homeowner's association to pursue a personal vendetta against those individuals.
 9 Collier is just another victim of Mossett-Puhek's abusive conduct.

10 **FIRST CAUSE OF ACTION**

11 **(For Violation of Nevada Law and Nevada Statutes Against All Defendants)**

12 ~~61-69.~~ Plaintiff repeats by reference thereto Paragraphs 1 through 59, inclusive with like force
 13 and effect as if the same were set forth herein in full.

14 ~~62-70.~~ NRS 116.31183 prohibits retaliatory actions by a homeowner's association and its
 15 executive board against a unit owner.

16 ~~71.~~ NRS. 116.31184 prohibits a homeowner's association from making threats or
 17 otherwise engaging in harassment against a unit owner.

18 ~~63-72.~~ Defendants also violated several other Nevada statutes as it relates to how they
 19 conducted themselves in this matter, including, but not limited to, NRS 116.31031(4)(b)(1)(II), NRS
 20 116.31065; NAC 116A.330(2)-(3); NRS 116.31034(9); NRS 116.31065(5); NRS 116.3102(3)-(4);
 21 NRS 116.31031(4)(b); NRS 116.31031.

22 ~~64-73.~~ In 2020 and 2021, Collier made various complaints in good faith about alleged
 23 violations of Chapter 116 of the Nevada Revised Statutes and the governing documents. In 2021,
 24 Collier questioned relationships between legal counsel of Anthem and the community manager of
 25 Anthem with certain members of the executive board, including, but not limited to, Mossett-Puhek,
 26 Eassa, TerraWest, Mr. Boyack, and Boyack, Orme, Anthony, and McKiever. In 2021, Collier
 27 requested in good faith to review the books, records or other papers of Anthem.

28 ~~65-74.~~ The retaliatory actions, threats, and harassment by Defendants, including, but not

1 limited to, Anthem, ~~and Mossett-Puhek~~, Eassa, and TerraWest, toward Collier have caused significant
 2 harm to Collier. Collier has suffered from serious emotional distress and/or a reasonable apprehension
 3 thereof given the actions toward Collier. The actions toward Collier involve the Property, which is
 4 Collier's primary residence, thereby causing her to live in a constant state of fear given the continued
 5 and unrelenting harassment. As a result, the actions toward Collier have created a hostile environment
 6 for her.

7 75. ~~Defendants Mossett-Puhek (as well as any unnamed Defendants)~~ acted within the
 8 course and scope of their role within the executive board of Anthem when Defendants engaged in this
 9 conduct toward Collier. Anthem knew of this course of conduct and otherwise consented or agreed to
 10 allow Defendants to engage in the course and scope of this conduct within their role of the executive
 11 board. Therefore, Anthem is liable for the aforementioned acts via Respondeat Superior, to the extent
 12 that Anthem is not directly liable for the conduct.

13 ~~66-76. Eassa (as well as any unnamed Defendants) acted within the course and scope of their~~
 14 ~~role within TerraWest when Defendants engaged in this conduct toward Collier. TerraWest knew of~~
 15 ~~this course of conduct and otherwise consented or agreed to allow Defendants to engage in the course~~
 16 ~~and scope of this conduct within their role of the executive board. Therefore, TerraWest is liable for~~
 17 ~~the aforementioned acts via Respondeat Superior, to the extent that TerraWest is not directly liable for~~
 18 ~~the conduct.~~

19 67-77. As a result of Defendants' conduct, Collier has been injured and is entitled to recover
 20 damages in an amount to be proven at trial, which is an amount in excess of \$15,000.00. These
 21 damages stem from the retaliatory conduct, threats, and continued and unrelenting harassment by
 22 Defendants. Such damages also include punitive damages based on the conduct set forth herein.

23 68-78. It has been necessary for Plaintiff to retain the services of counsel to represent her and
 24 to bring this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

25 **SECOND CAUSE OF ACTION**

26 **(Breach of Contract/Governing Documents/ Breach of Real Covenant/Chapter 116 Against**
 27 **Anthem)**

28 69-79. Plaintiff repeats by reference thereto Paragraphs 1 through 67, inclusive with like force

1 and effect as if the same were set forth herein in full.

2 ~~70.80.~~ On or about July 24, 2003, the CC&Rs were recorded against the Property, as well as
3 all other real property within the Anthem Community. In order to better regulate the Anthem
4 Community, Anthem also adopted articles of incorporation, bylaws, rules and regulations, and other
5 documents. These documents collectively that govern the operation of the common-interest
6 community are known as the Governing Documents.

7 ~~71.81.~~ In addition to the Governing Documents, Chapter 116 of the Nevada Revised Statutes
8 regulates homeowner's associations, including but not limited to Anthem. The Governing Documents
9 are deemed to conform with Chapter 116 of the Nevada Revised Statutes to the extent the Governing
10 Documents violate the same. NRS 116.1206(1).

11 ~~72.82.~~ Anthem violated the Governing Documents and Chapter 116 in a variety of ways. For
12 example, Anthem violated the same by pursuing Collier for alleged violations involving the oleander
13 bushes. The oleander bushes do not constitute a violation under the Governing Documents and/or
14 Nevada law. The oleander bushes also do not create an unreasonable view obstruction. The oleander
15 bushes are not a health, safety or welfare violation. As a result, the fines instituted against Collier are
16 not valid under the Governing Documents and/or Nevada law.

17 ~~73.83.~~ To the extent any violation of the Governing Documents did exist, Anthem unfairly
18 and inequitably enforced the Governing Documents against Collier in violation of Nevada law. For
19 example, Anthem itself has oleanders planted throughout the Anthem Community on the common
20 elements. It is simply improper as a matter of law for Anthem to pass rules and regulations that
21 prohibit oleander bushes when Anthem itself is in violation of the same. Furthermore, other unit
22 owners in the Anthem Community also have oleander bushes planted throughout the Anthem
23 Community. It is improper for Anthem to unfairly target and harass Collier when Anthem has not
24 initiated or otherwise taken appropriate steps to enforce the Governing Documents against other unit
25 owners in the Anthem Community.

26 ~~74.84.~~ Anthem is also enforcing the Governing Documents against Collier as it relates to
27 alleged violations involving the paint scheme and flagpole unfairly and inequitably in violation of
28 Nevada law, thereby negating enforcement actions and fines against Collier in this respect as well.

1 ~~75-85.~~ Anthem is specifically targeting and harassing Collier as it relates to the alleged
2 violations, requiring Collier to take additional steps that Anthem has not required other unit owners to
3 take.

4 ~~76-86.~~ Beyond the substantive violations of the Governing Documents and Nevada law,
5 Anthem has engaged in various procedural violations of the Governing Documents and Nevada law.
6 For example, Anthem did not timely and properly notice Collier as it relates to an alleged health,
7 safety, and welfare violation as it pertains to the oleanders. Despite having actual notice of the alleged
8 violation, Anthem waited years to address the violation with Collier. Even after addressing it Collier,
9 Anthem did not initially raise the health, safety, and welfare violation in any initial notices, waiting
10 just days before the hearing to raise this issue. Anthem did so to further bully and harass Collier,
11 attempting to fine Collier above and beyond the limitations imposed by the Governing Documents and
12 Nevada law that relate to violations for those not involving health, safety, and welfare of the Anthem
13 Community.

14 ~~77-87.~~ Anthem engaged in other procedural violations, such as not permitting Collier to
15 address the executive board at the violation hearing or otherwise submit evidence at the violation
16 hearing. Anthem also failed to timely send out all required notices or otherwise comply with Nevada
17 law and the Governing Documents as it relates to notices to Collier involving the alleged violations.

18 ~~78-88.~~ At all times material, Collier performed under the Governing Documents to the best of
19 her ability given the bullying, threats and harassment toward her involving the alleged violations. To
20 the extent Collier did not perform, Collier's performance was excused given Anthem's course of
21 conduct.

22 ~~79-89.~~ As a result of Anthem breaches of the Governing Documents and Nevada law, Collier
23 has been injured and is entitled to recover damages in an amount to be proven at trial, which is an
24 amount in excess of \$15,000.00. Such damages also include punitive damages based on the conduct
25 set forth herein.

26 ~~80-90.~~ It has been necessary for Plaintiff to retain the services of counsel to represent her and
27 to bring this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

28 **THIRD CLAIM FOR RELIEF**

(Breach of Covenant of Good Faith and Fair Dealing (In Tort And Contract) - Against Defendants)

~~81-91.~~ Plaintiff repeats, realleges, refers to, and incorporates herein by reference Paragraphs 1 through 79 as if fully set forth herein.

~~82-92.~~ A valid and enforceable agreement in the form of Anthem's Governing Documents existed between Anthem and Collier.

~~83-93.~~ Every agreement in Nevada contains an implied covenant to act in good faith in performance and enforcement of the agreement.

~~84-94.~~ Collier had a justifiable expectation that she would receive certain benefits consistent with the spirit of the Governing Documents, which included, but is not limited to, her property rights not being materially affected without a proper basis to do so.

~~85-95.~~ As discussed herein, Defendants performed in a manner that was in violation of or unfaithful to the spirit of the governing documents.

~~86-96.~~ Furthermore, a special relationship existed between Collier and Defendants given the trust placed within Anthem, given the trust and confidence placed in homeowner's associations over a unit owner's property.

~~87-97.~~ The unfaithful actions by Defendants were deliberate.

~~88-98.~~ Collier suffered damages as a direct result of Defendants' conduct. Collier has been injured and is entitled to recover damages in an amount to be proven at trial, which is an amount in excess of \$15,000.00. Such damages also include punitive damages based on the conduct set forth herein.

~~89-99.~~ It has been necessary for Plaintiff to retain the services of counsel to represent her and to bring this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty – Against Defendants)

~~90-100.~~ Plaintiff repeats, realleges, refers to, and incorporates herein by reference Paragraphs 1 through 88 as if fully set forth herein.

~~101.~~ As it relates to the specific issue of enforcement and violation actions pertaining to unit

1 owners, Defendants, including, but not limited to, Anthem, ~~and~~ Mossett-Puhek (given her role on the
 2 executive board), Eassa (given her role as the community manager), and TerraWest (given its role as
 3 the management company) owed Collier fiduciary duties of good faith, undivided loyalty,
 4 confidentiality, and disclosure to Collier. That is, Collier placed Defendants in a position of trust and
 5 confidence given Collier's role as a unit owner within the Anthem Community to only pursue
 6 enforcement actions against the Property in accordance with the governing documents and Nevada
 7 law, as well as to act in accordance with Nevada law-

8 91,102. Eassa and TerraWest put their pecuniary interests ahead of Collier, Anthem,
 9 and the Anthem Community by engaging in a course of conduct that permitted Mossett-Puhek to
 10 conduct herself in an inappropriate manner. Eassa and TerraWest failed to disclose their preexisting
 11 relationship with Mossett-Puhek at the time Anthem retained Mossett-Puhek. Mossett-Puhek failed
 12 to disclose her relationship with Eassa and TerraWest at the time she ran for reelection in 2021. The
 13 same is also true with other vendors of Anthem, such as Boyack, Orme, Anthony, and McKiever.

14 92,103. By engaging in the aforementioned conduct, including, but not limited to,
 15 improperly pursuing Collier for violations of the Governing Documents and Nevada law and otherwise
 16 engaging in retaliatory conduct, threats, and continued and unrelenting harassment, Defendants
 17 violated the fiduciary duty of good faith, the fiduciary duty of loyalty, the fiduciary duty of
 18 confidentiality, and other fiduciary duties that they owed to Collier.

19 93,104. As a result of the multiple breaches of fiduciary duties perpetrated by
 20 Defendants, Collier has been injured and is entitled to recover damages in an amount to be proven at
 21 trial and as otherwise set forth herein, which exceeds \$15,000.00. Such damages also include punitive
 22 damages based on the conduct set forth herein.

23 105. It has been necessary for Plaintiff to retain the services of counsel to represent her and
 24 to bring this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

25 **FIFTH CLAIM FOR RELIEF**

26 **(Conspiracy– Against Defendants)**

27 106. Plaintiff repeats, realleges, refers to, and incorporates herein by reference Paragraphs 1
 28 through 103 as if fully set forth herein.

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107. Mossett-Puhek, Anthem, Eassa, and TerraWest, and the ROES and DOES Defendants engaged in an agreement or a concert of action by agreement to accomplish the unlawful objective of harassing Collier, pursuing inappropriate violations against her, or the conduct otherwise generally described herein.

108. There was a meeting of the minds between Defendants regarding the objective of harassing Plaintiff or otherwise inappropriately pursuing Plaintiff, whether by explicit agreement or by tacit agreement.

109. Defendants engaged in this conduct with the intent to accomplish this unlawful objective for the purpose of harming Plaintiff.

110. Defendants engaged in a series of unlawful acts in furtherance of the agreement to inappropriately pursue or otherwise harass Plaintiff, as further described herein, which includes, but is not limited to, pursuing Plaintiff for inappropriate or personal reasons, or the conduct otherwise generally described herein.

111. As a direct and proximate result of the conspiracy and its unlawful objectives, Plaintiff has suffered damages in excess of \$15,000, which Plaintiff is entitled to recover from Defendants, along with interest thereon pursuant to NRS 17.130(2).

112. Defendants' unlawful, tortious conduct, as described hereinabove, was intentional, malicious, wanton, and oppressive, with a conscious disregard for Plaintiff's rights and with the intent to vex, injure, punish, and annoy Plaintiff so as to cause the injuries complained of herein. Such acts amount to oppression and malice, as described in NRS 42.005(1). Plaintiff is therefore entitled to an award of punitive or exemplary damages in an amount sufficient to punish and make an example of Defendants, and each of them.

113. As a direct and proximate result of Defendants' conspiracy and its unlawful objectives, Plaintiff has incurred necessary attorneys' fees and costs in this action, which Plaintiff seeks to recover in addition to the other relief requested herein.

SIXTH CLAIM FOR RELIEF

(Negligence / Negligent Supervision Against All Defendants – Against Defendants)

114. Plaintiff repeats, realleges, refers to, and incorporates herein by reference Paragraphs 1

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1 through 111 as if fully set forth herein.

2 115. Mossett-Puhek, Anthem, Eassa, and TerraWest, and the ROES and DOES Defendants
 3 owed Collier a standard of care given their respective roles within Anthem, whether as the HOA, a
 4 member of the executive board, the community manager, and/or the management company.

5 116. Defendants breached their respective duties to Plaintiff in the following ways, which is
 6 not all inclusive: pursuing Plaintiff for inappropriate fines, engaging in harassing conduct in violation
 7 of Nevada law, falling below their respective standards of care in their positions, and/or failing to
 8 properly supervise persons within positions. .

9 117. Upon information and belief, Defendants knew or should have known that Anthem,
 10 Mossett-Puhek, Eassa, TerraWest or other persons were not properly performing their respective
 11 duties to Collier. The harm to Collier could have been prevented had Defendants taken reasonable
 12 steps or otherwise properly performed their duties.

13 118. Defendants' conduct directly and proximately caused Plaintiff to suffer damages in an
 14 amount in excess of \$15,000.00 in an amount to be proven at trial.

15 119. It has been necessary for Plaintiff to retain the services of counsel to represent her and
 16 to bring this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

17 94.120.

18 **FIFTH-SEVENTH CLAIM FOR RELIEF**

19 **(Declaratory Relief Against All Defendants)**

20 95.121. Plaintiff repeats, realleges, refers to, and incorporates herein by reference
 21 Paragraphs 1 through 93 as if fully set forth herein.

22 96.122. Pursuant to NRS 30.010, et. seq. and NRS 40.010, this Court has the power and
 23 authority to declare Collier's rights and interests, pursuant to Nevada law, in the Governing
 24 Documents and the Property.

25 97.123. Collier is entitled to declaratory judgment from this Court finding that: i) no
 26 legal basis existed for the enforcement action as it relates to the oleanders, paint scheme, and/or
 27 flagpole; ii) to the extent a legal basis existed, which it did not, Defendants unfairly and inequitably
 28 enforced the Governing Documents against Collier in violation of Nevada law; iii) Defendants

1 committed substantive and procedural violations in the enforcement actions against Collier; iv)
2 Defendants engaged in conduct that amounted to retaliatory actions, threats, and harassment against
3 Collier; and v) Defendants otherwise engaged in violations of Nevada law and the Governing
4 Documents by engaging in the aforementioned conduct.

5 98-124. It has been necessary for Plaintiff to retain the services of counsel to represent
6 her and to bring this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for relief against all Defendants as follows:

- 9 (1) For general and special damages against Defendants, including incidental and
10 consequential damages, resulting from Defendants' actions in excess of \$15,000.00;
11 (2) For compensatory damages against Defendants in excess of \$15,000.00;
12 (3) For punitive or exemplary damages against Defendants in excess of \$15,000.00;
13 (4) For special damages against Defendants in excess of \$15,000.00;
14 (5) For reasonable attorneys' fees;
15 (6) For costs of suit and litigation; and
16 (7) For such other and further relief as the Court deems just and proper.

17
18 DATED: May 3, 2022

THE LAW OFFICES OF TIMOTHY ELSON

19
20
21 By: /s/ Timothy P. Elson

22 Timothy P. Elson, Esq.
23 Nevada State Bar # 11559
24 8965 S. Eastern Ave., Suite 382
25 Las Vegas, Nevada 89123
26 Attorneys for Plaintiff ANDREA COLLIER, as trustee of
27 the JACT TRUST
28

DECLARATION OF ANDREA COLLIER

On January 7, 2022, I attended the mediation with Anthem pursuant to the NRED process. The parties were not able to resolve their differences, which necessitated the filing of this legal action. The issues addressed in this Complaint, including, but not limited to, the oleanders, paint scheme, flagpole, and the ongoing harassment of Anthem and Mossett-Puhek were addressed and discussed at this mediation.

On May 25, 2023, I submitted a Second Claim Form with NRED, directly naming Mossett-Puhek as a respondent. On June 12, 2023, NRED issued me a letter providing me the right to move forward with litigation over the claims against Mossett-Puhek as a result of my good faith efforts to participate in the NRED process.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

FURTHER, AFFIANT SAYETH NAUGHT:

/ s/ Andrea Collier

Andrea Collier