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CASE NO: A-22-852032-C
Department 8

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

DISTRICT COURT
CLARK COUNTY, NEVADA

ANDREA COLLIER, as trustee of the JACT
TRUST,

Case No.:
Dept.:

Plaintiff,

COMPLAINT

v.

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

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.

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

PARTIES, JURISDICTION AND VENUE

1. Plaintiff ANDREA COLLIER ("Plaintiff" or "Collier") is, and at all relevant times
was, an individual residing in Clark County, Nevada. Ms. Collier is trustee of the JACT Trust (the
"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").

2. Defendant PENNIE MOSSETT-PUHEK ("Mossett-Puhek") is, and at all relevant
times was, an individual residing in the state of Nevada. Mossett-Puhek served as an officer and/or
director of Defendant ANTHEM HIGHLANDS COMMUNITY ASSOCIATION ("Anthem") at all
times relevant to this action. Mossett-Puhek conducted business and otherwise engaged in the activity

1 at all times material to this Complaint and as further described herein in Clark County, Nevada.

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

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

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

17 6. Plaintiff is informed and believes and based upon such information and belief allege
18 that each Defendant designated herein as DOES 1 through 20, inclusive, and ROE CORPORATIONS
19 1 through 80, inclusive, is responsible, either directly, indirectly, or through vicarious liability, in some
20 way and/or manner for the acts and occurrences herein alleged, whether such acts and occurrences
21 were committed intentionally, negligently, recklessly or otherwise, and that each DOE Defendant and
22 ROE CORPORATION Defendant is liable to Plaintiff for the damages and/or relief sought herein.

23 7. Upon information and belief, Plaintiff alleges that Mossett-Puhek, Anthem, each DOE
24 Defendant, and each ROE CORPORATION Defendants (collectively the "Defendants") are
25 responsible, negligently, intentionally, or in some other actionable manner, for the events and
26 happenings hereinafter referred to, and caused the injuries and damages proximately thereby to
27 Plaintiff as alleged in this Complaint.

28 8. Venue is appropriate in Clark County, Nevada given that the Property is located in

Clark County, Nevada and the obligations of the restrictive covenants at issue are to take place in Clark County, Nevada. Furthermore, venue is appropriate in Clark County, Nevada given that Mossett-Puhek resides in Clark County, Nevada. In addition, venue is appropriate in Clark County, Nevada as Mossett-Puhek and Anthem conduct business in Clark County, Nevada and/or events giving rise to this action occurred in Clark County, Nevada. Alternatively, venue is appropriate in Clark County, Nevada pursuant to NRS 13.040 as Plaintiff designates venue in Clark County, Nevada.

FACTUAL ALLEGATIONS

A. Collier and Mossett-Puhek's Relationship.

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

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

11. After several years of residing in Anthem, Collier noticed a general decline in the neighborhood. For example, Collier was frustrated with an increase in crime in the neighborhood, including an increase in car burglaries. The appearance of the neighborhood also decreased given an increase in unkept landscaping. Unit owners and their guests also routinely parked vehicles on the streets, including commercial vehicles and inoperable vehicles, which only worsened the appearance of the neighborhood. This general decline frustrated Collier.

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

13. Over the next seven to eight months, Collier and Mossett-Puhek continued to work

1 with one another. Collier and Mossett-Puhek discussed forming various neighborhood task forces to
2 assist Anthem's community management company, Terra West Management Services ("Terra West"),
3 with the various issues in the neighborhood. Mossett-Puhek requested that Collier take pictures of
4 infractions, landscaping issues, parking problems, or other issues within the Anthem Community.
5 Mossett-Puhek informed Collier during this time period that she would then address these issues with
6 Terra West to allow Anthem to follow proper procedure in addressing the complaints with the
7 appropriate unit owners.

8 14. During this timeframe, Mossett-Puhek also requested that Collier, as well as those
9 working with Collier to improve the neighborhood, take to social media to assist Mossett-Puhek. For
10 example, Nextdoor is an online website where neighbors communicate with one another. This creates
11 a neighborhood network. Mossett-Puhek was (and still is) the subject of many negative comments.
12 Mossett-Puhek originally informed Collier that these comments stemmed from disgruntled
13 homeowners, convincing Collier that the comments were not true. Mossett-Puhek encouraged Collier
14 and those working with Collier to post positive comments about Mossett-Puhek and her work to
15 improve the Anthem Community to help improve her status in the Anthem Community. Mossett-
16 Puhek constantly complained to Collier that she could not take significant steps to improve the
17 neighborhood during this timeframe given "covid" restrictions put in place by Terra West and the
18 State of Nevada, Department of Business and Industry, Real Estate Division ("NRED").

19 15. Toward the end of January 2021, as Mossett-Puhek and Collier continued to work with
20 one another, Collier invited Mossett-Puhek to the Property for drinks and appetizers in Collier's
21 backyard (the "Dinner Party"). Mossett-Puhek asked if she could bring a guest or two. Mossett-Puhek
22 brought Frank Capello and his wife, Dahl Capello. Mr. Capello is Mossett-Puhek's close friend, who
23 also happens to serve as the head of Anthem's architectural review committee. They arrived around
24 6:00 p.m.

25 16. During the Dinner Party, Mossett-Puhek mentioned that the President of Earlstone,
26 another subcommunity within Anthem, complained about Collier's oleander bushes. Mossett-Puhek
27 and Mr. Capello informed Collier not to worry as they had already determined that the oleanders were
28 "grandfathered" in and not in violation of Anthem's governing documents. Mossett-Puhek and Mr.

1 Capello then commented on Collier's beautiful yard, including her flagpole in the front yard. Mossett-
2 Puhek also commented about the trim of Collier's home, discussing that she loved the way it matched
3 the patio and gates, even the gates throughout the Anthem Community. Mossett-Puhek made
4 numerous comments about how she wished that more homeowners would maintain their property as
5 Collier did and it was unfortunate that the "covid" restrictions prevented her from taking additional
6 measures to address the degradation of the Anthem Community. During the Dinner Party, as well as
7 during other conversations, Mossett-Puhek discussed other unit owners with Collier in direct violation
8 of privacy restrictions of Nevada law.

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

15 18. On February 14, 2021, as Collier continued to develop a friendship with Mossett-
16 Puhek, Collier, Mossett-Puhek, and Mr. Woo went to dinner at Michael's Gourmet Room. During
17 dinner, Collier discussed with Mossett-Puhek the ongoing issues in the Anthem Community. Mossett-
18 Puhek continued to inform Collier that the "covid" restrictions were delaying her efforts. Eventually,
19 Mossett-Puhek became intoxicated and began making loud comments, including toward other notable
20 guests in the restaurant sitting near their table. Eventually, Collier was able to calm down Mossett-
21 Puhek, and they finished their meal and left the restaurant.

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

27 20. In March 2021, Collier decided to open the lines of communication with Terra West.
28 Collier spoke with Carmen Eassa, who was the community manager at Terra West assigned to the

1 Anthem. Ms. Eassa informed Collier that this was the first that Ms. Eassa had heard of many, if not
 2 all, of Collier's concerns. This greatly surprised Collier, given the repeated assurances from Mossett-
 3 Puhek that Mossett-Puhek had addressed these concerns.

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

8 **B. The Violation Letters And Continued Harassment From Anthem And Mossett-**
 9 **Puhek.**

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

13 23. On or about April 12, 2021, Anthem allegedly issued Collier a Courtesy Notice
 14 pertaining to the oleanders in her front yard. The Courtesy Notice indicated that Collier "need to
 15 submit an ARC for approval for Oleanders. It is a view obstruction." The alleged provision of the
 16 CC&Rs that was violated was Article 4, Section 4.1.4, which dealt with alteration of Improvements
 17 without prior written approval of the ARC. Despite the oleanders being present in her front yard for
 18 several years, as well as vegetation in a similar manner prior to the oleanders, Anthem never addressed
 19 this issue with Collier until her relationship with Mossett-Puhek soured.

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

24 25. On May 4, 2021, Anthem issued a Formal Notice to Collier regarding the oleanders in
 25 the front yard. The Formal Notice mirrored the Courtesy Notice.

26 26. On May 12, 2021, Anthem issued a Courtesy Notice pertaining to Collier's paint
 27 scheme on the front of her house. The Courtesy Notice indicated as follows:

28 Need to submit an ARC for approval for the exterior paint. Current paint does not match the
 community approved color scheme. Please go to <https://www.sherwin->

1 williams.com/homeowners/color/find-and-explore-colors/hoa/henderson/nv/anthem-
2 highlands-glengarry/ to find all of the approved paint schemes for your community.

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

5 27. As it relates to background pertaining to the paint scheme, Collier had the body of her
6 house painted on or about May 28, 2018. Anthem does not argue that the body of Collier's house
7 violates the Governing Documents. In early to mid 2020, Collier noticed issues with the trim of her
8 house due to faulty and rusted metal flashing. As such, Collier took steps to paint the trim of her
9 house. Before doing so, Collier attempted to contact Terra West on several occasions by telephone.
10 Whether due to covid or other issues with Terra West, Collier was not able to speak with anyone at
11 Terra West. Collier also reviewed the Anthem Community website and Sherwin Williams' website
12 to verify whether any specific paint scheme requirements existed. From January 1, 2020 until
13 approximately August 15, 2021, the Glengarry Community of Anthem was not listed on either website
14 as to the requirements of the paint schemes. As such, Collier selected a color that was authorized from
15 the Anthem Community, which is used on other houses and in other places on the Property (such as
16 the gates, doors, and patio coverings). Anthem does not allege that Collier selected an unauthorized
17 color, only that Collier chose a color that was not authorized with the body of her house (which is not
18 true given that the paint schemes were not listed on the websites as required to provide notice to Collier
19 and other unit owners in the Anthem Community). Importantly, Anthem never addressed this issue
20 with Collier until her relationship with Mossett-Puehek soured, despite the fact that the trim was painted
21 for over a year.

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

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

28 The alleged provision of the CC&Rs that was violated was Article 4, Section 4.3, which was

1 the first time that Anthem addressed this provision with Collier.

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

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

9 30. On May 24, 2021, Anthem also issued a Second Notice of Hearing pertaining to the
10 oleander bushes. The Second Notice of Hearing set a violation hearing for June 9, 2021. Therein,
11 Anthem alleged violations similar to the Courtesy Notice and Formal Notice pertaining to the oleander
12 bushes.

13 31. On or about May 25, 2021, Collier via those acting on her behalf exchanged a series of
14 emails with Anthem via Mossett-Puhek and Terra West. Therein, for example, Collier requested
15 additional time to address the painting scheme issues, respectfully requesting 45 days to coordinate
16 with the painter on what happened with the paint scheme and an additional 12 months to comply with
17 any painting requirements given budget requirements. Mossett-Puhek continued her threatening and
18 demeaning conduct toward Collier, avoiding any discussion of resolution with Collier on the
19 outstanding issues. Mossett-Puhek did so without consulting the executive board in violation of
20 Nevada law.

21 32. Prior to June 9, 2021, in a further effort to resolve the outstanding disputes with
22 Anthem, Collier took additional measures to trim the oleanders. Prior to trimming the oleander bushes,
23 Collier consulted with Henderson Code Enforcement and various regulations on this issue, as Mossett-
24 Puhek (acting on behalf of Anthem) had previously targeted and harassed Collier by referring her to
25 Henderson Code Enforcement. Neither Mossett-Puhek nor Anthem referred other unit owners to
26 Henderson Code Enforcement who had similar vegetation in similar areas with similar heights to
27 Henderson Code Enforcement, which Collier confirmed with Henderson Code Enforcement.
28 Henderson Code Enforcement did not pursue the issue with Collier at the time of the referral by

1 Mossett-Puhek (acting on behalf of Anthem), thereby furthering Collier's belief that the oleanders
2 were not problematic and/or a view obstruction even before she trimmed the same. Mossett-Puhek
3 (acting on behalf of Anthem) even involved the Henderson Police Department, which also did not
4 pursue the issue with Collier, thereby furthering Collier's belief that the oleanders were not
5 problematic and/or a view obstruction. The Henderson Police Department also confirmed with Collier
6 that neither Mossett-Puhek nor Anthem referred other similarly situated homeowners to the Henderson
7 Police Department. Nonetheless, Collier took steps to attempt to resolve the issue with Anthem by
8 trimming the oleanders.

9 33. On June 9, 2021, Collier sent written correspondence to Anthem addressing the
10 procedural and substantive issues pertaining to the violation hearing. A true and correct copy of this
11 correspondence is attached hereto as **Exhibit A**. That same day, Collier also provided an additional
12 photograph to Anthem from the vantage point of a car to demonstrate that no view obstruction existed.
13 A true and correct copy of this Photograph is attached hereto as **Exhibit B**. These correspondences
14 conclusively demonstrate that Collier was not in violation of the Governing Documents, to the extent
15 the issues were even properly noticed.

16 34. On June 9, 2021, Anthem issued a Formal Notice pertaining to the paint scheme. The
17 Formal Notice mirrored the Courtesy Notice as to the allegations regarding the paint scheme.

18 35. On June 9, 2021, Collier appeared at the violation hearing. Mossett-Puhek acted in an
19 abusive and otherwise engaged in inappropriate conduct toward Collier and those acting on her behalf,
20 knowing full well that Nevada law did not permit Collier to record the executive session. Mossett-
21 Puhek refused to allow Collier and those acting on her behalf to address the executive board and the
22 alleged violation. Mossett-Puhek refused to allow Collier to present documents or evidence at the
23 hearing. Several times during the executive session, Anthem muted Collier and/or those acting on her
24 behalf to intentionally interrupt and preclude Collier from presenting evidence at the hearing. In fact,
25 other members of the executive board asked Collier or those acting on her behalf questions, which
26 Mossett-Puhek refused to allow Collier to answer.

27 36. Immediately following the meeting and in accordance with Nevada law, Collier
28 memorialized the misconduct to both Terra West and legal counsel for Anthem, attempting to report

1 this misconduct to supervisory authorities. At no point did Terra West, legal counsel for Anthem,
2 and/or Anthem substantively respond to Collier's allegations of misconduct as it pertaining to the
3 conduct at the executive session. It was later learned and discovered that conflicts of interest exist
4 between Terra West, legal counsel for Anthem, and Mossett-Puhek, none of which have been disclosed
5 to the Anthem Communtiy in violation of Nevada law. For example, Mossett-Puhek did not disclose
6 her pre-existing relationships with these vendors on her candidate statement as required by Nevada
7 law. The vendors also did not disclose these relationships at the time Mossett-Puhek and the executive
8 board retained them.

9 37. On June 10, 2021, Anthem issued a Courtesy Notice to Collier alleging that Collier and
10 her counsel were improperly contacting Anthem's legal counsel without board approval. Anthem
11 threatened to assess Collier for legal fees generated by their legal counsel. As a basis, Anthem cited
12 Article 7, Section 7.2.4, which does not support Anthem's improper threats to Collier.

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

16 39. On June 11, 2021, Anthem issued a Second Notice of Hearing Result as it relates to the
17 oleanders. Anthem alleged that the oleanders are not on the approved plant list, thereby imposing a
18 \$50.00 fine if the oleanders are not removed in the next 14 days. Thereafter, Anthem threatened
19 Collier with an additional \$50.00 fine every seven (7) days until the oleanders are removed.

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

22 41. On June 14, 2021, in a further effort to comply with Anthem's request, Collier
23 submitted a supplement to her ARC submittal.

24 42. On June 17, 2021, in accordance with Nevada law on the preservation of evidence,
25 Collier issued a preservation of evidence request to Anthem, thereby notifying Anthem of a potential
26 claim against Anthem given the conduct toward Collier to date. As yet another example of the
27 improper conduct by Mossett-Puhek, Mossett-Puhek contacted Collier (or those working on her
28 behalf) to notify them that Mossett-Puhek had "unilaterally" determined that Anthem would not abide

1 by the preservation of evidence request and/or Nevada law on ensuring that discoverable information
2 is properly maintained and/or stored. A true and correct copy of Mossett-Puhek's email is attached
3 hereto as **Exhibit C**, thereby confirming additional procedural violations of the Governing Documents
4 and Nevada law.

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

8 44. On June 28, 2021, Anthem produced violation logs in response to document requests
9 by Collier. The violation logs further support that Collier is being targeted and harassed by Anthem
10 as Anthem has not taken steps to pursue other similarly-situated unit owners, whether for alleged
11 violations of the oleanders, paint scheme, and/or flagpole.

12 45. On or about September 1, 2021, Collier submitted an Alternative Dispute Resolution
13 Claim Form with the State of Nevada, Department of Business and Industry, Real Estate Division
14 ("NRED").

15 46. On October 4, 2021, Anthem's harassment continued regarding the oleanders. Despite
16 already fining Collier pertaining to the same, Anthem issued another Courtesy Notice to Collier
17 regarding the oleanders, this time alleging a violation of Article 5, Section 5.3.1.

18 47. On October 8, 2021, Collier timely served the Claim Form on Anthem as required by
19 Nevada law.

20 48. On November 1, 2021, Anthem took a new approach to harassing Collier. This time,
21 Anthem issued a Courtesy Notice to Collier regarding a flagpole in her front yard. This is yet another
22 example of the harassment by Anthem and Mossett-Puhek as Anthem (being directed by Mossett-
23 Puhek) issued the notice of violation related to the flagpole as a direct response to the Claim Form that
24 Collier served on Anthem. It would be disingenuous for Anthem to allege that it was unaware of the
25 flagpole prior to November 1, 2021, given the number of inspections and related issues with the
26 Property. The Courtesy Notice indicated that Collier needed to submit an ARC for approval for the
27 flagpole.

28 49. On January 6, 2022, Anthem issued Collier a Notice of Continuing Fine pertaining to

1 the paint scheme.

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

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

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

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

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

22 53. On February 10, 2022, Collier submitted a Home Improvement Application pertaining
23 to the flagpole.

24 54. On February 10, 2022, Collier submitted a Home Improvement Application pertaining
25 to the paint scheme.

26 55. On February 28, 2022, Anthem issued Collier a response to the Home Improvement
27 Application. In an effort to further harass Collier, Anthem required that Collier submit the following
28 information:

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

8 This response from Anthem continues to demonstrate the harassment and targeting of Collier.
9 Upon information and belief, Anthem has not required other unit owners to submit similar information,
10 to the extent Anthem has even pursued “flagpole” violations with other unit owners.

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

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

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

59. As a member of the executive board, Mossett-Puhek was the primary driving factor of
the conduct by Anthem toward Collier. Mossett-Puhek exchanged emails with Collier and those acting

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

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

11 **FIRST CAUSE OF ACTION**

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

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

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

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

19 64. In 2020 and 2021, Collier made various complaints in good faith about alleged
20 violations of Chapter 116 of the Nevada Revised Statutes and the governing documents. In 2021,
21 Collier questioned relationships between legal counsel of Anthem and the community manager of
22 Anthem with certain members of the executive board, including, but not limited to, Mossett-Puhek.
23 In 2021, Collier requested in good faith to review the books, records or other papers of Anthem.

24 65. The retaliatory actions, threats, and harassment by Defendants, including, but not
25 limited to, Anthem and Mossett-Puhek, toward Collier have caused significant harm to Collier. Collier
26 has suffered from serious emotional distress and/or a reasonable apprehension thereof given the
27 actions toward Collier. The actions toward Collier involve the Property, which is Collier's primary
28 residence, thereby causing her to live in a constant state of fear given the continued and unrelenting

1 harassment. As a result, the actions toward Collier have created a hostile environment for her.

2 66. Defendants acted within the course and scope of their role within the executive board
3 of Anthem when Defendants engaged in this conduct toward Collier. Anthem knew of this course of
4 conduct and otherwise consented or agreed to allow Defendants to engage in the course and scope of
5 this conduct within their role of the executive board. Therefore, Anthem is liable for the
6 aforementioned acts via Respondeat Superior, to the extent that Anthem is not directly liable for the
7 conduct.

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

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

14 **SECOND CAUSE OF ACTION**

15 **(Breach of Contract/Governing Documents/ Breach of Real Covenant/Chapter 116 Against**
16 **Anthem)**

17 69. Plaintiff repeats by reference thereto Paragraphs 1 through 67, inclusive with like force
18 and effect as if the same were set forth herein in full.

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

24 71. In addition to the Governing Documents, Chapter 116 of the Nevada Revised Statutes
25 regulates homeowner's associations, including but not limited to Anthem. The Governing Documents
26 are deemed to conform with Chapter 116 of the Nevada Revised Statutes to the extent the Governing
27 Documents violate the same. NRS 116.1206(1).

28 72. Anthem violated the Governing Documents and Chapter 116 in a variety of ways. For

1 example, Anthem violated the same by pursuing Collier for alleged violations involving the oleander
2 bushes. The oleander bushes do not constitute a violation under the Governing Documents and/or
3 Nevada law. The oleander bushes also do not create an unreasonable view obstruction. The oleander
4 bushes are not a health, safety or welfare violation. As a result, the fines instituted against Collier are
5 not valid under the Governing Documents and/or Nevada law.

6 73. To the extent any violation of the Governing Documents did exist, Anthem unfairly
7 and inequitably enforced the Governing Documents against Collier in violation of Nevada law. For
8 example, Anthem itself has oleanders planted throughout the Anthem Community on the common
9 elements. It is simply improper as a matter of law for Anthem to pass rules and regulations that
10 prohibit oleander bushes when Anthem itself is in violation of the same. Furthermore, other unit
11 owners in the Anthem Community also have oleander bushes planted throughout the Anthem
12 Community. It is improper for Anthem to unfairly target and harass Collier when Anthem has not
13 initiated or otherwise taken appropriate steps to enforce the Governing Documents against other unit
14 owners in the Anthem Community.

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

18 75. Anthem is specifically targeting and harassing Collier as it relates to the alleged
19 violations, requiring Collier to take additional steps that Anthem has not required other unit owners to
20 take.

21 76. Beyond the substantive violations of the Governing Documents and Nevada law,
22 Anthem has engaged in various procedural violations of the Governing Documents and Nevada law.
23 For example, Anthem did not timely and properly notice Collier as it relates to an alleged health,
24 safety, and welfare violation as it pertains to the oleanders. Despite having actual notice of the alleged
25 violation, Anthem waited years to address the violation with Collier. Even after addressing it Collier,
26 Anthem did not initially raise the health, safety, and welfare violation in any initial notices, waiting
27 just days before the hearing to raise this issue. Anthem did so to further bully and harass Collier,
28 attempting to fine Collier above and beyond the limitations imposed by the Governing Documents and

1 Nevada law that relate to violations for those not involving health, safety, and welfare of the Anthem
2 Community.

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

7 78. At all times material, Collier performed under the Governing Documents to the best of
8 her ability given the bullying, threats and harassment toward her involving the alleged violations. To
9 the extent Collier did not perform, Collier's performance was excused given Anthem's course of
10 conduct.

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

15 80. 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 **THIRD CLAIM FOR RELIEF**

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

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

22 82. A valid and enforceable agreement in the form of Anthem's Governing Documents
23 existed between Anthem and Collier.

24 83. Every agreement in Nevada contains an implied covenant to act in good faith in
25 performance and enforcement of the agreement.

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

86. 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. The unfaithful actions by Defendants were deliberate.

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

91. As it relates to the specific issue of enforcement and violation actions pertaining to unit owners, Defendants, including, but not limited to, Anthem and Mossett-Puhek (given her role on the executive board) owed Collier fiduciary duties of good faith, undivided loyalty, confidentiality, and disclosure to Collier. That is, Collier placed Defendants in a position of trust and confidence given Collier's role as a unit owner within the Anthem Community to only pursue enforcement actions against the Property in accordance with the governing documents and Nevada law.

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

93. As a result of the multiple breaches of fiduciary duties perpetrated by Defendants,

Collier has been injured and is entitled to recover damages in an amount to be proven at trial and as otherwise set forth herein, which exceeds \$15,000.00. Such damages also include punitive damages based on the conduct set forth herein.

94. 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.

FIFTH CLAIM FOR RELIEF

(Declaratory Relief Against All Defendants)

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

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

97. Collier is entitled to declaratory judgment from this Court finding that: i) no legal basis existed for the enforcement action as it relates to the oleanders, paint scheme, and/or flagpole; ii) to the extent a legal basis existed, which it did not, Defendants unfairly and inequitably enforced the Governing Documents against Collier in violation of Nevada law; iii) Defendants committed substantive and procedural violations in the enforcement actions against Collier; iv) Defendants engaged in conduct that amounted to retaliatory actions, threats, and harassment against Collier; and v) Defendants otherwise engaged in violations of Nevada law and the Governing Documents by engaging in the aforementioned conduct.

98. 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.

PRAYER FOR RELIEF

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

(1) For general and special damages against Defendants, including incidental and consequential damages, resulting from Defendants' actions in excess of \$15,000.00;

(2) For compensatory damages against Defendants in excess of \$15,000.00;

(3) For punitive or exemplary damages against Defendants in excess of \$15,000.00;

- 1 (4) For special damages against Defendants in excess of \$15,000.00;
- 2 (5) For reasonable attorneys' fees;
- 3 (6) For costs of suit and litigation; and
- 4 (7) For such other and further relief as the Court deems just and proper.
- 5

6 DATED: May 3, 2022

THE LAW OFFICES OF TIMOTHY ELSON

8
9 By: /s/ Timothy P. Elson

10 Timothy P. Elson, Esq.
11 Nevada State Bar # 11559
12 8965 S. Eastern Ave., Suite 382
13 Las Vegas, Nevada 89123
14 Attorneys for Plaintiff ANDREA COLLIER, as trustee of
15 the JACT TRUST
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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.

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

EXHIBIT A

EXHIBIT A



THE LAW OFFICES OF
TIMOTHY ELSON

(702) 874-8600
timothy.elson@gmail.com

8965 S. Eastern Ave, #382
Las Vegas, NV 89123

www.elsonlawoffices.com

June 9, 2021

VIA ELECTRONIC CORRESPONDENCE

Anthem Highlands Community Association
c/o Carmen Eassa, CMCA
Community Manager
Terra West Management Services
6655 S. Cimarron Road, Suite 200
Las Vegas, NV 89113
702.251.4502
ceassa@terrawest.com
manager@anthemhighlands.org

**Re: 2822 Culloden Ave.
Violation Hearing: June 9, 2021**

Dear Ms. Eassa:

This office represents Ms. Collier, the trustee of the unit owner (“Ms. Collier”) of 2822 Culloden Ave. (the “Property”), as it relates to the Violation Hearing set for June 9, 2021. This letter serves to provide written notice to Anthem Highlands Community Association (“Anthem”) that Ms. Collier is not in violation of Sections 4.1.4 or 4.3 of the CC&Rs. Furthermore, Anthem is engaging in arbitrary and capricious enforcement of the CC&Rs that amounts to an illegal retaliatory action against Ms. Collier for being an active member of the Anthem Community in an attempt to help remedy other violations of the CC&Rs. We strongly encourage Anthem to immediately cease and desist from engaging in this type of bullying conduct to avoid Ms. Collier from pursuing all legal remedies to which she is entitled.

I. Ms. Collier Is In Compliance With Section 4.3 Of The CC&Rs

Ms. Collier is in compliance with Section 4.3 of the CC&Rs. In the Notice of Hearing dated May 24, 2021, at 16:15:06 p.m. (“Hearing Notice 1”), Anthem erroneously claims that the oleander bushes near the side yard create a view obstruction. Anthem further erroneously cites to Section 4.3 titled Nuisances; Construction Activities for support that the oleander bushes constitute a nuisance, which they don’t. Because the oleander bushes do not constitute a view obstruction, no violation exists.

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First, the oleander bushes do not create a view obstruction. After receiving the Courtesy Notice from Anthem and before Hearing Notice 1 was issued, Ms. Collier took action to trim the oleander bushes.¹ The oleander bushes now stand below 24". That is, the oleander bushes no longer create a view obstruction, to the extent such a view obstruction existed. This should have been readily apparent to Anthem when it conducted its inspection on May 24, 2021.² The Collier Photograph (which is westward facing) clearly demonstrates that no view obstruction exists. The oleander bushes are trimmed below any line of site from a vehicle, even a low-profile vehicle. Furthermore, any vehicle traveling eastbound on Culloden Ave. would be visible above the oleander bushes. That is, Hearing Notice 1 should have never been issued.

Equally problematic is that Hearing Notice 1 fails to set forth sufficient evidence that the oleander bushes are a view obstruction. The photograph of Hearing Notice 1 is a north facing view toward the property. However, Hearing Notice 1 alleges that the view obstruction is created by looking southwest from Crathes St. onto Culloden Ave. Furthermore, Hearing Notice 1 alleges that a view obstruction exists from a low-profile vehicle. There is no evidence or photograph attached to Hearing Notice 1 to support the actual alleged violation. NRS 116.31031(4)(b)(1)(II) mandates that Anthem provide sufficient photograph evidence with Hearing Notice 1 prior to bringing Ms. Collier to hearing.³

To make matters worse, Anthem's proposed remedial action to completely remove the plant material further demonstrates the harassment toward Ms. Collier. Similar plant material existed at the Property before Ms. Collier even moved into the Property. Plant material has existed in a similar manner or at heights higher than 24" since Ms. Collier moved into the Property. There is no way that Anthem can even deny knowledge of these facts given that Ms. Mossett-Puhek personally visited Ms. Collier at the Property on different evenings when the two individuals shared drinks with one another. Anthem cannot now act in an arbitrary and capricious manner and demand that all plant material be removed. NRS 116.31065.

As further evidence that Anthem is acting in an arbitrary and capricious manner, even a cursory review of the Anthem Community demonstrates that other units currently have plants in a similar manner as to the height and location of the oleander bushes *before* Ms. Collier trimmed the same to 24". While Ms. Collier cannot be certain that notices have not been issued to these

¹ In taking this action, Ms. Collier does not concede that corrective action was required. Ms. Collier took this action in an effort to resolve this matter with Anthem to avoid any further legal issues.

² It does not appear that the photograph contained in Hearing Notice 1 ("Anthem Photograph") was taken on May 24, 2021, as alleged. The photograph provided to Anthem on May 25, 2021 ("Collier Photograph" – attached hereto as **Exhibit 1**), was taken on or about May 19, 2021. Furthermore, the Anthem Photograph appears to mirror the photograph contained in Hearing Notice 2 (as defined below), which indicates it was taken on May 7, 2021. We respectfully request that Anthem preserve all metadata as it relates to the Anthem Photograph, as well as take all appropriate steps to preserve any other evidence, documents, or communications that pertain to the issues discussed herein. .

³ That is, not only does a substantive violation not exist, but Anthem failed to comply with the necessary procedural requirements to the extent a substantive violation existed.

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units, Ms. Collier did speak with some of the unit owners, all of whom confirmed that Anthem had not issued similar notices for view obstructions, despite the fact that some units were at much busier intersections and possessed much larger vegetation. Ms. Collier understands that Anthem is now pursuing this issue as a result of a personal relationship between board members and Judy Hendrickson,⁴ who lives in the gated community (Earlstone Homeowners Association) just east of the Property.⁵ This is the only rational explanation as to why Ms. Collier is being treated in an arbitrary and capricious manner in violation of Nevada law. NRS 116.31065.

In an effort to harass Ms. Collier before Anthem issued Hearing Notice 1, Anthem or those working with Anthem (such as Ms. Hendrickson), referred Ms. Collier to Henderson Code Enforcement (“HCE”). Ms. Collier met with *HCE and members of the Henderson Police Department* (“HPD”), all of whom *ultimately agreed that the oleander bushes did not create a view obstruction*. This is exactly why HCE never issued a fine or took further corrective action following HCE’s initial notice to Ms. Collier. Further demonstrating that the oleander bushes do not create a view obstruction, *HCE only asked that Ms. Collier trim the oleander bushes to 24”, not completely remove the plant material*. See Letter dated March 3, 2021, attached hereto as **Exhibit 2**. Anthem is now requiring corrective action above and beyond what HCE originally requested and ultimately deemed unnecessary.

The oleander bushes do not create a view obstruction. The Collier Photograph conclusively proves this. **Exhibit 1**. Furthermore, HCE also indisputably agreed that if the oleander bushes were trimmed at 24” that the oleander bushes would not create a view obstruction.⁶ **Exhibit 2**. To the extent that Section 4.3 is the proper governing document to address the view obstruction, which we do not concede, no such view obstruction exists.

II. Ms. Collier Is In Compliance With Section 4.1.3 Of The CC&Rs

Ms. Collier is in compliance with Section 4.1.4 of the CC&Rs. In the Notice of Hearing dated May 24, 2021, at 11:29:22 a.m. (“Hearing Notice 2”), Anthem alleges that Ms. Collier was required to submit an ARC application. Prior to the oleander bushes being planted, other similar plants existed in this exact same area. It is our understanding that the oleander bushes were planted during the installation of Ms. Collier’s pool, which was approved. Due to damage to the original plant material, the oleander bushes were planted. This did not alter the appearance of

⁴ We respectfully request that all communications and related documents within Anthem, including its officers, directors, agents, or those acting on its behalf, including communications on personal computers or cell phones, be preserved by Anthem. This includes communications with Mr. Hendrickson. Ms. Collier may issue a formal preservation of evidence letter depending on the outcome of the upcoming hearing.

⁵ We understand that Ms. Mossett-Puhek also resides in Earlstone, which likely creates a conflict of interest given that Ms. Mossett-Puhek appears to be pursuing this activity out of a personal motivation rather than the betterment of the Anthem Community given that arbitrary and capricious manner in which Anthem in enforcing the CC&Rs.

⁶ Again, HCE ultimately accepted Ms. Collier’s position that the oleander bushes, even before they were trimmed, did not create a view obstruction.

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the unit. Because the oleander bushes did not alter the appearance, no violation exists of Section 4.1.4 of the CC&Rs.

Section 4.1.4 of the CC&Rs requires unit owners to obtain ARC approval when the exterior appearance of the unit is altered. The oleander bushes did not alter the appearance, as it simply replaced plant material that was damaged.⁷ The oleander bushes have been present for several years. Despite actual knowledge of the oleander bushes (Ms. Collier had conversations with Ms. Mossett-Puhek, wherein Ms. Mossett-Puhek stated no issues existed with them), Anthem did not issue any notices to Ms. Collier for several years.⁸ It is not abnormal for plants to die, especially in a harsh environment such as Las Vegas. There is no requirement that unit owners submit an ARC Application every time a plant dies and needs to be replaced. This type of practice would be unnecessarily laborious to the individual unit owner every time a dead bush or plant needed replaced. To the extent such a requirement exists, Anthem certainly does not uniformly enforce it. NRS 116.31065.

With that said, Ms. Collier has already offered to resolve Anthem's alleged violation and submit an ARC Application pertaining to the oleander bushes. Rather than address Ms. Collier's offer, Anthem engaged in a barrage of inappropriate email banter with Ms. Collier, erroneously claiming that Ms. Collier did not respond in a proper procedural manner. Anthem also refused to provide a substantive response or otherwise work with Ms. Collier to resolve this dispute. See Email Exchange, attached hereto as **Exhibit 4**. This is yet another example of Anthem's harassment and unfair treatment of Ms. Collier.

It is important to note that Nevada law does not require communication in the ridged manner alleged by Ms. Mossett-Puhek. **Exhibit 4**. Anthem's own governing documents do not attempt to mandate such restrictive measures.⁹ See, e.g., Fine and Enforcement Policy. To make matters worse, Anthem's own communications to Ms. Collier permit and encourage communication from the unit owner via email. For example, the courtesy notices state as follows:

Should you need additional information or clarification of the alleged violation, please contact management via email at manager@anthemhighlands.org . . .

Equally problematic is that Hearing Notice 2 states as follows:

Should you have any questions concerning this notice, or if there are circumstances that prevent you from correcting the condition(s) as requested, **please reply to this notice** via the enclosed Hearing Response Form **or contact Anthem Highlands Comm Assoc in**

⁷ Arguably, it would have been a violation of Section 4.1.4 of the CC&Rs to not replace the plant material.

⁸ Ms. Collier understands that Ms. Mossett-Puhek drove by the oleander bushes nearly everyday given the location of her residence.

⁹ To the extent the governing documents attempted to mandate the same, such restrictions would be procedurally unconscionable and unenforceable.

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writing via email manager@anthemhighlands.org, fax 7029986083 or by US Mail to the address above.

Given the history of the communications, Ms. Collier contacted Ms. Mossett-Puhket as that was the prior point of contact. However, Ms. Collier immediately contacted the community manager and the general mailbox when requested to do so. It should be abundantly clear that Anthem failed to follow its own procedural protocol and refused to provide additional information or clarification when requested by the unit owner (yet another procedural violation).

Ms. Collier is still willing to attempt to submit an ARC Application to resolve this dispute to the extent Anthem requests that she do so. There is no reason why the ARC Application would be denied, given that Ms. Collier simply replaced prior plants with a similar plant.¹⁰ To the extent this is agreeable, we would propose that Anthem provide Ms. Collier a reasonable time to submit the ARC Application and revisit this issue at the next board meeting.

III. Anthem Is Clearly Targeting And Harassing Ms. Collier Via Its Arbitrary And Capricious Enforcement Of The CC&Rs

Ms. Collier is an active member the Anthem Community. Her unit is maintained in an attractive manner. She routinely notifies Anthem of violations, requesting that Anthem clean up the Anthem Community for the betterment of all. Ms. Collier has volunteered to assist, requesting that committees be formed. Ms. Collier has even invited board members, such as Ms. Mossett-Puhek, to her personal residence for drinks to discuss how to better the Anthem Community. It is unclear when or why the relationship soured, but it is crystal clear that Anthem is misusing its power to harass or otherwise pursue personal vendettas against Ms. Collier. These types of retaliatory acts will not be permitted. NRS 116.31184.

According to HCE, Ms. Hendrickson was responsible for reporting Ms. Collier. Once HCE determined that no violation actually existed, Anthem engaged in an inappropriate course of conduct as a result of a personal relationship with Ms. Hendrickson, by issuing courtesy and violation notices, knowing full well the history of the oleander bushes and that no violation existed. Only after HCE determined that no violation existed did Anthem take any action whatsoever, further highlighting that no violation of the governing documents existed. That is, Anthem would have pursued enforcement activity long ago if Anthem legitimately alleged a violation. The recent communications with Ms. Collier and misrepresentations regarding the procedures of Anthem further highlight the harassment.

¹⁰ It is misguided for Anthem to allege that the oleander bushes are a prohibited plant. Prior to May 30, 2018, which is approximately when the oleander bushes were planted, oleanders were not a prohibited plant. Pursuant to NRS 116.31065, a rule may not “arbitrarily restrict conduct” and must be “uniformly enforced” against all unit owners. Even a cursory review of the Anthem Community shows that oleanders are planted throughout the entire community. Anthem cannot allow certain unit owners to plant oleanders and then preclude other unit owners from planting oleanders, especially when oleanders were not initially on the prohibited plant list. This rule is clearly not enforceable.

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Ms. Collier respectfully requests that Anthem immediately terminate this course of conduct. Ms. Collier is happy to abide by the governing documents, just as all unit owners. Ms. Collier continues to work with Anthem to resolve any outstanding differences. However, the issue with the oleanders is not about compliance but harassment. Ms. Collier is being unfairly targeted, whether due to her active requests of Anthem to address matters in the community and/or the improper personal relationship with Ms. Hendrickson. Should this course of conduct persist, Ms. Collier will take appropriate legal action.

III. Ms. Collier Would Like To Resolve This Matter

We thank you for the opportunity to work with you to resolve our outstanding differences. We first respectfully request that Anthem immediately vacate the upcoming hearing, thereby negating any further attorneys' fees that Anthem unnecessarily caused Ms. Collier to incur. To the extent that Anthem still insists that an ARC Application should be submitted, Ms. Collier will do so in an effort to amicably resolve this matter. Ms. Collier respectfully requests a reasonable time to submit the ARC Application, such as 30 days. To the extent Anthem insists on moving forward with the violation hearing, we look forward to addressing these issues with you at that time.

Sincerely,

/s/ Timothy Elson

Timothy Elson
of THE LAW OFFICES OF TIMOTHY ELSON, LLC

EXHIBIT 1

EXHIBIT 1



EXHIBIT 2

EXHIBIT 2



TIME 19
LINE OF SIGHT
DIAGRAM

CODE ENFORCEMENT DIVISION

240 S Water St
P.O. Box 95050 | M.S.C. 116
Henderson, NV 89009-5050
Phone 702-267-3950
Office Hours: M-Th 6:30am - 4:30pm

Case Numer: CE-21-503
Date: 03/03/2021

NOTICE OF VIOLATION & ORDER TO CORRECT

J A C T TRUST
10620 SOUTHERN HIGHLANDS PKWY # 110-431
LAS VEGAS, NV 89141

Subject Property: 2822 Culloden Avenue, Henderson, NV, 89044
Unit Number (if applicable):
APN: 19124813013

J A C T TRUST,

The purpose of this letter is to inform you that the above-listed property that you own, lease, or occupy is in violation of the City of Henderson Code of Ordinances. The City of Henderson is requiring that you make the following correction(s) by the required due date or contact Code Enforcement to get this matter resolved promptly.

Municipal Code	Description	Resolutions	Comply-By
HMC 15.12.030.B.7 RIGHT OF WAY OBSTRUCTIONS	Any object, including but not limited to a sign, tree, or bush on private property that interferes with, obstructs, partially obstructs, or renders dangerous the free passage, use, or vision in the customary manner of any sidewalk, street, alley, highway, or traffic light or sign in the city	The oleanders in the front yard shall be trimmed or removed to provide adequate line of sight visibility at the intersection, with a maximum height of 24 inches.	03/17/2021

On or after **03/17/2021** an inspection of your property will take place to verify compliance.

Consequences of Failure to Correct Violation(s)

Failure to correct the violation may lead to the violation conditions being abated by city personnel or by a private contractor hired by the city for that purpose. City personnel or a private contractor can enter upon private property in a reasonable manner to abate the conditions as specified in a future notice to abate or administrative order. All costs incurred by the City will be recovered through any method allowed by law which can include a special assessment and/or lien against the property.

Failure to correct the violation(s) can also lead to further administrative actions such as the remedies detailed in Section 15.12.060 of the Henderson Municipal Code or criminal prosecution as a misdemeanor with a maximum penalty of a \$1,000 fine and/or six months in jail. A full description of the hearing process for the City's administrative hearings for Municipal Code violations and your rights in that process are found in the City of Henderson Municipal Code Section 15.12.060.

Re-Inspections

The code official shall re-inspect the property after the compliance date specified in the notice and order. If the violation is still in existence on the re-inspection date, the code official is authorized to impose a re-inspection fee as provided in section 15.12.060.B.3 and in the amount specified in section 15.12.090 of this Code (\$150). A re-inspection fee may be charged in advance for the third inspection and any subsequent inspection until compliance is attained.

Rights of Appeal

This Notice, a Notice of Violation and Order to Correct, is not appealable pursuant to HMC 15.12.060.B.6, as there are no fines or fees associated with this Notice. Therefore, you are not able to appeal this Notice. If you dispute the violations set forth in this Notice of Violation, please contact the officer assigned to this case so that they can assist you with any concerns that you may have. You can find their contact information at the end of this Notice, or you may call the Code Enforcement Division at 702-267-3950 during normal business hours.

You are advised that you *may* have a right to appeal a future action taken by the Division. Pursuant to HMC 15.12.060, an owner may appeal any Notice of Abatement, fines and fees, liens levied against the property, or the lack of due process. An appeal must be filed within ten (10) calendar days from the date of any of these notices and/or actions. Please note that pursuant the **appeal process is not authorized to grant exceptions or modifications to the property maintenance code or other Henderson Municipal Codes.**

The City would like to take this opportunity to thank you for helping to resolve this matter in a timely fashion.



Jason Esau
Code Enforcement Officer
City of Henderson
702-267-3964

EXHIBIT 3

EXHIBIT 3



Tim Elson <tim@elsonlawoffices.com>

Re: 2822 Culloden; Violation re Oleanders

Pennie Mossett-Puhek <pennieahca@gmail.com>

Tue, May 25, 2021 at 4:13 PM

To: Tim Elson <tim@elsonlawoffices.com>

Cc: Carmen Eassa <ceassa@terrawest.com>, manager@anthemhighlands.org, Ted Boyack <ted@boyacklaw.com>

You are doing a disservice to your client by behaving in this manner. We know the law, it doesn't appear you do. This will be the last response, so please find someone else to harass.

Pennie Puhek
President
Anthem Highlands Community Association
702-808-8917

On May 25, 2021, at 4:11 PM, Tim Elson <tim@elsonlawoffices.com> wrote:

Ms. Mossett-Puhek,

That's not the way Nevada law operates. Again, your approach is not resolution oriented but creates a rigid framework that fails to appropriately address matters with unit owners. You do not even provide legal support for the contentions you set forth below. Beyond that, your email below is also not a substantive response as to why the violation still exists. We again renew our request for a substantive response. If you do not provide it, we will appear at the hearing. Issues do not need to be combative for them to get resolved.

Best,

Tim Elson

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On Tue, May 25, 2021 at 4:03 PM Pennie Mossett-Puhek <pennieahca@gmail.com> wrote:

Mr. Elson,

The architectural violation courtesy notice was sent the beginning of May and the formal notice the middle of May. If you read the response form, it says required and we never received the form back. This is why the hearing notice was issued for this violation. I emailed you all the information m, in a timely manner, that you requested and we never heard anything back until today.

You are correct, it's not that difficult. The notices and forms are self explanatory. You said you have read the governing documents, so you must k in the process. Response forms are required for hearings. We will not argue the issue via email. You have been provided a response form and you can present your facts, comments, and concerns at the hearing.

Pennie Puhek
President
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702-808-8917

On May 25, 2021, at 1:05 PM, Tim Elson <tim@elsonlawoffices.com> wrote:

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Best,

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Sent from my iPhone

On May 25, 2021, at 12:54 PM, Carmen Eassa <ceassa@terrawest.com> wrote:

Dear Mr. Elson,

Attached please find the requested violation letters for the Oleanders. Ms. Collier has been given ample opportunity to respond to the violation via the response form provided by the association. Since we did not receive a response, these matters will move forward to hearing to determine if they are in compliance.

If you will be attending the hearings on Ms. Collier's behalf, please send in written authorization from Ms. Collier prior to June 9th.

Thank you,

Carmen

Carmen Eassa, CMCA®

Community Manager

Anthem Highlands Community Association

Terra West Management Services

[6655 S. Cimarron Road, Suite 200 | Las Vegas, NV 89113](#)

7028563743 **Office** | 7029986083 **Fax**

terrawest.com | manager@anthemhighlands.org | [HOA Account Login](#)

<image001.png>

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From: Tim Elson <tim@elsonlawoffices.com>
Sent: Tuesday, May 25, 2021 11:49 AM
To: Pennie Mossett-Puhek <pennieahca@gmail.com>;
manager@anthemhighlands.org
Subject: Re: 2822 Culloden; Violation re Oleanders

Ms. Mossett-Puhek,

Given your prior conduct and statements, we do not necessarily agree with your email below, but we have copied the management company nonetheless. We look forward to receiving a response from the HOA in a timely manner, which will hopefully allow this matter to be resolved rather than escalated.

Best,

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On Tue, May 25, 2021 at 11:42 AM Pennie Mossett-Puhek
<pennieahca@gmail.com> wrote:

Good afternoon Mr. Elson,

Please direct all your correspondence and requests to the management company at manager@anthemhighlands.org . I have tried to help resolve the issues by providing as much information as possible, but it appears that this has not worked. The management company will process your requests for information and notify you about the status of violation accounts. This information is not readily available to me and I also need to request it from management. This makes the process easier for you to receive your requested information in a timely manner. Thank you.

On Tue, May 25, 2021 at 11:31 AM Tim Elson <tim@elsonlawoffices.com> wrote:

Ms. Mossett-Puhek,

Please forward us the current violation letters as it pertains to the oleanders. We understand that different versions have been circulated (or multiple alleged violations), and we simply want to ensure that we have the current letters.

With that said, please find attached a photograph pertaining to the oleanders that demonstrates the oleanders are within code and do not present a view obstruction. It's important to note that vegetation has been planted in a similar manner at this unit (and many other units) for years, which further negates any alleged obstruction. We trust this resolves any issue related thereto. If not, please advise.

As to the alleged ARC issue, we do not necessarily agree that the CC&Rs mandate that ARC approval be obtained to change vegetation from Plant A to Plant B. Without conceding such a requirement exists or that it is necessary, we are happy to submit an ARC application that provides that oleanders be planted instead of the prior vegetation, which was planted and maintained in a similar manner to the oleanders. If this will resolve this issue, please provide the paperwork and we will get that submitted. If not, please advise.

At this point, it appears these issues have been largely resolved. We trust that the HOA will either vacate or continue the upcoming hearings related to the oleanders while we finalize these issues.

Best,

Tim Elson

<image002.png>

(702) 874-8600

tim@elsonlawoffices.com

elsonlawoffices.com

[8965 S. Eastern Ave., #382](#)

[Las Vegas, NV 89123](#)

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<10-59-55.pdf>

<10-59-19.pdf>

EXHIBIT 4

EXHIBIT 4



Tim Elson <tim@elsonlawoffices.com>

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<image001.png>

We'd love to hear from you! Click here to answer a few questions about your experience today. We sincerely appreciate your business!

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<10-59-55.pdf>

<10-59-19.pdf>

EXHIBIT B

EXHIBIT B



EXHIBIT C

EXHIBIT C



Tim Elson <tim@elsonlawoffices.com>

Re: 2822 Culloden :Preservation Of Evidence

Pennie Mossett-Puhek <pennieahca@gmail.com>

Fri, Jun 18, 2021 at 4:00 PM

To: Tim Elson <tim@elsonlawoffices.com>

Cc: Katherine Matheson <kmatheson@terrawest.com>, Deborah Ogilvie <dogilvie@terrawest.com>, Carmen Eassa <ceassa@terrawest.com>

Mr. Elson,

I am really sick of your ridiculous and uninformed threats. Please learn HOA law before you start spouting nonsense. You clearly do not understand it which should be a surprise and a disservice to your client. This is a governing document issue. Potential means nothing. I potentially want to fly to the moon, but the chance of that happening is little to none, just like any claim you may want to bring. This is a governing document matter which can only be addressed through ADR with NRED prior to any claim being filed in a court. File away and keep wasting your clients money. I can send you the application if you like. Our position is rock solid. Additionally, I can make unilateral decisions regarding the management of the HOA. I refer you to the bylaws of the association where it specifies my powers as president. I also recommend that you read the ARC guidelines where the ultimate discretion is given to the committee when determining what to approve and what is in the best interest of the community. They are guidelines (see dictionary for the definition), not a complete list of what is allowed or disallowed.

All your client needs to do is change plant material and you are making a federal case of it. I bet the Nevada State Bar would think your conduct is reprehensible and unbecoming as an officer of the court. You are not immune just because you are an attorney. In fact, you are held to a higher standard. Your client has not been fined yet and you have been given plenty of opportunity to cure the violation. Your constant emails attacking myself and management are creating a hostile environment.

ONCE AGAIN... I AM BEGGING YOU TO STOP YOUR HARASSMENT AND BULLYING OR I WILL TAKE IT UP WITH THE STATE BAR AND FILE A COMPLAINT ALLEGING VIOLATIONS OF NRS 116.31184 (YES, I CAN DO THAT UNILATERALLY AS WELL).

On Fri, Jun 18, 2021 at 9:08 AM Tim Elson <tim@elsonlawoffices.com> wrote:

Ms. Mossett-Puhek,

Thank you for your email. We also do not plan to engage you in an email campaign so we may not respond to any future correspondence should you respond. If we do not respond, this should not be construed as an admission or acquiescence as to anything set forth in your emails.

With that said, your email is problematic for a variety of reasons. Anthem has now been put on notice of a potential claim, which carries potential ramifications if Anthem does not proceed in a proper manner. Notice of a claim carries with it different obligations in addition to what Chapter 116 sets forth, some of which are set forth in more detail in our letter. While Anthem is free to disregard our letter requesting preservation of evidence, Anthem's decision to do so may carry with it certain penalties set forth under the Nevada Rules of Civil Procedure to the extent litigation is pursued, which is looking more probable.

Even more problematic is that it appears you unilaterally made a decision to disregard the letter, which violates Chapter 116. As you are aware, HOAs are heavily regulated by Chapter 116. You are not in a position to unilaterally make any decision for the HOA. Furthermore, HOAs must typically make these types of decisions at properly noticed board meetings or as otherwise set forth within the governing documents. The fact that Terra West is allowing you to act in this manner is problematic for Terra West as well (along with some of the other procedural issues I've documented), which is why I've now copied upper management at Terra West.

We appreciate your email, which indisputably confirms these violations of Chapter 116. We will likely address that with the ombudsman in due course. We also appreciate your email that confirms that Anthem is intentionally not preserving any evidence, which may carry adverse consequences to the extent that evidence is lost or destroyed. Lastly, this is not a threat or harassment, as preservation letters are extremely common as parties conduct investigations and approach litigation. We hope Anthem (and Terra West) starts to appreciate the severity of the different violations that are occurring within the Anthem Community. We anticipate issuing future correspondence in the near future that addresses these issues.

Best,

Tim Elson

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On Thu, Jun 17, 2021 at 3:46 PM Pennie Mossett-Puhek <pennieahca@gmail.com> wrote:

Mr. Elson,

Thank you for your email. You cannot direct management to do anything so please cease and desist doing so. State law dictates what we preserve and what we don't and absent a court order we will not adhere to your demands. I understand that you feel these harassing tactics may get the association attorney involved, but it will not. The board has made a determination that there were violations of the governing documents and gave your client the opportunity to correct them prior to a fine being imposed. Frankly, you should be working with your client to cure these violations instead of putting her in financial jeopardy. The association has followed the law and our governing documents and will provide proof should it become necessary. If you have a complaint or proof that the association violated any state law or its governing documents, please feel free to file a complaint with the Nevada Real Estate Division. Until then, please cease and desist your harassment.

NO RESPONSE WANTED OR REQUIRED. THANK YOU.

Pennie Puhek
President, AHCA