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Pennie Mossett-Puhek

DISTRICT COURT

CLARK COUNTY, NEVADA

ANDREA COLLIER, as trustee of the JACT
TRUST,

Plaintiff,

vs.

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

Defendants.

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

**DEFENDANT PENNIE MOSSETT-
PUHEK'S MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

Hearing Requested

Defendant PENNIE MOSSETT-PUHEK ("Ms. Puhek"), by and through her counsel of record, the law firm FREEMAN MATHIS & GARY LLP, hereby moves to dismiss for failure to comply with NRS 38.310's mediation requirements, or alternatively, to grant summary judgment in her favor ("Motion"). Plaintiff did not submit this matter to mediation with Ms. Puhek prior to filing this civil action, as is statutorily required. As such, this matter must be dismissed as to Ms. Puhek in accordance with NRS 38.310.

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1 This Motion is based upon the attached Memorandum of Points and Authorities, the
2 declaration of Pennie Mossett-Puhek, the papers and pleadings on file herein, the exhibits attached
3 hereto, and any oral argument that this Court may allow.

4 DATED this 18th day of May, 2023.

6 FREEMAN MATHIS & GARY, LLP

7 /s/Michael M. Edwards

8 MICHAEL M. EDWARDS ESQ.

9 Nevada Bar No. 6281

DEREK R. NOACK, ESQ.

10 Nevada Bar No. 15074

3993 Howard Hughes Pkwy., Suite 100

11 Las Vegas, Nevada 89169

12 *Attorney for Defendant PENNIE MOSSETT-
PUHEK*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 Dismissal is warranted on Plaintiff's claims against Ms. Puhek as Plaintiff has failed to
16 comply with the mandatory requirement to engage in mediation with Ms. Puhek prior to filing her
17 civil action, as required by NRS 38.310. Andrea Collier ("Plaintiff") – a resident of and trustee to
18 real property located in the common interest community of Anthem Highlands – attempts to hold
19 Anthem Highlands Community Association (the "Anthem HOA") and Ms. Puhek liable for
20 purported unequal and/or retaliatory treatment, as well as procedural and substantive issues, related
21 to their interpretation, application, and/or enforcement of various CC&Rs and HOA rules.
22 Specifically, Plaintiff alleges that Ms. Puhek – in her individual capacity and in cooperation with
23 the Anthem HOA board – engaged in a personal vendetta against Plaintiff related to numerous
24 violations to Anthem Highlands' CC&Rs and HOA rules, including with respect to Plaintiff's
25 prohibited and overgrown oleanders in her front yard, her use of an unapproved paint color on
26 exterior trim, and her unapproved installation of a flagpole, which resulted in various notices,
27 hearings, and subsequent fines being levied against her.

1 Plaintiff's claims against Ms. Puhek must be dismissed. All claims against Ms. Puhek herein
2 require the interpretation, application, and/or enforcement of Anthem Highlands' CC&Rs and
3 Anthem HOA's rules for their resolution. Although Plaintiff was evidently aware that mediation
4 was required pursuant to NRS 38.310 prior to filing this action – and indeed, she purportedly
5 participated in such mediation with Anthem HOA – nevertheless, Plaintiff failed to pursue or
6 participate in the mandatory mediation *with Ms. Puhek* prior to commencing this civil action against
7 her, as *required* by NRS 38.310.

8 The undisputed facts contained herein demonstrate that Plaintiff failed to abide by NRS
9 38.310's statutory requirement. Pursuant to the statute, where a plaintiff commences a civil action
10 in violation of NRS 38.310, dismissal is mandatory. Accordingly, this Court must dismiss Plaintiff's
11 claims against Ms. Puhek for failure to engage in mediation with Ms. Puhek prior to filing her civil
12 action.

13 **II. STATEMENT OF UNDISPUTED FACTS**

14 A. On May 3, 2022, Plaintiff filed her Complaint in this Court, alleging claims against
15 Ms. Puhek related to the purportedly improper interpretation, application, and/or enforcement of
16 Anthem Highlands' CC&Rs and its HOA's rules.

17 B. Prior to commencing the present action, Plaintiff did not submit this matter to
18 mediation with Ms. Puhek, who she has sued in her individual capacity. *See* Declaration of Ms.
19 Puhek, ¶ 3, a true and correct copy is attached hereto as **Exhibit C** ("Puhek Dec.")

20 C. Ms. Puhek has not participated in any mediation or ADR process on behalf of
21 herself with respect to the claims Plaintiff has brought against her herein, either prior or subsequent
22 to the filing of this action. *See id.* at ¶ 5.

23 D. Ms. Puhek was not delineated as a respondent in Plaintiff's requested mediation
24 with Anthem HOA, nor was she ever served as a respondent with the claim in a manner described
25 under NRCP 4, as required by the State of Nevada, Department of Business and Industry – Real
26 Estate Division (the "Division") for all respondents to such mediations. *See id.* at ¶ 4; *see also*
27 Plaintiff's Alternative Dispute Resolution (ADR) Claim Form, a true and correct copy is attached
28 as **Exhibit A**; *see also* the Division's Alternative Dispute Resolution (ADR) Process Overview, a

1 true and correct copy is attached as **Exhibit B.**¹

2 **III. LEGAL ARGUMENT**

3 **A. Legal Standard.**²

4 Rule 56 requires entry of summary judgment upon a showing “that there is no genuine
5 issue as to any material fact, and that the moving party is entitled to a judgment as a matter of
6 law.” NRCP 56(c). The moving party bears the initial burden to establish the non-existence of a
7 factual dispute and of establishing entitlement to judgment as a matter of law. *Torres v. Farmers*
8 *Insurance Exchange*, 106 Nev. 340, 345, 793 P.2d 839, 842 (1990) (internal citation omitted).
9 However, if the moving party has borne its burden of proof, the nonmoving party may only avoid
10 summary judgment by presenting specific facts, through affidavits or other evidence, that
11 demonstrate the existence of an issue of material fact. *See* NRCP 56(e) (“When a motion for
12 summary judgment is made and supported as provided in this rule,” the adverse party must respond
13 by providing affidavits or other evidence, setting forth “specific facts showing that there is a
14 genuine issue for trial.”).

15 Mere disagreement or bald assertions that a genuine issue of material fact exists does not
16 preclude summary judgment. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030
17 (2005) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (“the mere exists
18 of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported
19 motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact”))

20 ¹ These instructions are available on the Nevada Real Estate Division’s website at [https://red.nv.gov/
21 uploadedFiles/rednvgov/Content/Forms/523.pdf](https://red.nv.gov/uploadedFiles/rednvgov/Content/Forms/523.pdf).

22 ² Where matters outside the pleadings are presented in conjunction with a motion to dismiss and are not
23 excluded by the Court, such a motion is generally treated as one for summary judgment under NRCP 56. *See*
24 NRCP 12(d). However, conversion of a motion to dismiss to a motion for summary judgment does **not** occur
25 “by a court’s consideration of matters ***incorporated by reference or integral to the claim.***” *Baxter v. Dignity*
Health, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (internal citations omitted) (emphasis added); *see also*
Breliant v. Preferred Equities Corp., 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (holding that a district
court may consider “items present in the record of the case” when ruling on a motion to dismiss without
converting it to a motion for summary judgment).

26 Herein, Ms. Puhek has presented her own declaration to substantiate that she was not in involved in a
27 mediation with respect to Plaintiff’s claims against her. As Plaintiff is statutorily required to participate in
28 such a mediation with Ms. Puhek prior to commencing this action against Ms. Puhek, such participate is
integral to the establishment of jurisdiction of this court to hear such claims. Accordingly, Ms. Puhek’s
declaration may be considered by the Court under a motion to dismiss. Nevertheless, in an abundance of
caution, Ms. Puhek presents the standard for summary judgment in the alternative.

1 (emphasis in original).

2 As set forth herein, Ms. Puhek has met her burden of proof regarding the absence of a
3 genuine issue of material fact that would preclude summary judgment as to the fact that Plaintiff
4 did not engage in mediation with Ms. Puhek prior to commencing the present civil action as
5 required pursuant to NRS 38.310, and thus, Plaintiff's claims must be dismissed. It is undisputed
6 that Plaintiff's claims are based on the interpretation, application, and/or enforcement of Anthem
7 Highlands' CC&Rs and its HOA's rules. As a result, the burden shifts to Plaintiff. Plaintiff will
8 not be able to raise any genuine issue of material fact that would preclude this Court from
9 dismissing the claims against Ms. Puhek and/or entering summary judgment in favor of Ms.
10 Puhek. Accordingly, this case must be dismissed, or alternatively, summary judgment be entered
11 in Ms. Puhek's favor.

12 **B. Plaintiff's Claims Against Ms. Puhek Must Be Dismissed Pursuant to NRS**
13 **38.310.**

14 Pursuant to NRS 38.310, no civil action based on claims relating to the interpretation,
15 application or enforcement of any CC&Rs or HOA rules applicable to a residential property may be
16 commenced in any court in Nevada unless it has been first submitted to mediation, or upon
17 agreement of the parties, to an alternative dispute resolution ("ADR") program pursuant to the
18 provisions of NRS 38.300-38.360. *See* NRS 38.310(1). NRS 38.310's prefiling requirement is
19 similar to requirements to exhaust administrative remedies before filing a civil complaint. *See*
20 *Nationstar Mortg., LLC v. Maplewood Springs Homeowners Ass'n*, 238 F. Supp. 3d 1257, 1269 (D.
21 Nev. 2017) (holding that "NRS 38.310 is an exhaustion statute that creates prerequisites for filing
22 certain state-law claims"). Failure to comply with the statutory requirement is fatal to any civil
23 action, as the statute mandates, "A court *shall dismiss* any civil action which is commenced in
24 violation" of such requirements. NRS 38.310(2) (emphasis added).

25 It is undisputed that Plaintiff's claims are based on the interpretation, application, and/or
26 enforcement of Anthem Highlands' CC&Rs or its HOA's rules. Plaintiff alleges that she is a trustee
27 of the JACT Trust, which holds title to real property in the common interest community of Anthem
28 Highlands. *See* Complaint, at ¶¶ 1, 3, 9. Anthem Highlands is governed by the Anthem HOA, of

1 which Ms. Puhek was an officer and/or director. *Id.* at ¶¶ 2-3. However, Plaintiffs claims are brought
2 against Ms. Puhek in her *individual* capacity, not in any official capacity as an officer and/or director
3 of the Anthem HOA. *See generally id.*

4 Plaintiff alleges that, beginning on or about April 12, 2021, she began to receive various
5 notifications from Anthem HOA regarding violations to Anthem Highlands' CC&Rs and/or HOA
6 rules, which later resulted in violations hearings being conducted by Anthem HOA and resultant
7 fines being assessed against her in accordance with the CC&Rs. These violations were related to
8 Plaintiff's repeated failure to request and receive written approval from Anthem HOA prior to
9 making various changes to her property within the common interest community, particularly where
10 such changes deviated from the CC&Rs and the Anthem HOA's rules, including: (1) oleanders that
11 she planted, which were on the community's prohibited plant list and which were causing an unsafe
12 view obstruction for drivers within the community; (2) paint color used on her exterior trim, which
13 was not on the list of approved colors; and (3) the installation of a flagpole. *Id.* at ¶¶ 23, 25-28, 30,
14 34, 38-39, 43, 46, 48-50, 52, 56-57. The notifications and violations hearings cited to specific
15 provisions of the Anthem Highlands' CC&Rs and/or HOA rules that Plaintiff had violated. *See, e.g.*
16 *id.* at ¶¶ 23, 26, 28, 46.

17 In commencing this action, Plaintiff clearly seeks to challenge the interpretation, application,
18 and/or enforcement of the Anthem Highlands' CC&Rs and its HOA's rules. Not only do Plaintiff's
19 factual allegations include disputations regarding the CC&Rs and the HOA rules,³ but every cause
20 of action heavily relies on Plaintiff's objections to the purportedly improper interpretation,
21 application, and/or enforcement of the same by Defendants. *See, e.g. id.* at ¶ 64-66 (claiming she
22 experienced retaliation and harassment involving her property in violation of the "governing
23
24

25
26 ³ *See, e.g. id.* at ¶ 29 (quoting a specific CC&R for which she was cited, which deals with nuisances, stating,
27 "The oleanders did not constitute a nuisance under Nevada law, to the extent any view obstruction even
28 existed."); *id.* at ¶ 33 (objecting to purported procedural and substantive issues of the violation hearing and
its notification, contesting that no view obstruction existed, and maintaining that she was not in violation of
the CC&Rs); *id.* at ¶¶ 44, 58 (objecting to the purported inequitable enforcement of CC&Rs).

documents⁴” and NRS 116); *id.* at ¶¶ 70-79 (claiming breach of contract based on violations of the governing documents and Anthem HOA’s improper interpretation, application, and inequitable enforcement of the same); *id.* at ¶¶ 82-85 (claiming breach of covenant of good faith and fair dealing against Defendants based on a failure to perform in a manner that was faithful to the spirit of the governing documents); *id.* at ¶¶ 91-92 (claiming breach of fiduciary duty based on issues related to Defendants’ enforcement and violation actions as related to unit owners in accordance with the governing documents); *id.* at ¶¶ 96-97 (requesting declaratory relief in accordance with the governing documents with respect to Plaintiff’s specific noticed violations of the CC&Rs).

Plaintiff’s claims all require the interpretation, application, or enforcement of CC&Rs to resolve the claims, and as such, they are subject to NRS 38.310’s requirements for mediation or ADR with Ms. Puhek. *See Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Cmty. Ass’n*, 137 Nev. 516, 520, 495 P.3d 492, 497 (2021). As Plaintiff failed to engage in any mediation or other alternative dispute resolution of her claims against Ms. Puhek, the claims against her must be dismissed.

C. Summary Judgment Is Appropriate, as No Material Facts Can Show That Plaintiff Complied with NRS 38.310’s Requirements with Respect to Her Claims Against Ms. Puhek.

Alternatively, to the extent that the Court determines a finding for summary judgment is required, summary judgment is also appropriate because no material facts exist to support Plaintiff’s compliance with NRS 38.310’s requirements with respect to her claims against Ms. Puhek. Plaintiff alleges in her Complaint that, on or about September 1, 2021, she submitted an Alternative Dispute Resolution Claim Form and that she subsequently attended a mediation with Anthem HOA on January 7, 2022. *See* Complaint at ¶¶ 45, 51. ***However, Plaintiff does not allege that she participated in any mediation or other ADR program with Ms. Puhek, as required pursuant to NRS 38.310.***

⁴ Plaintiff defines “governing documents” as including Anthem Highlands’ CC&Rs, articles of incorporation, bylaws, rules and regulations, and other documents used to “govern the operation of the common-interest community.” *Id.* at ¶ 70.

1 No records exist supporting any assertion that Ms. Puhek participated in any mediation with
2 Plaintiff regarding the claims Plaintiff has asserted against her herein. While Plaintiff purportedly
3 participated in mediation with Anthem HOA, the Alternative Depute Resolution Claim Form
4 submitted by Plaintiff to the Division, requesting such mediation, shows that the *only respondent*
5 *Plaintiff identified therein was Anthem HOA*. See Alternative Dispute Resolution (ADR) Claim
6 Form, **Exhibit A**. Ms. Puhek was not identified as a respondent on Plaintiff’s application with the
7 Division, and no evidence exists to suggest that Plaintiff attached an “Additional Respondent Form
8 520B,” as required for mediations involving more than one respondent. *See id.*; *see also* ADR
9 Process Overview form, **Exhibit B**.

10 Further, as stated in the Division’s Alternative Dispute Resolution Process Overview form,
11 all respondents must not only be listed on the form, but they must also be properly served with
12 various claim documents pursuant to NRCP 4. **Exhibit B. For each respondent**, Plaintiff was
13 required to provide a copy of a completed Affidavit of Service form, which was to be completed by
14 the process server and properly notarized and returned to the Division. *See id.* at pp. 4-5 (delineating
15 how service must be made, what must be included in service, and stating, “If there are multiple
16 respondents, each respondent must be separately served with the set of documents described above
17 and a separate *Affidavit of Service* must be filed for each individual respondent.”). The undisputed
18 evidence shows that no such service was ever effectuated with respect to Ms. Puhek, nor can Plaintiff
19 provide any completed Affidavit of Service form with respect to her claims against Ms. Puhek as a
20 respondent to such a mediation.

21 No issue of material fact exists as to whether Plaintiff participated with Ms. Puhek in a
22 mediation or other ADR process, as required pursuant to NRS 38.310. The records provided herein,
23 as well as the declaration of Ms. Puhek, substantiate that Plaintiff did not participate in mediation
24 with Ms. Puhek or in any other alternative dispute resolution process with respect to the claims she
25 has filed against Ms. Puhek. She did not properly include Ms. Puhek as a respondent in her requested
26 mediation with Anthem HOA, nor did she serve Ms. Puhek with a claim, as required for all
27 respondents to the Division’s mediations. Plaintiff’s claims against her therefore must be dismissed,
28 and this Court should grant the instant Motion.

1 **IV. CONCLUSION**

2 Whether as a motion to dismiss or a motion for summary judgment, Plaintiff's claims against
3 Ms. Puhek must be dismissed. Plaintiff failed to comply with the mandatory requirements of NRS
4 38.310 to engage in mediation or alternative dispute resolution with Ms. Puhek prior to filing civil
5 claims against her in her individual capacity. Therefore, Ms. Puhek respectfully requests that the
6 Court grant this Motion in its entirety, and either dismiss Plaintiff's claims against her or grant
7 summary judgment in her favor.

8 DATED this 18th day of May, 2023.

10 FREEMAN MATHIS & GARY, LLP

11 /s/Michael M. Edwards

12 MICHAEL M. EDWARDS ESQ.

13 Nevada Bar No. 6281

14 DEREK R. NOACK, ESQ.

15 Nevada Bar No. 15074

16 3993 Howard Hughes Pkwy., Suite 100

17 Las Vegas, Nevada 89169

18 *Attorney for Defendant PENNIE MOSSETT-*
19 *PUHEK*

PROOF OF SERVICE
Andrea Collier v. Pennie Mossett-Puhek, et al.
Case No.: A-22-852032-C

The undersigned does hereby declare that I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by Freeman Mathis and Gary LLP. 550 South Hope Street, Suite 2200, Los Angeles, CA 90071. I am readily familiar with Freeman Mathis and Gary LLP's practice for collection and processing of documents for delivery by way of the service indicated below.

On May 18, 2023, I served the following document(s):

**DEFENDANT PENNIE MOSSETT-PUHEK'S MOTION TO DISMISS,
OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT**

on the interested party(ies) in this action as follows:

Timothy P. Elson, Esq.
THE LAW OFFICES OF TIMOTHY ELSON
8965 S. Eastern Ave. Suite 382
Las Vegas, NV 89123
Telephone: (702) 874-8600
Tim@ElsonLawOffices.com
Attorney for Plaintiff

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MCKIEVER
7432 W. Sahara Avenue, Suite 101
Las Vegas, NV 89117
Telephone: (702)-562-3415
ted@boyacklaw.com
*Attorney for Anthem Highlands Community
Association*

X By Electronic Service. Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

By Mail. By placing said document(s) in an envelope or package for collection and mailing, addressed to the person(s) at the address(es) listed above, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing of mail. Under that practice, on the same day that mail is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

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

/s/Laurie Moreno
An employee of Freeman Mathis and Gary LLP

EXHIBIT A

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY – REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS
3300 West Sahara Avenue, Suite 350, Las Vegas, Nevada 89102
(702) 486-4480 / Toll free: (877) 829-9907 / Fax: (702) 486-4520
E-mail: CICombudsman@red.nv.gov / <http://red.nv.gov>

ALTERNATIVE DISPUTE RESOLUTION (ADR) CLAIM FORM

Date: 09/01/21

Signature of Claimant: [Signature], TRUSTEE

***Only one claimant per claim form is allowed for tracking purposes.**

Claimant: J A C T TRUST

**If individual, provide full name as it appears with the assessor's office in order to verify that you are a Unit Owner. If an Association, provide COMPLETE Association name as it appears on the Secretary of State's website.*

Law Firm and Attorney (if applicable): The Law Offices of Timothy Elson

Please provide the name of the law firm and the name of the attorney. An attorney is not required.

Mailing Address: 8965 S. Eastern Ave. # 382

Street and number, city, state, and zip code

Phone Number: (702) 874-8600 Fax Number: _____ Email Address: Tim@elsonlawoffices.com

Respondent: Anthem Highlands Community Association

**If individual, provide full name. If an Association, provide COMPLETE Association name as it appears on the Secretary of State's website.
Please list only one party. Attach an Additional Respondent Form 520B if there is more than one Respondent.*

Mailing Address: 6655 S. Cimarron Rd., Suite 200, Las Vegas, NV 89113

Street and number, city, state, and zip code

Phone Number: 702-362-6262 Fax Number: _____ Email Address: ceassa@terrawest.com

PLEASE SELECT YOUR METHOD OF RESOLUTION: ☒ Mediation ☐ Referee Program*

**Claims involving multiple parties may be excluded from the Referee Program.*

****If all parties agree to the Referee Program, the cost will be fully subsidized by the Division, if funds are available.**

☐ Yes ☒ No Has the above-listed Claimant filed an Intervention Affidavit (Form 530) regarding the same or similar issues? *If yes, provide the file number(s):* _____

INITIAL

AC

I have read and agree to the policies stated in the ADR Overview (Form 523).

**INITIAL IF
APPLICABLE**

I acknowledge that if an Intervention Affidavit (Form 530) has been filed with the Division based upon the same issues, by filing an ADR claim; the Division will not move forward with investigating the Intervention Affidavit pursuant to NAC 116.630.

AC

If the Referee Program is selected, and the Respondent chooses Mediation, the claim will default to mediation.

For office use only

Receipt Number: _____ Claim Number: 22-048

RECEIVED SEP 24 2021
Date Received: _____

Address of unit related to this claim: 2822 Culloden Ave. Henderson, Nevada 89044

- Your explanation must start below. You may attach additional pages, if more space is needed. Please, do not write "SEE ATTACHMENT" in the space below IT IS NOT ACCEPTABLE.
- If this claim is being filed based on a referral from the Intervention process, please ensure that you explain the issue below. Do not refer to your original complaint.

The allegations include, but are not limited to, the following: 1) the HOA issued violation notices and ultimately fined the unit for alleged violations of Sections 4.1.4 and 4.3 of the CC&Rs; 2) Ms. Collier disputes these violations and fines, on both a procedural and substantive basis; and 3) Ms. Collier also alleges that the HOA is engaging in targeting and retaliatory conduct due to complaints that Ms. Collier made about the governance of the community, which includes, but is not limited to, unequal enforcement of the CC&Rs, thereby entitling her to legal and equitable relief.

IDENTIFY THE SECTION OF GOVERNING DOCUMENTS PERTAINING TO THE DISPUTE:

This matter includes, but is not limited to, the following provisions: CC&R 4.1.4 and CC&R 4.3.

In order for the claim to be considered filed, the following must be submitted, if applicable.

Please indicate that you acknowledge and will follow through with completing each of the items below. Initial that the following steps have been completed:

INITIAL

AC

Forms:

One (1) Original Claim Form (Form 520)

Two (2) copies of the Claim Form and supporting documents

- *Supporting documents may be provided directly to the Mediator or Referee one assigned and need not be provided with this Claim Form. Should you choose to submit your documents, you must supply one (1) original set and two (2) copies of the supporting documents.*

AC

NONREFUNDABLE Filing Fee of \$50.00 payable to "NRED" in the form of:

- Cash (exact change; please do not mail cash)
- Check
- Money Order

AC

I acknowledge that the Subsidy Application will **ONLY** be accepted and reviewed prior to the claim being assigned to a Mediator or Referee.

**INITIAL IF
APPLICABLE**

AC

ADR Subsidy Application for Mediation (Form 668). Subsidy is awarded based on the following:
For a Unit Owner, once during each fiscal year of the State for each unit owned.

For an Association, once during each fiscal year of the State for each unit located within each individual association. Association must be "in good standing" with Secretary of State and Office of the Ombudsman.

I acknowledge that the Claimant will **NOT** be applying for Subsidy for this claim.

SERVING THE CLAIM

Please be advised, the Claimant will be responsible to have the Respondent(s) served within **45 days** from the date the Division processes the Claimant's 520 claim form. The packet will contain instructions on how to serve the claim.

The packet that the Claimant will receive in the mail will contain:

- A claim opening letter (keep this letter for your records).
- A receipt for **the non-refundable** \$50.00 filing fee (keep for your records).
- Affidavit of Services Form
 - This form must be filled out by the person that serves the claim.
 - The form **MUST** be notarized and returned to the Division within 10 days of the claim being served.
 - The packet cannot be served by anyone associated with the claim.

The following items from the packet are required to be served:

- ADR Overview, Form 523
- Copy of the claim that was processed, Form 520
- A blank Response, Form 521
- A blank Subsidy Application, Form 668
- *If the Claimant listed more than one Respondent on the Claim Form (520). The Claimant will be responsible to make copies of the packet, so that each Respondent can be served.*
- *One (1) Affidavit of Service will have to be notarized and submitted for each Respondent listed on the Claim Form (520/520B).*
- *Pursuant to NAC 38.350(2)(a) – The Affidavit of Service MUST be submitted to the Division within 10 days of being served.*

INITIAL

AC

I acknowledge that all forms listed above will be served pursuant to NRS 38.320.

AC

I acknowledge that if the claim is not served within the timeframe set forth by Nevada Administrative Code (NAC) 38.350 (1), the claim will be closed.

AC

I acknowledge if the Affidavit of Service (AOS) is not submitted to the Division within the timeframe set forth by Nevada Administrative Code (NAC) 38.350 (2)(a), the Division has the authority to close the claim.

How service must be made:

- **Service on a Nevada Corporation:** Service shall be made upon the president or other corporate head, secretary, cashier, managing agent or resident agent. However, if this is not possible, then upon the Secretary of State in the manner described in Rule 4 of the Nevada Rules of Civil Procedure.
- **Service on a Non-Nevada Corporation:** Service shall be made upon the agent designated for service of process, in Nevada, or its managing agent, business agent, cashier, or secretary within this State. However, if this is not possible, then upon the Secretary of State in the manner described in Rule 4 of the Nevada Rules of Civil Procedure.
- **In all other cases (except service upon a person of unsound mind, or upon a city, town or county):** Service shall be made upon the respondent personally, or by leaving copies at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.
- **If all the above are not possible because of the absence from the state or inability to locate the respondent: An Affidavit of Due Diligence can be provided to the Division. If the Division determines adequate efforts were made to serve the respondent(s), the Division will provide a letter to the claimants acknowledging their unsuccessful efforts to participate in the ADR program.**

"Service by Publication" is not a valid form of service for the ADR Program.

The following is a listing of the Mediators and Referees for the Alternative Dispute Resolution program. Before making your selection, you may view the resumes of the Mediators and Referees, and their location availability.

- If the parties do not agree on the selection of Mediator or Referee, the Division will assign a Mediator/Referee at random.
- *This is a requirement, please indicate the Mediator/Referee by initialing next to the party selected.*

SOUTHERN NEVADA

MEDIATOR LISTING

- ☐ Dee Newell, JD
- ☐ Donald E. Lowrey, Esq.
- ☐ Ira David, Esq.
- ☐ Malcolm Doctors
- ☒ Phillip A. Silvestri, Esq.

REFEREE LISTING

- ☐ Donald E. Lowrey, Esq.

NORTHERN NEVADA

MEDIATOR LISTING

- ☐ Paul H. Lambole, Esq.
- ☐ Michael Matuska, Esq.

REFEREE LISTING

- ☐ Paul H. Lambole, Esq.
- ☐ Michael Matuska, Esq.

Once a claim has been received and processed by the Division an opening packet will be mailed out to the mailing address provided on page 1 of this form. This packet will include instructions on the next step in this process (serving the claim).

Submit the required forms and documents to:

**Nevada Real Estate Division
ADR Facilitator
3300 West Sahara Avenue, Ste. 350
Las Vegas, NV 89102**

EXHIBIT B

ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCESS OVERVIEW
Please read the entire overview before submitting
Claim Form (#520) or Respondent Form (#521).

The ADR process is required under Nevada Revised Statutes (NRS) 38.300 to 38.360, before parties may file a civil action in court. The ADR process is available to all unit owners even if they have no intention of filing civil action in court. The regulations for NRS 38 are found in the Nevada Administrative Code (NAC) 38. Parties with a dispute involving the governing documents of their common-interest community must either participate in the Division's referee program or mediation prior to going to court. Aside from a \$50 filing fee, the referee program is a free service offered by the Division to the extent funding is available. Parties to a referee proceeding must agree to participate.

If the referee program is not agreed to by both parties, the dispute will be mediated. If the dispute is not resolved by mediation, parties that initially participated in mediation may agree to have the issue arbitrated or they may proceed to civil court. Arbitration may be binding or non-binding. If the referee program is utilized, the referee will issue a decision. The referee's decision is enforceable if the decision is confirmed by a court.

Please be advised, pursuant to Nevada Administrative Code (NAC) 116.630, by filing an ADR claim, the Division will not move forward with investigating an intervention affidavit filed based on the same or similar issues.

MATTERS SUBJECT TO ADR

NRS 38.310 provides that the following matters must go through the ADR process:

- The interpretation, application or enforcement of any covenants, conditions or restrictions (CC&R's) or any other governing documents applicable to residential property; or
- The procedure used for increasing, decreasing or imposing additional assessments upon residential property.

Claims for injunctive relief where there is an immediate threat of irreparable harm and actions relating to the title of residential property are not required to participate in the ADR process and can proceed directly to court. ADR does not apply to civil disputes between owners, or between owners and their association that do not involve the governing documents or the process used to set the amount of the periodic assessments paid by unit's owners. For example, if an owner cuts down a neighbor's tree, the dispute does not involve the governing documents or assessment issues and is, therefore, not subject to ADR.

If a civil action is filed between a homeowner and an association concerning governing documents or an assessment dispute before the ADR process has been completed, the court may dismiss that case without taking any action. Any applicable statute of limitations that has not expired before filing an ADR claim is suspended until the conclusion of the ADR process.

ADR PROGRAMS

- **THE REFEREE PROGRAM** – The referee program is a free program, administered by the Real Estate Division to the extent funds are available. Referees are licensed attorneys approved by the Division to hear disputes. The referee assigned to a claim will schedule a hearing for the parties to present their evidence. The referee will ask the parties to provide documentation, if any, to support their positions. Documents must be provided no less than 5 days before the hearing or as requested by the referee. All documents must be sent directly to the referee and simultaneously mailed to the opposing party. Do not send documents to the Division. At the hearing, parties may present evidence, including without limitation, witness testimony. The referee governs the procedures used during the hearing, including what evidence may be considered. The referee may ask questions of the parties and the witnesses.

The parties may agree to waive the hearing and elect instead to submit written statements describing the issue and their positions. The referee will review the claim, the response and the supporting documentation, including the association's governing documents. He/she will then issue a written decision. The referee's decision will be provided to the parties and the Division within 30 days of the hearing or 30 days after the referee receives all documents from the parties. After receiving the referee's decision, the parties have 60 days to file a claim with the appropriate court. If neither party files a claim, the referee's decision can be confirmed in court by either party within one year. Confirmation makes the decision an order of the court and is binding on both parties. If a monetary award is granted, it may not exceed \$7,500 and may not include attorneys' fees and costs. Note that claims involving multiple parties cannot participate in the referee program.

- **MEDIATION** – If the disputing parties do not agree to participate in the referee program, they must go through mediation prior to court. Mediators are certified and approved by the Division to mediate disputes. The parties meet with a mediator for up to 3 hours or longer if agreed to by the parties. The mediator promotes reconciliation, agreement, and compromise. If mediation is successful, the parties sign a written agreement, which becomes enforceable between the parties. A copy of the mediation agreement is provided to both parties. The Division does not receive a copy. If the mediation is unsuccessful the parties may proceed to court, agree to arbitration or apply to the referee program.
 - Mediation of a claim must be conducted in accordance with the provisions of NRS 38.300 to 38.360 inclusive. The mediation must be concluded within 60 days of the date the claim is filed with the Division, unless the parties agree otherwise. To complete the process in 60 days, claimants must serve the respondent as soon as possible since the respondent has 30 days to answer the claim. The mediator will contact the parties to schedule a date for the mediation.
 - The mediation may be held at the mediator's office, or other suitable location. The disputing parties must submit a statement to the mediator no later than five (5) days before the mediation. The statement must describe the issues and a proposed

compromise to the dispute. The mediator will not share that information with the opposing party. Any documents provided to the mediator are confidential and need not be provided to the Division. Supporting documentation should not be provided with the *Claim Form* (#520) or the *Respondent Form* (#521).

- If the parties agree to a resolution of the claim, a document detailing the resolution will be drafted by the mediator and signed by both parties before leaving the office. The settlement agreement is binding on the parties and can be enforced in court.
- If the parties do not agree to a resolution of the claim, either party may file a claim in the appropriate court stating that they have complied with the requirements of NRS 38.300, et seq. If the parties so desire, they may participate in arbitration or the referee program through the Division after an unsuccessful mediation.

MEDIATION SUBSIDY (NAC 116.520): Mediators may charge up to \$167.00 per hour, up to \$500.00 per claim. The Mediation may be subsidized up to \$250.00 per party, not to exceed \$500 per mediation. The parties must submit a *Subsidy Application for Mediation* (#668) at the time of filing a *Claim Form* (#520) or a *Response Form* (#521) with the Division. Unit owners may receive a subsidy once during each fiscal year of the State for each unit owned. An association may receive one subsidy each fiscal year against the same unit owner for each unit owned by that unit owner. Associations must be in good standing with the Secretary of State and the Office of the Ombudsman. The claimant requesting subsidy must file the claim for mediation within 1 year of discovery of the alleged violation. The State's fiscal year is from July 1 through June 30. If you have questions about your eligibility, please contact the ADR Facilitator.

- **Arbitration** – After participating in mediation, the parties may elect to have the claim arbitrated. Arbitrator fees are limited to \$300 per hour; however, there is no time limit or maximum allowable billing for arbitration. The Division does not award subsidy for arbitration. Both parties must agree to arbitration and notify the Division through the joint Arbitration Claimant and Respondent Form (#524). If both parties do not complete and sign the joint form (#524), the Division will not process the arbitration request pursuant to NRS 38.330 (2). Once submitted, the Division will assign an arbitrator.

FEES DUE TO THE MEDIATOR / ARBITRATOR

- Mediators may charge up to \$167 per hour, not to exceed \$500 for three-hour mediation. The parties to the mediation may agree to extend the mediation at a cost of \$200 for each hour. Mediators may require a deposit from both parties before proceedings begin. Each side pays half of the total amount. Mediators will refund, within 30 days, any amount that exceeds the allowable rate. Any outstanding amount due to the mediator must be paid within 10 days from the date of the mediation.
- Arbitrators may not bill more than \$300 per hour; however, there is no maximum number of allowable hours. Arbitrators may require a deposit from both parties.

SUBMITTING A CLAIM FOR MEDIATION OR REFEREE PROGRAM

- **Fill out Claim Form (#520) completely.** This form is located on our website at <http://red.nv.gov/>. The person making the claim is the "Claimant." The person or

entity with whom you have a dispute is the “Respondent.” If there are additional Respondents, list them on the *Additional Respondent Form* (#520B). Provide a brief statement of the facts giving rise to the dispute and the relevant provisions of the governing documents at issue. Unless the parties agree to use the referee program, mediation is the required form of resolution before proceeding to court. The Real Estate Division’s referee program may be utilized if both parties agree and the claim does not involve multiple parties. The claim form allows you to select either mediation or the referee program. If the Claimant selects the referee program but the Respondent does not agree, the claim will proceed to mediation. You are required to file the original and two (2) copies of the Claim Form (#520 and 520B, if applicable). Lastly, a \$50.00 filing fee payable to "NRED" either by check, money order or cash. Do not send cash in the mail. **This fee is not refundable.**

- **Mediation Subsidy.** If the claimant wishes to apply for subsidy of the mediation, include with your *Claim Form* (#520) the *Subsidy Application for Mediation* (#668).
- **Serve the Respondent.** After your claim has been filed, you will receive a packet from the Division by mail that must be **served on the Respondent as soon as possible. You may not serve the Respondent yourself.** (See **Filing and Serving the Claim** below for instructions). The package to serve will have a copy of your *Claim Form* (#520), a copy of this *Overview Form* (#523) and Form 520B, if applicable, a blank *Respondent Answer Form* (#521), a *Subsidy Application for Mediation* (#668), and an *Affidavit of Service* form.
- **Respondent’s Response.** Respondents must review all documents served upon them, which shall include this *Overview* (#523), the *Claim Form* (#520), Forms 520A and B, if there are additional claimants or respondents to supplement the *Claim Form*, a blank *Respondent Form* (#521), and a *Subsidy Application for Mediation* (#668). Respondents are required to file with the Division a completed *Respondent Form* (#521) within 30 days after service **and mail a copy to the Claimant.** Respondents should provide a brief statement of his/her defense to the allegations made by Claimant. Respondents shall file the original *Respondent Form* (#521) and one (1) copy to the Division. Lastly, a \$50.00 filing fee payable to "NRED" either by check, money order or cash must be provided at the time of filing. Do not send cash in the mail. **This fee is not refundable.**
- **Selection of the Referee/Mediator.** The last page of the *Claim Form* (#520) contains a list of the current mediators and referees. Claimants are to select one of the names listed. Claimants and Respondents may view the resumes of all mediators and referees on the Division’s website at <http://red.nv.gov/Content/CIC/ADR/Panel/> prior to making a selection. Respondent will state on the *Respondent Form* (#521) whether he/she agrees with the Claimant’s selection. If both parties cannot agree on a mediator or referee, one will be appointed by the Division. Once a mediator or referee is appointed, he/she will govern the process going forward.

SERVING THE CLAIM

Per NRS 38.320(3), the Claimant must serve the claim, in the manner described under Nevada Rules of Civil Procedure 4, with a blank *Respondent Form*, a copy of this *Overview* (#523), a copy of the *Claim Form* (#520), and subsidy information as soon as possible after filing the claim with the Division. The Division will provide an *Affidavit of Service* form showing the

required documents that must be served. The *Affidavit of Service* form must be completed by the person who served the respondent, notarized, and **provided to the Division.**

If there are multiple respondents, each respondent must be separately served with the set of documents described above and a separate *Affidavit of Service* must be filed for each individual respondent.

Who may serve required documents? The sheriff of the county where the respondent resides or any citizen of the United States over eighteen (18) years of age other than the claimant or the respondent may provide service. A process server can also be used.

How service must be made:

- **Service on a Nevada Corporation:** Service shall be made upon the president or other corporate head, secretary, cashier, managing agent or resident agent. However, if this is not possible, then upon the Secretary of State in the manner described in Rule 4 of the Nevada Rules of Civil Procedure.
- **Service on a Non-Nevada Corporation:** Service shall be made upon the agent designated for service of process, in Nevada, or its managing agent, business agent, cashier, or secretary within this State. However, if this is not possible, then upon the Secretary of State in the manner described in Rule 4 of the Nevada Rules of Civil Procedure.
- **In all other cases (except service upon a person of unsound mind, or upon a city, town or county):** Service shall be made upon the respondent personally, or by leaving copies at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.
- **If all of the above are not possible because of the absence from the state or inability to locate the respondent:** An *Affidavit of Due Diligence* can be provided to the Division. If the Division determines adequate efforts were made to serve the respondent(s), the Division will provide a letter to the claimants acknowledging their unsuccessful efforts to participate in the ADR program.

COMPLETION OF THE PROCESS

The Division will issue written notification certifying that the claim has been submitted to a referee, mediator, or arbitrator within 30 days after receiving a copy of:

- (a) A statement from the mediator that the mediation was unsuccessful;
- (b) The decision from the referee or;
- (c) The decision from the arbitrator.

ENFORCEMENT OF MEDIATION AGREEMENT, REFeree DECISION OR ARBITRATION AWARD

- **Referee Decision:** After receiving the decision of the Referee, the parties have 60 days to commence a civil action with the appropriate court. If neither party commences a civil action, the referee's decision can be confirmed by a court at the request of any party within 1 year of the decision. Confirmation of the decision makes it an order of the court and a judgment binding on the parties. A decision of the referee is non-binding on the parties until it is confirmed by a court.

- **Mediation:** An agreement reached through mediation is binding on both parties and may be enforced as any other written agreement. Should an agreement not be reached through mediation, the parties may start a civil action in court, or apply to the referee program.
- **Nonbinding Arbitration Award:** If neither party to an arbitration award starts a civil action in court within 30 days after service of the award, either party may, within one year after service of the award, apply to the court for a confirmation of the award pursuant to NRS 38.239. Confirmation of the decision makes it an order of the court and a judgment binding on the parties.
- **Binding Arbitration Award:** If neither party to an arbitration award moves to vacate the award within 90 days after the service of the award, for the very limited reasons given in NRS 38.241, either party may apply to the court for verification of the award under NRS 38.239, and obtain a judgment, which can be enforced through the court.

CAUTION: Failure to apply to the court for confirmation of a referee or arbitration decision within the time specified makes the decision non-binding and unenforceable by the parties.

ASSISTANCE AVAILABLE FROM THE DIVISION

Division staff can assist the parties in understanding the process and forms used in ADR. The Division cannot provide legal advice or determine whether or not the governing documents have been violated, or the enforceability of a specific provision. The staff facilitates the process. The Division does not employ or otherwise control the performance of the work by the mediators, referees or arbitrators. The Division is not responsible for, and does not endorse, any conduct by any mediator, referee, arbitrator or party. The Division has no stake in the outcome of any dispute. All fees and charges billed by the mediators and arbitrators are due and payable directly to the billing party. The mediator or arbitrator may request a deposit prior to the start of the mediation or proceeding. Any amount of subsidy for mediation is paid directly to the mediator. The Division has no authority to collect any sums payable to a mediator or arbitrator.

Please direct questions to the Division's ADR Facilitator at:

REAL ESTATE DIVISION
COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS PROGRAM
3300 WEST SAHARA AVENUE, SUITE 325
LAS VEGAS, NEVADA 89102
(702) 486-4480 • Fax (702) 486-4520
Statewide Toll-Free Telephone: (877) 829-9907

EXHIBIT C

1 **DEC**
2 MICHAEL M. EDWARDS
3 Nevada Bar No. 6281
4 DEREK R. NOACK, ESQ.
5 Nevada Bar No. 15074
6 **FREEMAN MATHIS & GARY, LLP**
7 3993 Howard Hughes Pkwy., Suite 100
8 Las Vegas, Nevada 89169
9 Tel.: 725.258.7360
10 Fax: 833.336.2131
11 Michael.Edwards@fmglaw.com
12 Derek.Noack@fmglaw.com
13 *Attorneys for Defendant*
14 *Pennie Mossett-Puhek*

15
16 DISTRICT COURT
17 CLARK COUNTY, NEVADA

18 ANDREA COLLIER, as trustee of the JACT
19 TRUST,

20 Plaintiff,

21 vs.

22 PENNIE MOSSETT-PUHEK, individually;
23 ANTHEM HIGHLANDS COMMUNITY
24 ASSOCIATION, a Nevada Non-Profit
25 Corporation; DOES I through X and ROE
26 BUSINESS ENTITIES I through X, inclusive,

27 Defendants.
28

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

**DECLARATION OF DEFENDANT
PENNIE MOSSETT-PUHEK IN SUPORT
OF HER MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

I, PENNIE MOSSETT-PUHEK, declare as follows:

1. I make this Declaration in support of my Motion to Dismiss, or in the Alternatively,
Motion for Summary Judgement (the "Motion").

2. I am over eighteen (18) years old and have personal knowledge of all matters set
forth herein. If called to do so, I would competently and truthfully testify to the same.

3. At no point have I participated in any mediation or other alternative dispute
resolution process with respect to the claims Andrea Collier ("Plaintiff") has asserted against me
in my individual capacity in the above-captioned case.

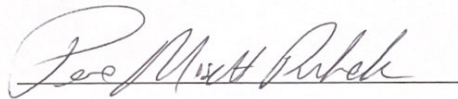
1 4. At no point was I ever served as a respondent with respect to any claim
2 purportedly submitted by Plaintiff to the State of Nevada, Department of Business and Industry –
3 Real Estate Division (the “Division”), nor to my knowledge, was I ever identified by Plaintiff as a
4 respondent on any Alternative Dispute Resolution (ADR) Claim Form.

5 5. I was not invited or requested to participate in any mediation by Plaintiff with
6 respect to Plaintiff’s present claims against me, including the mediation that purportedly occurred
7 between Plaintiff and Anthem Highlands Community Association (“Anthem HOA”).

8 6. A true and correct copy of Plaintiff’s Alternative Dispute Resolution (ADR) Claim
9 Form, as submitted to Anthem HOA, is attached to the Motion as **Exhibit A**.

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

12 DATED this 18th day of May, 2023.

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14 
15 Pennie Mossett-Puhek
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